

**W. BARRY BLAND  
ATTORNEY AT LAW, LLC  
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SPARTANBURG, SC**

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MAILING ADDRESS  
POST OFFICE BOX 6432  
SPARTANBURG, SC 29304

August 21, 2013

THE HONORABLE DANIEL E. SHEAROUSE  
CLERK OF COURT  
SOUTH CAROLINA SUPREME COURT  
P.O. BOX 11330  
COLUMBIA, SC 29211

**RECEIVED**

AUG 26 2013

**S.C. Supreme Court**

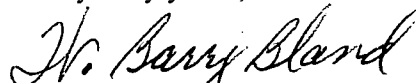
Dear Mr. Shearouse:

**RE: The State vs. Shannon Tremell Hopkins  
Case #2011-CP-42-2460**

Enclosed for filing is an original of NOTICE OF INTENT TO APPEAL and PROOF OF SERVICE on opposing counsel for the above-referenced case to which I had been appointed. (A copy of the ORDER OF APPOINTMENT and ORDER OF DISMISSAL is also enclosed.)

Should you have any questions or need anything further, please do not hesitate to contact my office.

Very truly yours,

  
W. Barry Bland

WBB/ncc

Enclosures 4

cc Suzanne H. White, Assistant Attorney General (w/enclosures)  
Lorraine French, Office of Indigent/Appellate Defense (w/enclosures)  
Shannon Tremell Hopkins (w/enclosures)

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**RECEIVED**

AUG 26 2013

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

**S.C. Supreme Court**

The Honorable J. Mark Hayes, II

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Case No.: 2011-CP-42-2460

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The State .....Respondent,

vs.

Shannon Tremell Hopkins ..... Appellant.

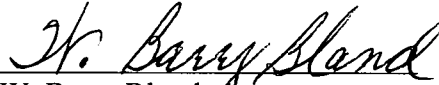
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NOTICE OF INTENT TO APPEAL

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Shannon Tremell Hopkins hereby notices the appeal of the denial of his application for post-conviction relief for the above case number as dismissed with prejudice by the Honorable J. Mark Hayes, II on July 24, 2013.

Dated: August 21, 2013

  
W. Barry Bland, Attorney  
SC Bar No. 729  
P.O. Box 6432  
Spartanburg, SC 29304-6432  
(864) 582-9192; Fax: (864) 582-9193  
Attorney for Appellant

Other Counsel of Record:

Suzanne H. White, Assistant Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549  
(803) 734-3970  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

**RECEIVED**

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

**AUG 26 2013**

**S.C. Supreme Court**

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Case No.: 2011-CP-42-2460

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The State .....Respondent,

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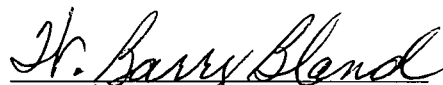
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PROOF OF SERVICE

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I certify that I have served the Notice of Intent to Appeal on The State of South Carolina by depositing same in the U.S. First Class Mail, proper postage affixed thereto, on August 21, 2013, addressed to its attorney of record: Suzanne H. White, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211-1549

Dated: August 21, 2013



W. Barry Bland, Attorney

SC Bar No. 729

PO Box 6432

Spartanburg, SC 29304-6432

(864) 582-9192; Fax: (864) 582-9193

Attorney for Appellant

STATE OF SOUTH CAROLINA  
 COUNTY OF SPARTANBURG  
 Shannon Tremell Hopkins, 252133  
 Plaintiff(s),  
 -vs-  
 State Of South Carolina,  
 Defendant(s).

RECEIVED  
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IN THE COURT OF COMMON PLEAS  
 7th JUDICIAL CIRCUIT  
 CASE NO.: 2011-CP-42- 2460  
 APPOINTMENT OF COUNSEL OR GAL  
 (Select one.)

