

ELLIOT BROWN
#43722037
FCI ALLENWOOD MEDIUM
P.O. BOX 2000
WHITE DEER, PA 17887

RECEIVED

OCT 04 2013

S.C. SUPREME COURT

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OCT 04 2013

SC Court of Appeals

SOUTH CAROLINA COURT OF APPEAL
JENNY ABBOTT KITCHINGS, CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

RE: STATE OF SOUTH CAROLINA vs ELLIOT J. BROWN
APPELLATE CASE No. 2013-001144

Dear Clerk Of Court:

In response to your office document, which stated that "Our record do not reflect that you have a notice of appeal pending at the Court of Appeal." Please find enclosed a copy of the above mentioned correspondence.

Also, enclosed are copies of; Notice of Appeal, dated and stamped May 24, 2013,; letter from Caroline M. Hurlbeck attorney at law stating that she had filed an appeal on behalf of Elliot Brown, and he will be represented by an attorney from the SC office of Appeal Defense; Order Granting Respondents Partial Motion to Dismiss and Applicants Request for White v. State Belated Appeal, dated May 3, 2013....The Supreme Court Of South Carolina order Remittitur, in which Elliot J. Brown has not receive representation from the SC Appellate Defense Office.

Wherefore the Petitioner request clarification of the totality of his situation with instruction on how to proceed at this point.

I patienttly await response in this matter, of any pro,se steps allowed by the Court the further the Appeal proceedings.

Sincerely,

Elliot Brown 43722037
Sept. 30 2013

SOUTH CAROLINA COURT OF APPEALS

ELLIOTT BROWN

DECLARATION OF
ELLIOTT BROWN

v.

STATE OF SOUTH CAROLINA

Indictment No. 2007-GS-23-592

ELLIOTT BROWN, hereby declares under the penalty of perjury pursuant to 28 U.S.C.1746 that the following is true and correct:

1. Annexed hereto is a true copy of Notice of Appeal filed in Elliott Brown behalf by attorney Caroline M. Horlbeck dated May 24, 2013.
2. Annexed hereto is a true copy of letter by Caroline M. Horlbeck to Elliott Brown submitting a copy of the final order of Elliott's Brown's Post-Conviction relief Petition (PCR), and Caroline M.
3. Annexed hereto is a true copy of the final order of Honorable G Edward Welmaker, Resident Judge, Thirteenth Judicial Circuit.
4. That the declarant is pro se and incarcerated in a federal institution without access to the internet online South Carolina Appellate Court Rules.
5. That declarant request that counsel be appointed in this matter
6. That declarant request that the court excuse any defaults and allow on appeal to be perfected.
7. That declarant request any other relief this court deems necessary and proper.

Executed on this 9 th day of August, 2013 in White Deer, Pennsylvania.

Respectfully Submitted

Elliott Brown 45722037
Elliott Brown-pro se

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S.C. SUPREME COURT

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OCT 04 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
HONORABLE Edward W. Miller

Indictment No. 2007-GS-23-592

STATE OF SOUTH CAROLINA,

RESPONDENT,

vs.

ELLIOT J. BROWN

APPELLANT.

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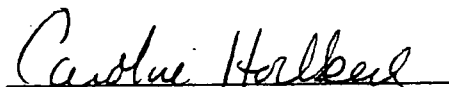
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SC Court of Appeals

NOTICE OF APPEAL

Appellant ELLIOT J. BROWN, appeals from the Order and Sentence of the Honorable Edward W. Miller, Circuit Court Judge, dated January 9, 2008.

Respectfully submitted,



Caroline M. Horlbeck, Esq.
Greenville County Courthouse
Greenville, SC 29601
Attorney for Appellant

Date: May 24, 2013

Other Counsel of Record: Howard Steinberg, Assistant Thirteenth Circuit Solicitor
305 Ea. North Street, Suite 325, Greenville SC 29601

CAROLINE M. HORLBECK

ATTORNEY AT LAW

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601
horlbecklawfirm@gmail.com

(864) 315-9919
Fax(864) 232-4756

May 29, 2013

Mr. Elliott Brown #43722 037
FCI Allenwood
P.O. Box 2000
White Deer, PA 17887

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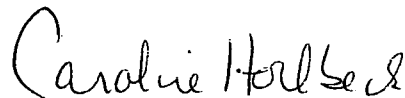
SC Court of Appeals

Dear Mr. Brown:

Enclosed please find a copy of the final order in your PCR case and copy of the notice of appeal filed on your behalf. Unfortunately, the Judge denied your PCR petition but I have filed an appeal on your behalf. You will be represented on your appeal case by an attorney from the SC Office of Appellate Defense. Please address all correspondence regarding your appeal to:

SC Office of Appellate Defense
P.O. Box 11433
Columbia, SC 29211

Yours very truly,



Caroline M. Horlbeck

CMH:kmo
Enclosures

The Supreme Court of South Carolina

Elliot J. Brown, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-001144

The Honorable Edward W. Miller
Greenville County
Trial Court Case No. 2011CP2304514

