

P.S.N.O.A.
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AUG-5-2013

"AUGUST 5TH, 2013"

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AUG - 9 2013

POOF of SERVICE of NOTICE of Appeal
S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
IN THE SUPREME COURT

Appeal from LAUREN COUNTY,
COURT OF COMMON PLEAS,
CLIFTON B. NEWMON, Circuit Judge,

CASE NO. 2011-CP-30-308.

BEN R. NABORS, prose appellant
vs.

THE STATE OF SOUTH CAROLINA, respondent

* SERVED ON THIS DAY, "AUGUST 5TH, 2013"

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AUG - 9 2013

S.C. Supreme Court

proof of service

This prose appellant does certify that he, "BEN R. NABORS," has served the notice of appeal on the South Carolina Attorney General, Alan Wilson, and assistant attorney General, J. Rutledge Johnson, Esq., by depositing same, a copy of it, in the United States male, postage prepaid, on justly served same, hand delivered to, S.C.D.C., B.R.C.F. Mace Room Supervisors, MR. COX, MR. KITT, and MRS. FRIE, ON AUGUST 5TH, FIFTH, 2013,"

P.S. N.O.A.
Pg. #77 = 3
Aug-5-2013

and that such notice of
appeal was, has been
addressed to the South
Caroline Attorney General's

C/O: Alan Wilson, and
J. Rutledge Johnson
P.O. Boxes 11549,
Coke, S.C. 29211-1549

by personally, The pro se
appellant did, deliver such,
notice of appeal, personally
to B.R.C.I. mad room supervisors,
and swears, this pro se appellant
under all penaltys of perjury,
That he, "BEN R. NABORS"
has done all described above
in this notice of appeal,
and that such was done on

P.S. N.O. A.
Pg. ~~4444~~ = 4
AUG-5-2013

cc August, 5th - fifth 2013

* AUGUST 5th 2013 * S. Ben R. Nabors
* today's DATE IS: * BEN R. NABORS #233844
B.R.C.E. MLT-1101-B
4460 BROADSIVERSROADS
COLLE, S.C. 29210

cc: CLK. COURT, COMON PLAS, 8th. cit. LYN W. LANCASTER,
cc: THE HONORABLE FANYA A. GEE, CLK. S.C. APPL. COURT
cc: THE HONORABLE DANIEL E. SHEAROUSE, S.C. SUPREM COURT.
cc: J. DAN WILSON, S.C. ATTORNEY GENERAL
cc: J. RUTLEDGE JOHNSON, ASS. T. S.C. A.G.

ck cont,
Pg. # = 1
Aug-5-2013

"AUGUST, 5th, 2013"

Letter to the Appellate Court
Clerk Filing this Notice of Appeal.

ON: AUGUST, 5th, "Fifth", 2013

THE Honorable DANIEL E. SHEAROUSE,
Clerk, SUPREME COURT SOUTH CAROLINA
P.O. Box 11330
Columbia, S.C. 29211

RE: BEN R. NABORS, prose appellant,
VS. SOUTH CAROLINE, Attorney
Generals, Alan Wilson, J. Rutledge
JOHNSON, EQS. Respondents.

CASE NO:
→

CASE NO. 2011-CP-30-308

Dear MR. SHEAROUSE: 8-5-13

Enclosed for filing, is a
copy, Notice of appeal, in the above
case. Also enclosed are the
following: A proof of service
of the notice of appeal on
the respondent(s). A copy
of the order(s) judgment, which,
(4-25-13, 7-16-13) respectfully, These

PJ. ~~17~~ ^{CLK-CONT} = 2

is are to be challenged
on appeal. A brief explanation
of the facts surrounding
such appeal and why this
prose appellant believes that
his appeal (should be) addressed
in the South Carolina Supreme
Court, why he feels that
important constitutional
federal, state, and due
process rights of his, have
been either ignored, or outright
violated by the respondents
and the eighth circuit, 8th Cir.
Court of General Sessions
and Common Pleas and
the eighth, 8th Cir. Solicitors
Office, Greenwood County.

pg. ^{CLK-COAT}~~77~~ = 3

therefore, This appeal is being
filed with the suprem court,
because of reasons named
above, and because this prose
appellant (does believe) that
his appeal issues are
(such issues of extrem
importance to those of
the public) who are as the
prose appellant, defined
as, (mentally ill or vulnerable
adults), whose rights have
been, such as this appellant
asserts his have, or whose
rights may be in the future.
Such as this appellants rights
have thus been violated
by constitutional, state, federal and
due process violations by L.C.S.D.

pg. ~~1111~~ ^{CIN. 0011} = 4

by rogue, abusive, discriminatory
police officers, local
officers of state, county
governments, of (actual
authority) who have
taken advantage of, "like me."