ORDER  
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption                    | <input type="checkbox"/> Juvenile          |
| <input type="checkbox"/> SVP case  | <input type="checkbox"/> Custody and/or Visitation   | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change                                   | <input type="checkbox"/> Other: Post Convict Rel 500 |  |

It appears , who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: .

Therefore, it is ordered that **W. Barry Bland**, hereby is appointed as (Select one.)

- counsel     lead counsel (if capital PCR case)     guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

- (If Death Penalty PCR Case) It is further ordered that Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED  
 October 19, 2012

*Gail Moffitt*  
 Circuit Judge     Clerk of Court  
*Act Clerk*

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 M. HOPE BLANKLEY

Plaintiff Attorney:

|                                   |  |
|-----------------------------------|--|
| <b>W. Barry Bland</b>             |  |
| Attorney at Law                   |  |
| P O Box 6432                      |  |
| Spartanburg, S. C. 29304 582-9192 |  |

Defendant Attorney:

|                         |  |
|-------------------------|--|
| State Of South Carolina |  |
|                         |  |
|                         |  |
|                         |  |

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at [www.sccid.sc.gov](http://www.sccid.sc.gov), and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

Handwritten initials in the top right corner.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Shannon Tremell Hopkins, #252133, )  
 )  
Applicant, )  
 )  
v. )  
 )  
-----  
State of South Carolina, )  
 )  
Respondent. )  
 )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-2460

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 1, 2011. An evidentiary hearing into the matter was convened on April 3, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by W. Barry Bland, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, Applicant's records from the dismissal and appeal of the application, and the plea transcript.

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**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 Spartanburg County. The Applicant was indicted at the June 1998 term of the Court of General Sessions for Spartanburg County for attempted armed robbery (98-GS-42-2730) and armed robbery (98-GS-42-2731). He was represented by Michael Morin, Esquire. On August 25, 1998, the Applicant pled guilty as indicted.

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He was sentenced by the Honorable J. Derham Cole to confinement for a period of thirty years for armed robbery and twenty years for attempted armed robbery. A Motion for Reconsideration was timely filed, but later dismissed by Judge Cole on November 4, 1998.

The Applicant filed a timely notice of appeal. An Anders brief was filed on Applicant's behalf: The South Carolina Court of Appeals dismissed the appeal. State v. Hopkins, Op. No. 2000-UP-032 (filed January 11, 2000). The Remittitur was returned on January 28, 2000.

The Applicant then filed this application on June 1, 2011. The application was summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on August 25, 1998. The Remittitur was returned after his unsuccessful appeal on January 28, 2000. The State argued that Applicant was therefore required to file his application before January 28, 2001, and the lower court agreed.

Applicant appealed the denial of his application. On September 19, 2012, the South Carolina Supreme Court reversed the decision of the lower court summarily dismissing the application and ordered a hearing pursuant to Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009). The Remittitur was issued on October 5, 2012.

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## ALLEGATIONS

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

- 1) Ineffective assistance of counsel, in that;
  - a) Counsel allowed Applicant to proceed with guilty plea, even though Applicant was mentally incompetent at the time of the commission of the crimes and at the time of the guilty plea,
  - b) Counsel failed to investigate Applicant's mental health history and request mental health examination,

## 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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### Tolling of Statute of Limitations

This Court was instructed to conduct a hearing to determine if the statute of limitations for filing a post-conviction relief application, the year following Applicant's 1998 guilty plea, should be tolled due to the Applicant's mental incompetency, as indicated in Ferguson. Further, if this Court found incompetence prevented the Applicant from filing his application within the mandated statute of limitations, then this Court was to determine the duration of the incompetence and whether or not the application was filed within one year of the Applicant regaining competency.

Based upon observations of and the testimony of the Applicant, along with review of the limited information available from the file, this Court finds that the Applicant has failed to meet

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his burden of proof. It appears that it is more likely than not that the reason an application was not filed for more than ten years following his guilty plea was the fact that Applicant was not aware of the process, not that he suffered from incompetence which prevented him from filing during that time period.

