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September 25, 2013

HAND DELIVERED

RECEIVED

SEP 25 2013

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: Anthony Deon Kelley, #334711, vs. State of South Carolina
Civil Action No.: 2013-CP-40-02386

Dear Mr. Shearouse:

Enclosed for filing is a *Notice of Appeal* in the above-referenced case. Also enclosed are the following:

1. Proof of Service of the *Notice of Appeal* on the Respondent.
2. A copy of the *Order of Dismissal* which is challenged on appeal.

Since the Appellant is indigent, and the undersigned appeared as Court-appointed counsel in this matter, I respectfully request that the filing fee be waived pursuant to Rule 203(d), *South Carolina Appellate Court Rules*.

Thank you very much for your assistance.

Sincerely,

David E. Belding
Attorney for Appellant

DEB/ym
cc: Megan E. Harrigan, Esquire
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning, Circuit Court Judge

RECEIVED
SEP 25 2013
S.C. Supreme Court

Case No. 2013-CP-40-02386

Anthony Deon Kelley, #334711.....Appellant,

v.

State of South Carolina.....Respondent.

NOTICE OF APPEAL

Anthony Deon Kelley, #334711, appeals from the *Order of Dismissal with Prejudice* of the Honorable L. Casey Manning, Circuit Court Judge, in this case, dated September 16, 2013, and filed September 17, 2013, dismissing Appellant's post-conviction relief application. Appellant's counsel received notice of entry of this *Order* on September 23, 2013.

BY:

David E. Belding (S.C. Bar #00623)
Post Office Box 11964
Columbia, South Carolina 29211
(803) 665-3161
ATTORNEY FOR APPELLANT

Columbia, South Carolina
September 25, 2013

Other Counsel of Record:
Megan E. Harrigan, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

(803) 734-5178
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning, Circuit Court Judge

RECEIVED
SEP 25 2013
S.C. Supreme Court

Case No. 2013-CP-40-02386

Anthony Deon Kelley, #334711.....Appellant,

v.

State of South Carolina.....Respondent.

PROOF OF SERVICE

I certify that I have served the *Notice of Appeal* on Megan E. Harrigan, Esquire, counsel for Respondent, by depositing a copy of same in the United States Mail, postage prepaid, on September 25, 2013, addressed to her as counsel of record at Post Office Box 11549, Columbia, South Carolina, 29211-1549.

September 25, 2013

David E. Belding
Post Office Box 11964
Columbia, South Carolina 29211
(803) 665-3161
ATTORNEY FOR APPELLANT.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4002386

Anthony Deon #334711 Kelley

PLAINTIFF(S)

Richland County Solicitors Office

DEFENDANT(S)

RICHLAND COUNTY FILED
2013 SEP 17 P 12:56
JEANETTE W. McBRIDE C.C.P. & G.S.

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		$
		$
		$

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.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 September 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Anthony Deon #334711 Kelley David Edward Belding Megan E. Harrigan

Anthony Deon #334711 Kelley

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____ **Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Anthony Kelley, # 334711, Applicant, VS. State of South Carolina, Respondent.	)	Case No. 2013-CP-40-2386 **ORDER OF DISMISSAL WITH PREJUDICE**

RICHLAND COUNTY FILED
2013 SEP 17 PM 12:52
JEANETTE W. McBRIDE C.C.P. & G.S.

This matter comes before the Court by way of an application for post-conviction relief filed April 22, 2013, in which he seeks relief in the form of a "reduction lesser plea." The State has moved to dismiss the application on the basis that Applicant waived post-conviction relief pursuant to a consent agreement accepted by the trial court in exchange for the State recommending a negotiated aggregate sentence of between forty to fifty years imprisonment.

