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**Jul 08 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM JASPER COUNTY  
Court of General Sessions  
Brooks P. Goldsmith, Circuit Court Judge

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Appellate Case No. **2023-001769**

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

Juan Carlos Garcia Negrete,

APPELLANT.

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**MOTION TO WITHDRAW APPEAL**

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This matter comes before the Court from an appeal of a criminal conviction and sentence filed by the Appellant Juan Carlos Garcia Negrete. The Appellant respectfully requests to withdraw his direct appeal. Specifically, the Appellant desires to withdraw his direct appeal to pursue an Application for Post-Conviction Relief (PCR).

In support of this motion, the Appellant has acknowledged his consent and desire to withdraw this appeal by his signature below. The Appellant has been advised and understands that this decision is final, and Appellant will not be able to reinstate his direct appeal after it is dismissed pursuant to this motion. The Appellant made this decision knowingly, intelligently, and voluntarily after being advised of his rights and waiver of legal issues preserved for appellate review.

Based on the foregoing reasons, the Appellant Juan Carlos Garcia Negrete respectfully moves this Court to dismiss his direct appeal with prejudice.

Respectfully submitted,

  
Dayne C. Phillips, Esq.

PRICE BENOWITZ LLP  
1614 Taylor Street, Suite D.  
Columbia, SC 29201  
O: 803-272-4503  
C: 803-807-0234  
F: 803-380-8035  
dayne@pricebenowitz.com

ATTORNEY FOR APPELLANT

June 27, 2024

**I CONSENT AND SO MOVE.**

  
Juan Carlos Garcia Negrete, Appellant

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Appellate Case No: **2023-001769**

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The State of South Carolina,

Respondent,

v.

Juan Carlos Garcia Negrete,

Appellant.

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that I have this date served the within and foregoing Motion to Withdraw Appeal by emailing and depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Mark Farthing, Esq., S.C. Attorney General's Office, PO Box 11549, Columbia, SC  
29211



**Courtney Powers**  
*Paralegal*

1614 Taylor Street, Suite D.  
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Appellate Case No.: **2023-001769**

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STATE OF SOUTH CAROLINA,

Respondent,

v.

Juan Carlos Garcia Negrete,

Appellant.

---

**AFFIDAVIT OF APPELLANT TO WITHDRAW APPEAL**

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PERSONALLY appeared before me, **Juan Carlos Garcia Negrete**, who being duly sworn, deposes and says:

- (1) I am the Appellant in the above-captioned direct appeal, and it is my desire to withdraw this direct appeal.
- (2) Specifically, I intend to pursue an application for post-conviction relief (PCR) action.
- (3) I have been advised and understand that I have a right to pursue this direct appeal and this Court will only address issues that are preserved for appellate review.
- (4) I have been advised and understand that this direct appeal must be dismissed to pursue collateral review of my conviction and sentence in a PCR action.

- (5) I have been advised and understand that the issues presented in a direct appeal are different than the issues generally raised in a PCR action.
- (6) I have been advised and understand that any legal issues that are preserved for appellate review are considered waived upon dismissal of this appeal, and I would not be able to raise those issues in a subsequent proceeding.
- (7) Specifically, I have been advised and understand that I will not be able to raise issues that are preserved for a direct appellate review in a PCR action.
- (8) I have been advised and understand the differences between a direct appeal and PCR action, and the differences in the legal issues generally raised in those proceedings.
- (9) I have been advised and understand the risks of withdrawing my direct appeal to pursue a PCR action.
- (10) I have been advised and understand that the potential remedy of my direct appeal could be different than the remedy pursued in a PCR application (e.g., suppression versus new trial).
- (11) I have been advised and understand that the decision to withdraw my direct appeal is final, and I will not be able to reinstate my direct appeal after it is dismissed.
- (12) I have been advised and understand that I will not be able to raise any issues that were preserved for appellate review in a PCR (or collateral) proceeding due to those issues being waived by withdrawing this appeal.
- (13) I have been advised and understand and that it is a potential conflict of interest for my current lawyer, Dayne Phillips, to represent me on a post-conviction relief action because I have been advised and understand that I would be unable to raise any allegations of ineffective assistance of appellate counsel against him during the collateral proceeding and would only be able to raise allegations of ineffective assistance of counsel against my

former Trial Counsel, Mark Peper.

- (14) I have been advised and understand that I have the right to hire different counsel for PCR representation, and it is my desire to continue representation with Dayne Phillips, after this appeal is dismissed to pursue a PCR action on my behalf.
- (15) It is my informed desire to withdraw this appeal, thereby waiving any potential issues preserved for appellate review.
- (16) Specifically, I am requesting that this direct appeal be dismissed with prejudice to pursue collateral relief in a PCR action.
- (17) I am not under the influence of any medications/drugs or have any mental/medical condition(s) affecting my ability to understand the consequences of this decision.
- (18) I have not been promised, threatened, or coerced into making this decision.
- (19) Therefore, I move for and consent to this Court dismissing my direct appeal with prejudice.

FURTHER, AFFIANT SAYETH NOT.

Juan Garcia  
Juan Carlos Garcia Negrete

SWORN TO BEFORE me this 27<sup>th</sup> day  
of June, 2024.

Virginia Robinson (L.S.)  
Notary Public for South Carolina  
My Commission Expires: April 21, 2031

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The State of South Carolina,

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Appellant.

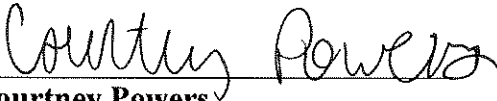
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**CERTIFICATE OF SERVICE**

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I hereby certify that I have this date served the within and foregoing Affidavit of Appellant to Withdraw Appeal by emailing and depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Mark Farthing, Esq., S.C. Attorney General's Office, PO Box 11549, Columbia, SC  
29211

  
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July 8, 2024

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10505 JUDICIAL DRIVE, SUITE 203  
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July 8, 2024

The Honorable Jenny Kitchings  
Clerk of Court, SC Court of Appeal  
P.O. Box 11629  
Columbia, SC 29211

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Re: State of South Carolina v. Juan Carlos Garcia Negrete  
MOTION TO WITHDRAW APPEAL;  
AFFIDAVIT OF APPELLANT TO WITHDRAW APPEAL  
Appellate Case No.: 2023-001769


Dear Ms. Kitchings:

I have enclosed the original Motion to Withdraw Appeal and the original Affidavit of Appellant to Withdraw Appeal that I emailed and mailed for filing today in the above-referenced case. Thank you for your assistance with filing these documents.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

cc: Juan Carlos Garcia Negrete  
Mark Farthing, Esq.

s/ Dayne C. Phillips   
Dayne C. Phillips, Esq.

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