

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Angelo Ham, #315014,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT

) CASE NO. 2022-CP-16-0347

) **ORDER GRANTING RELIEF**
) **PURSUANT TO WHITE V. STATE**
) **AND ORDER OF DISMISSAL**

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. George M. McFaddin
Steven W. Fowler, Esq.
D. Russell Barlow, II, Esq.
Robert L. Gailliard, Esq.
March 4, 2024
Keshia T. Reed

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2024 MAR 25 A 10:51

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Angelo B. Ham (Applicant) on April 26, 2022. Respondent, the State of South Carolina, filed its Return on February 8, 2023, requesting an evidentiary hearing.

A hearing into the matter convened on March 4, 2024, before the Honorable George M. McFaddin, Jr. at the Darlington County Courthouse. Applicant was present and represented by Steven W. Fowler, Esquire. Assistant Attorney General D. Russell Barlow, II, represented the Respondent. This Court had before it a copy of the Darlington County Clerk of Court records regarding the subject's convictions; a copy the trial transcript; a copy of the resentencing transcript; a copy of the previous PCR records; and the records of the current PCR action.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. During its October 2005

term, the Darlington County Grand Jury indicted Applicant for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970), and criminal conspiracy (2005-GS-16-1971). Applicant was represented by Henry M. Anderson, Jr., Esquire.

On April 17, 2006, Applicant pled guilty to all three charges before the Honorable John M. Milling, circuit court judge. On April 17, 2006, he was sentenced to five years' imprisonment for criminal conspiracy. On September 14, 2007, Applicant was sentenced to life imprisonment for murder and twenty-five (25) years' imprisonment for armed robbery. Applicant filed a notice of appeal on September 19, 2007. Applicant withdrew the direct appeal. An order of dismissal and Remittitur was filed on June 9, 2008.

FIRST PCR ACTION: 2007-CP-16-0811

Applicant filed his first PCR application on September 11, 2007. Respondent filed its return and partial motion to dismiss on November 1, 2007. Applicant was represented by Charles T. Brooks, III, Esquire. A hearing was scheduled for October 15, 2008, where the application was withdrawn with prejudice.

SECOND PCR ACTION: 2008-CP-16-1006

Applicant subsequently filed his second PCR application on November 21, 2008. Respondent made its return on February 25, 2009. An evidentiary hearing into the matter was convened on September 13, 2010, at the Darlington County Courthouse. Applicant was present at the hearing and was represented by Gary I. Finklea, Esquire. Karen C. Ratigan, Esquire, of the South Carolina Attorney General's Office, represented Respondent. On December 7, 2010, the Honorable Thomas A. Russo issued the order of dismissal denying Applicant's PCR application. Applicant filed a *pro se* motion for relief from judgement under Rule 60(b)(5) on December 27, 2013, which was denied by written order filed May 16, 2014.

A notice of appeal was filed on May 31, 2011. On September 21, 2011, Robert M. Pachak, Esquire, filed a petition for *writ of certiorari* in the Supreme Court of South Carolina on behalf of Applicant, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). On March 11, 2014, by written order, the South Carolina Court of Appeals denied the petition. The Remittitur was returned to the circuit court on March 27, 2014.

THIRD PCR ACTION: 2013-CP-16-0248

Applicant subsequently filed his *third* PCR application, through Counsel Elizabeth Franklin-Best, Esquire, on March 20, 2013. Respondent made its return and motion to dismiss on May 14, 2013, amended on March 10, 2016. A conditional order of dismissal was signed by the Honorable J. Michael Baxley, circuit court judge, on May 23, 2013. An amended conditional order was signed by the Honorable Roger E. Henderson, circuit court judge, on March 16, 2016. Judge Henderson signed the final order of dismissal on March 3, 2017.

FOURTH PCR ACTION: 2014-CP-16-0202

Applicant filed his *fourth* PCR application on March 18, 2014. Respondent made its return and motion to dismiss on March 10, 2015. On March 16, 2016, the Honorable Roger E. Henderson, circuit court judge, signed the conditional order of dismissal. The final order of dismissal was signed by Judge Henderson on February 3, 2017. Applicant made a motion for reconsideration pursuant to Rule 59(e), SCRPC, which was denied by Judge Henderson through order filed May 8, 2017.

Applicant filed a notice of appeal and Rule 243 explanation on October 23, 2017. A *pro se* petition for *writ of certiorari* and appendix was made on November 29, 2017. An order dismissing the appeal was made on January 18, 2018. The Remittitur was returned to the circuit court on February 5, 2018.