Before this Court are Applicant's records from the Richland County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, Applicant's Plea Agreement, and Applicant's Guilty Plea transcript. Applicant was indicted by the Richland County Grand Jury for:

- Assault and Battery in the First Degree (2011-GS-40-2908);
- Assault and Battery in the First Degree (2011-GS-40-2910);
- Assault and Battery in the First Degree (2011-GS-40-2927);
- Assault and Battery in the First Degree (2011-GS-40-2929);
- Assault and Battery in the First Degree (2011-GS-403201);
- Resisting Arrest (2011-GS-40-3865);
- Failure to Stop for a Blue Light (2011-GS-40-3866);
- Criminal Sexual Conduct in the First Degree (2011-GS-3867);

SCANNED

- Grand Larceny over $10,000 (2011-GS-40-3868);
- Burglary in the First Degree (2011-GS-40-3869);
- Hit and Run – Personal Injury (2011-GS-40-3874); and
- Hit and Run – Property Damage (2011-GS-40-3876).

Applicant was represented on all charges by Gregory B. Collins, Esquire, and James H. May, Esquire. Applicant and his attorneys entered into a signed Plea Agreement with the Solicitor's Office signed by Applicant, both of his attorneys, the prosecuting Assistant Solicitor, and the Honorable R. Knox McMahon on April 23, 2012. In exchange for the State recommending a negotiated aggregate sentence of between forty to fifty years imprisonment, Applicant, under the express terms of the agreement, explicitly waived his right to any and all direct or collateral attacks on his guilty plea and sentences:

> "I further understand that by accepting this plea agreement I give up my right to appeal all matters. I agree to waive any and all appeals, Post-Conviction Relief (PCR) applications, federal habeas petitions and any and all other methods of review of this guilty plea and sentence."

This Plea Agreement was sworn to, signed, and filed in open Court in the presence of both of Applicant's attorneys, the prosecuting Assistant Solicitor, and Judge McMahon during Applicant's guilty plea proceeding.

Respondent argues that the post-conviction relief application should be dismissed as it violates the bargained for agreement of the parties. Specifically, Applicant waived seeking post-conviction relief under the terms of the agreement. Further, the agreement explicitly stated that by signing the Plea Agreement, Applicant acknowledged and attested that he fully understood the terms of the agreement, read the Plea Agreement in detail, had ample opportunity to discuss the agreement with his attorneys, and did discuss at length the terms of the agreement with his

counsel. Finally, he indicated by his signature that: "I understand that if I request either judicial review it would constitute a breach of this agreement. I understand that if I breach this agreement it would nullify the negotiation of a sentencing range of forty (40) to fifty (50) years and the State can pursue the maximum sentence allowed by law. No one has threatened me to make me enter the plea. I am entering the plea because: I am guilty, and I believe it is in my own best interest."

In addition to the written Plea Agreement, this Court has reviewed the transcript of Applicant's guilty plea and finds that Judge McMahon reviewed Applicant's rights thoroughly and extensively, and determined that Applicant was waiving his rights, including the right to seek post-conviction relief, freely and voluntarily. Applicant's trial attorneys and the prosecuting Assistant Solicitor explained to Judge McMahon the essence of the bargain, including Applicant's waiver of appellate rights and post-conviction relief for an agreement the State would recommend a negotiated sentence of between forty to fifty years, as opposed to the life plus ninety-five years Applicant was facing. They advised Judge McMahon that they fully discussed the terms of the agreement with Applicant. Judge McMahon specifically went over Applicant's right to post-conviction relief and the fact that he was waiving this right. Judge McMahon's colloquy ensured that Applicant was making the decision voluntarily and that Applicant was comfortable with the decision.

Based on the express terms of the agreement and the clear demonstration from the colloquy that Applicant freely and voluntarily waived his rights in exchange for the agreement, this Court finds that the Respondent's motion to dismiss should be granted and that pursuant to the terms of the bargained for agreement between the State and Applicant, Applicant is

precluded from seeking post-conviction relief. See Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008) (finding waiver of appellate and post-conviction relief rights was voluntarily made based on the text of the plea agreement and the transcript of the plea hearing, and where both attorneys attended the plea hearing and signed the written plea agreement, along with Spoone himself; therefore, the post-conviction relief court did not err in enforcing the waiver and dismissing the application).

CONCLUSION

Based on the foregoing, this Court finds and concludes that the post-conviction relief application must be dismissed pursuant to the express terms of the aforementioned consent agreement. This Court notes to the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

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 19 day of September, 2013.

L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina