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Jan 15 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

J. Derham Cole, Circuit Court Judge

Appellate Case No. **2024-001007**

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

Gregory Howard Frye,

APPELLANT.

MOTION TO WITHDRAW APPEAL

This matter comes before the Court from an appeal of a criminal conviction and sentence filed by the Appellant **Gregory Howard Frye**. The Appellant respectfully requests to withdraw his direct appeal. In support of this motion, the Appellant has attached an affidavit providing the reasons for withdrawal, advisement of rights, and waiver of potential issues preserved for appellate review. Specifically, the Appellant desires to withdraw his direct appeal to pursue an Application for Post-Conviction Relief. 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 **Gregory Howard Frye** respectfully moves this Court to dismiss his direct appeal with prejudice.

Respectfully submitted,



Dayne C. Phillips, Esq.

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ATTORNEY FOR APPELLANT

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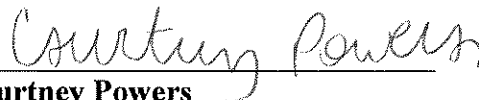
Gregory Howard Frye,

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

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APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

J. Derham Cole, Presiding Judge

Appellate Case No.: 2024-001007

STATE OF SOUTH CAROLINA,

Respondent,

v.

Gregory Howard Frye,

Appellant.

AFFIDAVIT OF APPELLANT TO WITHDRAW APPEAL

PERSONALLY appeared before me, **Gregory Howard Frye**, who being duly sworn, deposes and says:

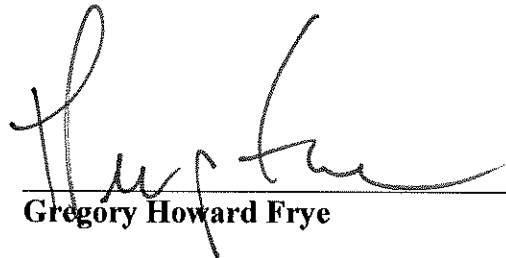
- (1) I am the Appellant in the above-captioned direct appeal, and it is my desire to withdraw this direct appeal.
- (2) Specifically, I intend to pursue an application for post-conviction relief (PCR) action.
- (3) I have been advised and understand that I have a right to pursue this direct appeal and 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.

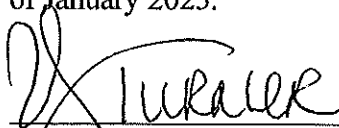
- (14) I have been advised and understand that I have the right to hire different counsel for PCR representation, and it is my desire to continue representation with Dayne Phillips, after this appeal is dismissed to pursue a PCR action on my behalf.
- (15) It is my informed desire to withdraw this appeal, 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.



Gregory Howard Frye

SWORN TO BEFORE me this 14th day
of January 2025.



(L.S.)
Notary Public for South Carolina
My Commission Expires: 2/26/28

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CERTIFICATE OF SERVICE

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:

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January 15, 2025

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

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SC Court of Appeals

Re: State of South Carolina v. Gregory Howard Frye
MOTION TO WITHDRAW APPEAL;
AFFIDAVIT OF APPELLANT TO WITHDRAW APPEAL
Appellate Case No.: 2024-001007

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: **Gregory Howard Frye**
Mark Farthing, Esq.

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

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