The mentally ill citizens
of this state, or country -
in order to gather
information on, about, other
citizens of this state, or
country, who are believed to
be drug dealers or
drug manufacturers,
who such officers have
targeted as such as "terrorists,"

pg. ~~XXXX~~^{CLK. COM} = 5

AND as a direct result of
the disregard of such
mentally ill persons, (like appellants)

safety, etc. Those mentally
ill persons became or may
in the future, if this court
fails to take action now,

may become, as this pro
se appellant did so become
on "6-10-09", exposed
to toxic/deadly chemicals
used in the manufacturing
of crystal meth. which
did further aggravate his or
aggravate and trigger schizophrenia

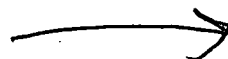
PS ^{CH. CONT.} ~~*****~~ = 6

has already diagnosed,
medically documented,
paranoid schizophrenia,
which did as result
directly led to the
convictions / sentences, for
which he now so appeals
from / seeks relief of.
through the courts of
this state and country.

SIN SIN /

August 5th 2013
for a / S DATE!

Ben Ray. Nabor
BEN R. NABORS #233844



clk. cont.
Pg. ~~1111111~~ = 7

August 5th 2013 * Ben Ray PA

today's DATE is

B&N R. NABORS #233844
B.R.C.T. MIT-1101-B
4460 BROADS MIVERS
ROADS, COLE, S.C. 29210

Attorney for respondents
CC: ALAN WILSON, ATTORNEY GENERAL, S.C.
J. Rutledge JOHNSON, SCS

P.O. BOYS 11549, COLE, S.C.
zip. 29211-1549

Pg. 7 = 28

~~PP 2013~~

8-5-13

STATE OF SOUTH CAROLINA)
CLYNN W. LANCASTER) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) CIVIL ACTION NO.: 2010-CP-30-00308

2013 JUL 19 A) 8:47

Benjamin Nabors,
S.C.D.C. No. 233844

Applicant,

vs.

State of South Carolina,

Respondent.

LAURENS COUNTY
CLERK OF COURT

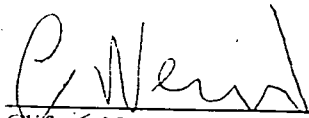
**ORDER DENYING MOTION
TO ALTER OR AMEND**

This matter comes before the Court by way of Applicant's Motion to Alter or Amend the Order of Dismissal filed May 22, 2013 in the Laurens County Clerk of Court office. The Applicant's Motion to Alter or Amend was not filed with the Clerk of Court, but was mailed to my chambers in Kingstree, South Carolina.

However, having carefully considered the arguments submitted and applicable law, the Court finds that the Motion to Alter or Amend should be DENIED.

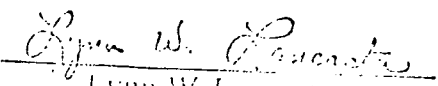
It is therefore ORDERED that the Applicant's Motion to Alter or Amend is DENIED.

AND, IT IS SO ORDERED.


Clifton Newman
Presiding Judge

July 16, 2013
Columbia, South Carolina

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JUL 23 2013
FBI
MAIL ROOM

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Laurens County CCCP & CTS

Pg. 7 = 3

RJ

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)
LYNN W. LANCASTER)
IN THE COURT OF COMMON PLEAS)
EIGHTH JUDICIAL CIRCUIT)

2013 MAY 22 A 9:19

Benjamin Ray Nabors, #233844,)

2011-CP-30-0308)

Applicant, LAURENS COUNTY)
CLERK OF COURT)

ORDER OF DISMISSAL)

v.)

State of South Carolina,)

Respondent.)