PRIOR HABEAS CORPUS ACTION: 6:18-CV-290-JMC-KFM

Applicant filed a *pro se* petition for writ of habeas corpus under 28 United States Code § 2254 on March 12, 2018. Respondent filed its return and motion for summary judgment on December 21, 2018. On July 23, 2019, the report and recommendation that Respondent's motion for summary judgment be granted and Applicant's petition be denied was issued.

On August 23, 2019, the United States District Judge adopted the Magistrate's report and recommendation granting Respondent's motion for summary judgment and dismissed Applicant's petition. Ham v. Warden Williams, Case No. 6:18-cv-00290-JMC (D.S.C. filed Aug. 23, 2019).

A notice of appeal was made on September 10, 2019. The matter was dismissed on January 24, 2020. The order on appealability certificate was issued on January 24, 2020, and the mandate was issued on April 7, 2020.

RE-SENTENCING AND APPEAL: 2005-GS-16-1969; 2022-000280

Applicant had a re-sentencing hearing pursuant to Aiken v. Byers on March 3, 2022, before the Honorable Robert E. Henderson. He was represented by Robert L. Gailliard, Esquire (Counsel Gailliard). Applicant's initial sentence was not affected. He appealed from this re-sentencing on March 10, 2022. The matter was transferred from the South Carolina Supreme Court to the South Carolina Court of Appeals. The appeal was dismissed on April 6, 2022, for failure to file a timely proof of service. The Remittitur was returned to the circuit court on April 28, 2022. Applicant moved to recall the Remittitur, which was denied on June 2, 2022.

CURRENT ACTION BEFORE THE COURT

Applicant alleges he was denied his right to a direct appeal based on ineffective assistance of counsel.

RESPONDENT'S CONSENT TO WHITE¹ CLAIM

At the hearing, Applicant's Counsel indicated they were moving forward on the White claim only as this was the only claim raised in the PCR application. Counsel Gailliard testified at the hearing that he failed to timely serve the notice of appeal on the Solicitor's Office, and the appeal was dismissed. After this testimony, Respondent conceded that Applicant did not knowingly, intelligently, and voluntarily waive his right to direct appeal of his resentencing hearing. Accordingly, this Court grants Applicant relief pursuant to White v. State for appellate review of the resentencing hearing affirming his sentence on March 3, 2022. (2005-GS-16-1969, -1970, -1971).

CONCLUSION

This Court finds that Applicant did not knowingly and intelligently waive his right to a direct appeal and, as such, he may petition the Supreme Court of South Carolina pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See also Davis v. State, 388 S.C. 390, 342 S.E.2d 60 (1986) (setting forth procedures for a White appeal, prohibiting other forms of relief on this basis). This Court notes that Applicant did not raise any other allegations in his pleadings or at this hearing. Therefore, the Court finds it is appropriate to dismiss the PCR application, except for the White claim, with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from his attorney's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking appellate review. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his attorney must serve and

¹ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

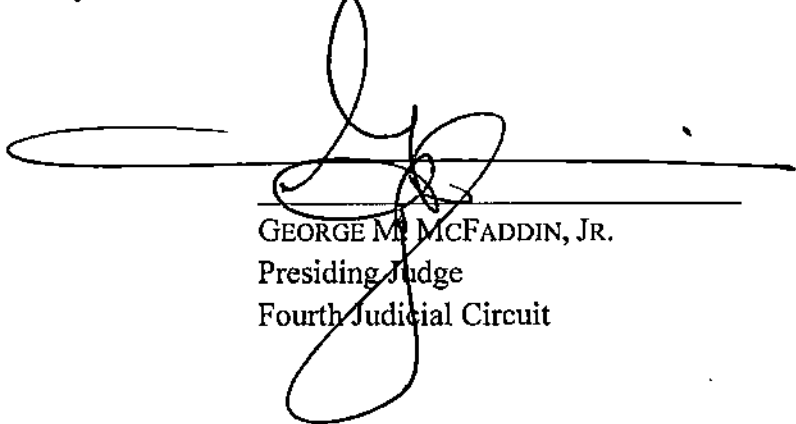
file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. Within thirty (30) days of service of this Order, counsel for Applicant must file a notice of appeal to secure the appropriate review of Applicant's resentencing on March 3, 2022. Counsel and 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 appellate review; and;
2. This PCR application, except for the White claim, is dismissed with prejudice; and
3. Applicant shall remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15th day of March, 2024.

Smith, South Carolina


GEORGE M. MCFADDIN, JR.
Presiding Judge
Fourth Judicial Circuit