

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Honorable R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

OCT - 2 2013

S.C. Supreme Court

DARREN A. SIMMONS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION TO HOLD CASE IN ABEYANCE


The undersigned respectfully shows the Court:

1. The petition for a writ of certiorari in the above named case following the PCR court's granting of an appeal on the motion for reconsideration pursuant to White v. State, 263 S.C. S.C. 110, 108 S.E.2d 35 (1974) and denying all other claims is due to be filed with this Court on October 4, 2013. For the reasons articulated below, it is now apparent that a critical transcript is now required for judicial review of the White v. State appeal ordered by the Honorable Markley Dennis.

2. Darren Aulbray Simmons pled guilty to burglary second degree violent and the unlawful possession of a weapon on September 1, 2010 before the Honorable Roger Young. Judge Young sentenced Simmons to fifteen years suspended to the active service of ten years and five years probation.
3. On September 10, 2010, plea counsel, Mary Beth Mullaney, filed a Motion for Reconsideration of the Sentence Or In The Alternative Withdrawal of the Guilty Plea. Several issues were included in the motion. However, the basis of the motion was that the state had agreed to make no recommendation as to sentencing, and then violated that agreement by asking the judge to order active time. The state filed a Motion in Opposition on September 23, 2010.
4. Upon reviewing the PCR hearing transcript, the undersigned learned that a hearing was held on the Motion for Reconsideration. Judge Young did not issue a written order but denied the motion on the record. Plea counsel did not appeal the ruling of denial. The written Motion for Reconsideration was admitted at the PCR hearing as an exhibit, but the transcript for the hearing was not available.
5. Judge R. Markley Dennis, Jr., the PCR judge, granted a belated appeal pursuant to White v. State, Id., on the denial of the Motion for Reconsideration although the transcript was not available for review.
6. Appellate counsel requests this Court to hold this case in abeyance to allow time for counsel to procure the transcript of the motions hearing. This transcript will be essential to preparation of the belated appeal.
7. Judge Dennis expressed his belief that this issue was significant and needed to be reviewed on appeal. Two PCR hearing pages are attached with the judge's comments.


8. A letter was sent to the court reporter on October 2, 2013 requesting this transcript. A copy of this letter is attached.
9. The Assistant Attorney General, Ashleigh Wilson, has consented to this motion for abeyance.

Respectfully submitted,

  
LaNelle Cantey DuRant  
Appellate Defender

Attorney for Petitioner

This 2nd day of October, 2013

  
I consent to this motion:

Ashleigh Wilson  
Assistant Attorney General

October 2, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Charleston County

Honorable R. Markley Dennis, Jr., Circuit Court Judge  
\_\_\_\_\_

DARREN A. SIMMONS,

PETITIONER,

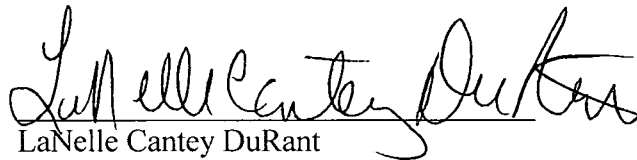
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.


\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Motion To Hold In Abeyance in the above referenced case has been served upon opposing counsel, Ashleigh R Wilson, Esquire and Darren A. Simmons, 342580 at Kershaw Correctional Institution this 2nd day of October, 2013.

  
LaNelle Cantey DuRant  
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me  
this 2nd day of October, 2013.

  
\_\_\_\_\_  
(L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

October 2, 2013

Ms. Amanda Haffenden  
Circuit Court Reporter  
P.O. Box 424  
Summerville, SC 29484

Dear Ms. Haffenden:

Please provide us with the following transcript:

State of South Carolina v. Darren A. Simmons

Case #: 2010-GS-10-01722  
2010-GS-10-03109

County: Charleston

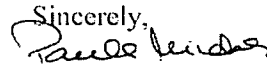
Date of trial: November 11, 2010

Presiding Judge: Roger M. Young

To insure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the page from 1-52, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the State and defense counsel's opening and closing arguments. Please be sure to include Headers and a list of exhibits. This was a hearing on the motion for reconsideration of the sentence.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,  
  
Maria Paula Murdoch  
Legal Assistant

cc: S.C. Supreme Court  
Attorney General's Office

Darren A. Simmons v State of South Carolina

Case No. 11-CP-10-6034  
Hearing of January 11, 2012

Before The Honorable R. Markley Dennis, Jr.

1 clear in my head, Judge?

2 THE COURT: Um-humm.

3 MR. ARCHER: Are you granting the  
4 PCR or are you granting a belated appeal?

5 THE COURT: I am granting a  
6 belated appeal, denying the PCR because he  
7 fails on the PCR because of the second prong.  
8 Assuming ineffective assistance, there is no  
9 change -- it wouldn't have changed the  
10 outcome, that is the guilty plea. The  
11 sentence was consistent within the purview.

12 If the sentence had violated, as a  
13 matter of law, the agreement then so be it.  
14 But that's up to the reviewing court in  
15 Columbia, not for me. Thank you. Good luck  
16 to you, Mr. Simmons.

17 I will ask the State to prepare the  
18 Order since I am denying it. I need you to  
19 address, please, that while I find it  
20 ineffective that I don't think that the  
21 change would have been because the applicant  
22 did not testify that he would have done  
23 anything other than plead guilty.

24 I really believe that he needs to  
25 have that ruling reviewed. I really don't

1 know that it -- I don't know that the ruling  
2 departs from anything that is not really  
3 contained in this, but I think he's got a  
4 right to have that reviewed by the court as  
5 to whether or not it was an agreement and  
6 whether or not a straight up plea -- it would  
7 be a great thing because -- let's put it this  
8 way: that if the court grants that, and this  
9 could be on the record because I -- I know  
10 that they don't need my guidance on this but  
11 we are going to have to change the sentencing  
12 sheet to have another block, that says "This  
13 is without negotiation or recommendations."  
14 Or "this is without any recommendation as to  
15 sentence" or -- and that probably is a better  
16 block that we need to have rather than  
17 "without negotiation" because we all know  
18 that there are always negotiations. That's  
19 up to them. Sir?

20 MR. ARCHER: Well, I am just  
21 commenting.

22 THE COURT: Well, you don't need  
23 to. I appreciate it. We can talk about that  
24 off the record.

25 MR. ARCHER: Right.