

*Julia McCarley Bass*

1039 44th Avenue North  
Suite 102  
Myrtle Beach, SC 29577



Attorney at Law  
Certified Family Court Mediator

Telephone (843) 839-2501  
Fax (843) 839-2507  
Bassatsccoast@aol.com

August 22, 2013

The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**RECEIVED**

AUG 26 2013

**S.C. Supreme Court**

RE: Jimmy Charles Kendall, III, #319409 vs. The State of South Carolina  
Case No: 2012-CP-46-00768 (PCR)

Dear Mr. Shearouse:

Enclosed please find the Notice of Intent To Appeal, Proof of Service on the Respondent and Final Order of Dismissal in the above-referenced Post-Conviction Relief action, together with four (4) copies, for filing in your office. I would appreciate your filing the Notice of Intent To Appeal, Proof of Service, and Final Order of Dismissal on Mr. Kendall's behalf and returning the additional date-stamped copies to me in the envelope provided.

If you should have any questions concerning this matter, you may reach me at (843) 839-2501. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Julia Bass".

Julia McCarley Bass

Enclosures  
JMB/jc

cc: J. Rutledge Johnson, Assistant Attorney General

Jimmy Charles Kendall, III, #319409

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

CASE NO:  
2012-CP-46-0768

FILED-RECEIVED  
2013 AUG 15 PM 3:26  
DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

Jimmy Charles Kendall, III, #319409 ..... Appellant,

v.

The State of South Carolina..... Respondent.

NOTICE OF INTENT TO APPEAL

Jimmy Charles Kendall, III, appeals the Final Order of Dismissal of the Honorable John C. Hayes, III, dated July 22, 2013. Appellant received written notice of entry of this order on August 5, 2013.

August 14, 2013

*Julia McCarley Bass*  
JULIA McCARLEY BASS Bar No. 64259  
Mickle & Bass, LLC  
1039 44<sup>th</sup> Avenue North, Suite 102  
Myrtle Beach, SC 29577  
(843)839-2501  
Attorney for Appellant

Other Counsel of Record

J. Rutledge Johnson  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
803-734-3970  
Attorney for Respondent

**RECEIVED**

AUG 26 2013

**S.C. Supreme Court**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM YORK COUNTY  
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John C. Hayes, III, Circuit Court Judge

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C.C.P. & G.S.  
YORK COUNTY, SC

2013 AUG 15 PM 3:26

FILED-RECEIVED

Jimmy Charles Kendall, III, # 319409..... Appellant,

V.

The State of South Carolina..... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Intent To Appeal on the State of South Carolina by depositing a copy of the Notice in the United States Mail, postage prepaid, on August 14, 2013, addressed to the attorney of record, J. Rutledge Johnson, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549.

August 14, 2013

**RECEIVED**

AUG 26 2013

**S.C. Supreme Court**

*Julia McCarley Bass*  
Julia McCarley Bass S.C. Bar # 064259  
Mickle & Bass, LLC  
1039 44<sup>th</sup> Avenue North, Suite 102  
Myrtle Beach, SC 29577  
843-839-2501  
Attorney for Appellant

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP4600768

Jimmy Charles Kendall	State Of South Carolina
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by: J. Rutledge Johnson	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (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.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  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; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION  
Final Order of Dismissal

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/John C. Hayes, III  
Circuit Court Judge

2049  
Judge Code

8/1/2013  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on **August 1, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **August 1, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

**Julia McCarley Bass** 1039 44Th Ave. N. Ste. 102 Myrtle  
Beach, SC 29577

**J Rutledge Johnson** Office Of The Attorney General PO Box  
11549 Columbia, SC 292111549

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

**David Hamilton**

**Court Reporter**

**David Hamilton - Clerk of Court**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 )  
 Jimmy Charles Kendall, III, # 319409 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

2012-CP-46-0768

FINAL ORDER OF DISMISSAL

CERTIFIED TRUE COPY  
 2013 AUG 15 3:26 PM  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC  
 FILED-RECEIVED  
 2013 AUG - 1 PM 2:18  
 DAVID HAMILTON  
 C.C.P. & C.S.  
 YORK COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 29, 2012. The Respondent (the State) made its Return and Motion to Dismiss on May 15, 2012, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated May 21, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. The Applicant received a copy of the Conditional Order of Dismissal on June 21, 2012, but did not receive a copy of the Applicant's transcripts until April 19, 2013. The Applicant replied to the Conditional Order of Dismissal on May 8, 2013.

In a document titled "Applicant's Response to Conditional Order of Dismissal," the Applicant argues he is entitled to an evidentiary hearing because he contends his waiver of counsel at the November 2, 2011 hearing was not knowingly and intelligently made. The Applicant further argues the trial court should have conducted a hearing pursuant to Faretta v. California, 422 U.S. 806

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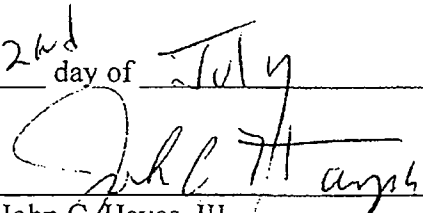
(1975) to determine whether the Applicant knew and understood the dangers of self-representation. This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Once the Applicant decided to represent himself, there cease to exist a claim for ineffective assistance of counsel. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 22<sup>nd</sup> day of July, 2013.

  
John C. Hayes, III  
Chief Administrative Judge

#2

Sixteenth Judicial Circuit

York, South Carolina.

Mickle & Bass LLC  
1039 44th Avenue North  
Mayfair Building, Suite 102  
Myrtle Beach, SC 29577

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29201