RECEIVED

AUG 23 2013

S.C. Supreme Court

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 30, 2011. Respondent made its Return on August 25, 2011. An evidentiary hearing into the matter was convened on March 13, 2013, at the Greenwood County Courthouse. The Applicant proceeded *pro se* after having Rodney Richey, Esquire relieved as counsel. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Alex Stalvey, Esquire, also testified. This Court also had before it a copy of the records of the Laurens County Clerk of Court, records from the South Carolina Department of Corrections, the guilty plea transcript, a report from the Department of Mental Health and numerous articles on the subject of methamphetamines and addiction, which were introduced by the Applicant.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Laurens County. The Applicant was indicted at the October 2009 term of the Laurens County Grand Jury for Carjacking (2009-GS-30-

ATTORNEY GENERAL'S OFFICE

RECEIVED 5/28/13

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END

HAVE COPIES MADE

ROUTE TO

ORDER: TRANSCRIPT

PEN RECORDS CLERK RECORDS

OTHER: Scan! LB!

Send copy to SCOT for

Review! calendar date 30

days

5724

1276), and Armed Robbery (2009-GS-30-1387). He was represented by Alex Stalvey, Esquire. On October 18, 2010, the Applicant pled guilty as indicted to both charges. The Honorable J. Derham Cole sentenced the Applicant to incarceration for a period of twenty-five (25) years for armed robbery, and twenty (20) years suspended with five (5) years' probation to run consecutively. He did not appeal his convictions or sentences.

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

- I. "I have a long history of mental illness and was not allowed to plea guilty but mentally ill, was abused by guards"
 - a) "Long history of illness, earlier incident on day in question was evidence of mental illness at that time"

In his amended application filed by Rodney Richey, Esquire on January 15, 2013, the Applicant alleged numerous issues including ineffective assistance of counsel.

At the hearing, Applicant proceeded on the ineffective assistance of counsel and involuntary guilty plea claims.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he

burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Investigate

Applicant claims Counsel was ineffective because Counsel failed to properly investigate his case prior to his guilty plea.

“Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

The Applicant alleged Counsel conducted no pre-trial investigation, and the Applicant had witnesses that would have confirmed this allegation. Additionally, the Applicant stated he wanted an independent mental evaluation, separate from the one conducted by the Department of Mental Health. The Applicant further made allegations that he wanted a copy of his discovery, a copy of the guilty plea transcript, a Blair¹ hearing, and an independent psychiatrist's evaluation. He also claims he was insane at the time of the crime, and Counsel did not investigate any of these issues.

Counsel testified he was appointed by Judge Hill, as the Applicant had several prior attorneys on this case. Counsel stated he met with the Applicant on numerous occasions and even had the Applicant transferred from the Laurens County Detention Center to the Greenville County Detention Center so that he could meet with the Applicant more often. Counsel testified he prepared this case for a jury trial. Counsel stated he has been practicing criminal law for eight years, including five years as an assistant solicitor.

Counsel also testified he received discovery from the State in this case and extensively discussed it with the Applicant. The discovery included, but was not limited to, the incident reports, the Applicant's statement to law enforcement, the victim's statement, the transcript from the Applicant's wife's (also a co-defendant) guilty plea transcript, the evaluation from the Department of Mental Health, which deemed the Applicant competent, the Applicant's medical records, and the Applicant's prior record. Counsel also stated he prepared a defense to the armed robbery charge and was prepared to challenge the State's theory that the Applicant was armed with a knife. Counsel would have attempted to persuade the trial judge to instruct the jury on common law robbery.

Counsel also testified he researched a possible insanity defense. Counsel would have challenged the report from the Department of Mental Health as to its finding of criminal responsibility and the Applicant's mental health status. Counsel testified he researched the medications the Applicant was taking and even had a mental health expert subpoenaed and ready to testify at the trial. However, Counsel admitted the Applicant was criminally responsible as he knew right from wrong.

Further, Counsel testified he prepared for trial and even started the trial. Counsel challenged the Applicant's statement to law enforcement in a Jackson v. Denno² hearing. However, the trial judge ruled the statement was admissible. Additionally, both Counsel and the State gave opening statements, and the State even called one witness before the case broke for the day. Counsel testified he spoke with the Applicant the next morning, and the Applicant told Counsel he wanted to plead guilty. Counsel then stated he advised the Applicant that, in his opinion, the Applicant would have been convicted, and the best possible sentence would result from a guilty plea. The Applicant did

1 State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) (competency to stand trial).

2 378 U.S. 368 (1964).

