

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-02120

**RECEIVED**

MAY 28 2013

S.C. SUPREME COURT

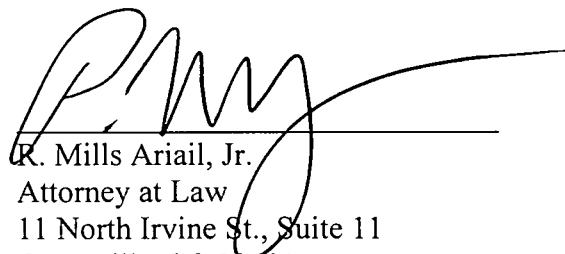
Tedric Delvion Hill ..... Appellant,  
S.C.D.C. No. 344029

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Tedric Delvion Hill appeals the sentences he received on December 8, 2010 from the Honorable Edward W. Miller. On April 24, 2013 The Honorable G. Edward Welmaker ordered that Appellant was entitled to a belated direct appeal from his criminal conviction pursuant to White v. State. Appellant, through counsel, received written notice of entry of this order on May 4, 2013. A copy of Judge Welmaker's Order is attached.

  
\_\_\_\_\_  
R. Mills Ariail, Jr.  
Attorney at Law  
11 North Irvine St., Suite 11  
Greenville, SC 29601  
Telephone (864) 232-9390  
Facsimile (864) 232-9392  
Attorney for Tedric Hill

Greenville, South Carolina  
May 21, 2013

Other Counsel of Record and Interested Parties:

Karen C. Ratigan, Esq.  
Assistant Attorney General  
PO Box 11549  
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803-734-3970  
Attorney for the State of South Carolina

Greenville County Clerk's Office  
Greenville County Courthouse  
305 East North Street  
Greenville, SC 29601

Greenville County Solicitor's Office  
305 East North Street  
Greenville, SC 29601

SC Commission of Indigent Defense  
Division of Appellate Defense  
1122 Lady Street  
Columbia, SC 29201-3218

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Court of Common Pleas

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Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-02120

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Tedric Delvion Hill ..... Appellant,  
S.C.D.C. No. 344029

v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this 21<sup>st</sup> day of May, 2013 I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

**Karen C. Ratigan, Esq.**  
**Assistant Attorney General**  
PO Box 11549  
Columbia, SC 29211  
Attorney for the State of South Carolina

**Greenville County Solicitor's Office**  
**305 E. North Street**  
**Greenville, SC 29601**

**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
1122 Lady Street  
Columbia, SC 29201-3218

Denise Tanner LaBeck  
Denise Tanner LaBeck  
Paralegal to R. Mills Ariail, Jr.  
LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law

May 21, 2013  
Greenville, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP2302120

2013 MAY 03 PM 4:29

Tedric D Hill vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
  - Rule 12(b), SCRC P:
  - Rule 41(a), SCRC P (Vol. Nonsuit):
  - Rule 43(k), SCRC P (Settled):
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):
  - Rule 40(j) SCRC P:
  - Bankruptcy:
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award:
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
  - Affirmed:
  - Reversed:
  - Remanded:
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order:  Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 3rd day of May, 2013.

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the , and a copy mailed first class this 3rd day of May, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine St., Ste. 11  
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensimer - Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Tedric Delvion Hill, )  
 S.C.D.C. No. 344029, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 C.A. No. 2011-CP-23-2120

**ORDER OF DISMISSAL  
 GRANTING WHITE V. STATE  
 BELATED APPEAL**

2013 APR 18 11:43 AM  
 65th St. - 3rd Floor  
 Greenville, SC 29615

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 25, 2011. The Respondent made its return on June 24, 2011. An evidentiary hearing into the matter was convened on April 18, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

**PROCEDURAL HISTORY**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 2010 term of General Sessions for assault and battery with intent to kill (ABIK) (2010-GS-23-5610, count 1) and possession of a weapon during the commission of a violent crime (2010-GS-23-5610, count 2). The Applicant waived presentment to the Grand Jury on the charge of assault on a correctional facility employee (2010-GS-23-4590). Daniel J. Farnsworth, Sr., Esquire represented the Applicant.

On December 8, 2010, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of eighteen (18) years for ABIK, five (5) years for possession of a weapon during the commission of a violent crime, and time-served for assault on a correctional facility employee. The Applicant did not appeal.

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
  - a. "Counsel failed to investigate what I told the court at General Sessions."

The Applicant submitted a pro se document captioned "Amendments to Post Conviction Relief Application" dated January 16, 2013:

1. Ineffective assistance of counsel:
  - a. Failed to conscientiously discharge his professional responsibilities.
  - b. Failed to act as a diligent, conscientious advocate.
  - c. Failed to effectively challenge the arrest and seizure.
  - d. Failed to give his complete loyalty.
  - e. Did not have the Applicant's best interest in mind.
  - f. Failed to serve the case in good faith.
  - g. Neglected the necessary investigations and preparation of the case.
  - h. Failed to do necessary factual investigations.
  - i. Did not conscientiously gather information.
  - j. Failed to do necessary legal research.
  - k. Failed to appeal the case after the Applicant wanted to appeal.
  - l. Failed to have the case settled in a "matter that would have been to [the Applicant's] best advantage."

At the PCR hearing, the Applicant proceeded solely on the allegation that he was entitled to a belated appeal.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Belated Appeal

This Court finds the Applicant's allegation that he was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291, n.1, 342 S.E.2d 60, 60, n.1 (1986) ("Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.").

Counsel for Respondent informed the Court that plea counsel was suffering from serious medical issues and would not be able to attend the hearing (or likely any hearing in the future). As such, the Respondent agreed that – out of an abundance of caution – the Applicant should be granted a belated appeal from his guilty plea hearing. The Court affirmatively finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes the Applicant is entitled to a belated review of his conviction. The Applicant's lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State.

### All Other Allegations

As to any and all allegations that were raised in the application and not specifically

addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

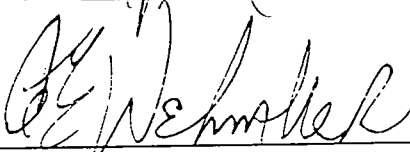
**CONCLUSION**

Based on all the foregoing, this Court finds and concludes the Applicant is entitled to a belated direct appeal of his criminal conviction pursuant to White v. State.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and Rule 243(i), SCACR for the appropriate procedure for securing belated appellate review; and
3. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 24 day of April, 2013.

  
\_\_\_\_\_  
G. Edward Welmaker  
Resident Judge  
Thirteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina

R. MILLS ARIAIL, JR.  
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601  
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

May 21, 2013

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MAY 28 2013

S.C. SUPREME COURT

Via US Mail

Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

*Re: Notice of Intent to Appeal from Tedric Delvion Hill (SCDC #344029) v. State of South Carolina, C.A. No.: 2011-CP-23-02120*

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of Judge Welmaker's Order of Dismissal Granting a White v. State Belated Appeal. By copy of this letter, I am also serving counsel for the State of South Carolina, the Greenville County Solicitor's Office, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,

LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law

R. Mills Ariail, Jr.

RMAjr/dcd  
Enclosures (as stated)

cc:

Greenville County Solicitor's Office  
305 East North Street  
Greenville, SC 29601

Karen C. Ratigan  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211-11549

Tedric D. Hill  
SCDC #344029  
Broad River Correctional Institute  
4460 Broad River Road  
Columbia, SC 29210

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Greenville, SC 29601

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Division of Appellate Defense  
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Daniel E. Shearhouse  
Clerk of Court  
Supreme Court of South Carolina  
PO Box 11330  
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