The only witness presented was the Applicant, who testified that he suffered from a few health/mental issues which had gone un-medicated or under-medicated while in the Department of Corrections. Viewing the testimony in a light most favorable to the Applicant, testimony was presented to indicate that the untreated health/mental issues pre-dated his guilty plea and were either not recognized or were improperly treated until the end of 2009 or beginning of 2010. Applicant testified that it was not until this 2009 or 2010 transfer to Perry Correctional facility that he was able to think "in his right mind," and found out about the PCR application process from an older inmate. However, no other witness was called to support the Applicant's factual assertions related to any health/mental issues. A reasonable assumption can be made that medical and mental health records of the Applicant exist, but no documents were presented to guide the Court in its fact finding process.

Therefore, this Court only had the records of the SCDC Offender Management System to review. This Court has closely reviewed those records for information which may support the Applicant's position. It appears that the Applicant has been able to function sufficiently well in the Department of Corrections to the extent that he has earned 1165 work credits, 279 education credits and service credits of 4893. At the time of the printing of the report, the Applicant was also employed as a food service worker and was at a level 2 security level in a minimum security prison. However, Applicant also had a history of three assaultive disciplinary charges (ultimately dropped), roughly seventy-six non-assaultive disciplinary convictions and roughly

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nine non-assaultive convictions dropped. Applicant's convictions vary from sexual misconduct, failing to obey, false statement to harm, out of place, disrespect, inciting/creating a disturbance, use of profanity, and other charges listed as major, minor, or administrative. It does appear that the Applicant has been transferred to several institutions, including several different admissions into Perry. However, this Court finds that it would require speculation to draw from these documents any conclusion other than what is obvious in the documents, which is to validate that the Applicant was admitted into Perry while in custody of the Department of Corrections.

The burden at this hearing is on the Applicant to establish that he suffered from a mental incapacity (incompetence) which prevented him from filing his PCR application within the one year statute of limitations once his right to file the application became ripe. Without more, the Applicant's testimony is insufficient in this case to carry the burden. Even assuming the Applicant had mental issues which were incorrectly being treated, there is a lack of sufficient evidence upon which this Court can rely to establish those mental issues or incorrect treatment to the Applicant resulted in him not filing his application.

Therefore, pursuant to the Order remanding this case back to the circuit court on September 19, 2012, this Court finds that the Applicant has failed to meet his burden as indicated in Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009), which would allow his application to proceed. The application is dismissed as barred by the statute of limitations.

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### CONCLUSION

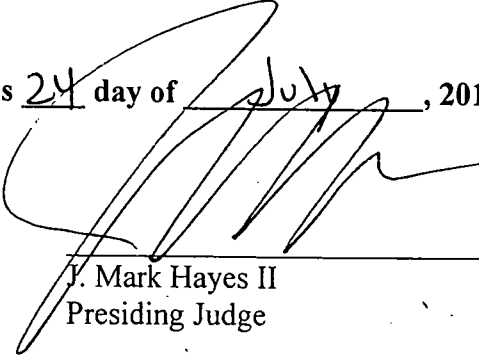
Based on all the foregoing, this Court finds and concludes that the Applicant has not met his burden of proof of establishing that mental incompetence prevented him from filing an application for almost twelve years following his guilty plea. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions 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 this 24 day of July, 2013.

  
\_\_\_\_\_  
J. Mark Hayes II  
Presiding Judge

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2013 JUL 26 AM 8:46  
M. HOPE BLACKLEY

W. BARRY BLAND  
ATTORNEY AT LAW  
P.O. BOX 6432  
SPARTANBURG, SC 29304-6432

THE HONORABLE DANIEL E. SHEAROUSE  
CLERK OF COURT  
SOUTH CAROLINA SUPREME COURT  
P.O. BOX 11330  
COLUMBIA, SC 29211