not tell Counsel he did not understand or that he was against this idea. Counsel lastly testified he felt fully prepared, and based his advice to the Applicant on his experience and the facts of the case.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. Counsel, based on his experience as a former assistant solicitor and now defense attorney, sufficiently prepared this case for trial. Counsel thoroughly discussed with the Applicant all of the discovery documents on numerous occasions. He researched the Applicant's mental health, even retaining a mental health expert to assist in case preparation and understanding the various medications the Applicant was taking. Counsel also was prepared to challenge the evaluation completed by the Department of Mental Health. The Applicant alleged an independent mental evaluation would have proven Counsel was ineffective for not having him separately evaluated. However, the Applicant failed to provide any evidence that a separate evaluation would have shown any different results than Department of Mental Health's report as to his competency to stand trial.

The Applicant also alleged he had witnesses that would have proven Counsel was ineffective. However, no witnesses testified on the Applicant's behalf at the evidentiary hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992).

This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Involuntary Guilty Plea

The Applicant alleges Counsel coerced him into pleading guilty. The Applicant also testified he pled because he was under the impression that Judge Cole would give him a life sentence and because he was on various medications at the time of his guilty plea.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

The Applicant's alleges his plea was involuntarily entered. This Court finds that this allegation is conclusively refuted by the record. At the guilty plea hearing, the Applicant testified that he was not under the influence of any alcohol or drugs, other than medications that helped him understand what was occurring around him. (Transcript p. 16 line 5). Judge Cole informed Applicant of the maximum penalty of carjacking and armed robbery (Transcript p. 10 line 14; p. 12 line 15), and informed him of his right to remain silent as well as his right to a jury trial and other associated jury trial rights. (Transcript p. 6 line 5- p. 9 line 14). Applicant subsequently affirmed

that he was guilty of both carjacking and armed robbery (Transcript p. 10 line 10; p. 12 line 11), and he agreed with the facts of the case as stated by the solicitor. (Transcript p. 20 lines 7 and 9). Applicant stated "I just want to get this over with so [victim] ain't got to keep standing over there and getting put through more of it. I'm very shameful for what I have done to her. And I know what I done was wrong. She was just trying to be a good citizen. And I just flipped out. And that's no excuse." (Transcript p. 16 line 24- p. 17 line 4). Not once during the guilty plea did the Applicant explain to Judge Cole that Counsel coerced him into pleading guilty or that he did not understand the proceedings.

This Court further finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing lacked credibility. Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

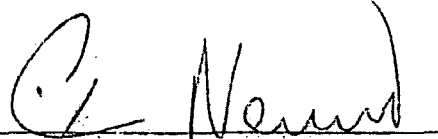
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

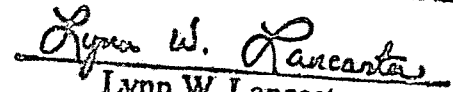


Clifton B. Newman
Presiding Circuit Court Judge
Eighth Judicial Circuit

April 25, 2013

Lexington, South Carolina

A TRUE COPY OF ORIGINAL



Lynn W. Lancaster
Laurens County CCCP & GS

8-5-2013
today's date

TO: Honorable, DANIEL E. SHEAROUSE
CLERK - SUPREME COURT, S.C.
P.O. BOX 11330
COTE, S.C. 29211

RECEIVED
AUG - 9 2013
S.C. Supreme Court

FROM: BEN NABORS #233844, PRO SE APPELLANT
B.R.C.I. Mt-1101-B
4460 Broad Rivers Road
COTE, S.C. 29210

RE: ENCLOSED, "NOTICE OF APPEAL"
WITH DOCUMENTATION, (EXPLANATIONS)
AS TO WHY THIS PRO SE APPELLANT
WISHES THE SUPREME COURTS TO
HEAR HIS APPEAL, RATHER THAN
THE COURT OF APPEALS. ^{cc} THE A.G.
WAS SENT PROOF OF SERVICE ON APPEAL
(today also) DEER MR. SHEAROUSE. 8-5-13
ENCLOSED PLEASE FIND ALL REFERENCED ^{today's date}
ABOVE. PLEASE FILE MY NOTICE OF
APPEAL. THANK YOU.

8-5-13
today's date

SINSIMY
BEN NABORS #233844
B.R.C.I. Mt-1101-B
4460 Broad Rivers Road