ORDER

Petitioner has failed to provide the explanations required by Rule 243(c) and/or Rule 203(d)(1)(B) of the South Carolina Appellate Court Rules, and requested by this Court's letter of June 11, 2013. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

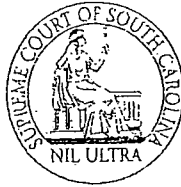
FOR THE COURT

BY 
CLERK

Columbia, South Carolina

July 9, 2013

cc: Caroline M.W. Horlbeck, Esquire
Karen Christine Ratigan
Office of Appellate Defense *LY*



Closed
13-314

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

July 25, 2013

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The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

JUL 26 2013

SC OFFICE OF
APPELLATE DEFENSE

REMITTITUR

Re: Elliott J. Brown v. State
Lower Court Case No. 2011CP2304514
Appellate Case No. 2013-001144

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc: Caroline M.W. Horlbeck, Esquire
Karen Christine Ratigan, Esquire
Division of Appellate Defense *LP*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Elliott Brown,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-4514

**ORDER GRANTING RESPONDENT'S
PARTIAL MOTION TO DISMISS AND
APPLICANT'S REQUEST FOR
WHITE V. STATE BELATED APPEAL**

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17 47 WJ 5 - 174 607

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 8, 2011. The Respondent made its return and partial motion to dismiss on December 30, 2011. A hearing into the matter was convened on April 18, 2013 at the Greenville County Courthouse. The Applicant participated through teleconference and was represented at the hearing by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

The Applicant is confined in Federal Correctional Institution Allenwood Medium facility in White Deer, Pennsylvania. The Applicant was indicted at the February 2007 term of the Greenville County Grand Jury for trafficking marijuana (2007-GS-23-0592). He was represented by Monte Desai, Esquire.

On January 9, 2008, the Applicant pled guilty to possession with intent to distribute marijuana, second offense. He was sentenced by the Honorable Edward W. Miller to eighteen (18) months of home incarceration. The Applicant did not appeal.

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EWH

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Misadvised about the elements of the offense.
 - b. Failed to object to the factual basis for the guilty plea.
 - c. Failed to file an appeal.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

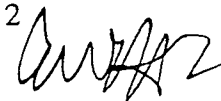
Partial Motion to Dismiss

This Court finds the Respondent's partial motion to dismiss issues related to the Applicant's guilty plea must be granted due to failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant pled guilty to the offense he challenges in this Application on January 9, 2008. The Applicant was therefore required to file his application before January 9, 2009. This Application was filed on July 8, 2011, which was approximately two (2) years and six (6) months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from

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the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, all issues related to the Applicant’s January 9, 2008 guilty plea hearing – except for the issue of a belated appeal – must be dismissed.

Belated Appeal

This Court finds the Applicant’s allegation that he was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291, n.1, 342 S.E.2d 60, 60, n.1 (1986) (“Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.”).

Counsel for Respondent stated she had spoken to plea counsel in this case, who admitted he failed to properly file an appeal. As such, the Respondent agreed the Applicant was entitled to a belated appeal from his guilty plea hearing. The Court affirmatively finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes the Applicant is entitled to a belated review of his conviction. The Applicant’s lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

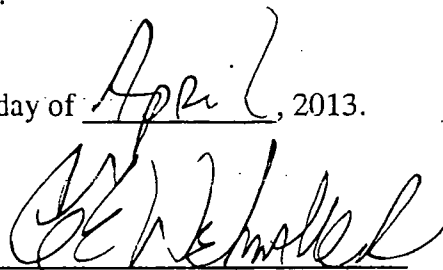
CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant is entitled to a belated direct appeal of his criminal conviction pursuant to White v. State.

IT IS THEREFORE ORDERED:

1. That the Respondent's partial motion to dismiss is granted;
2. That the Applicant's request for a belated appeal is granted; and
3. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and Rule 243(i), SCACR for the appropriate procedure for securing belated appellate review.

AND IT IS SO ORDERED this 24 day of April, 2013.

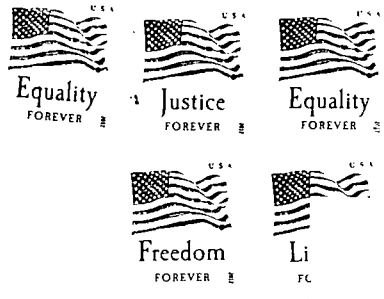


G. Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit



, South Carolina

Elliot Brown 43722037
FCI Allenwood Medium
P.O. Box 2000
White Deer PA 17887



SEP 30 2013

Handwritten signature: DC

43722-037
Jenny Abbott Kitchings Clerk
1015 Sumter ST
Appeal Court
Columbia, SC 29201
United States

ALLENWOOD FEDERAL CORRECTIONAL INSTITUTION
WHITE DEER, PA 17887-2500

DATE

THE ENCLOSED LETTER WAS PROCESSED THROUGH SPECIAL MAILING PROCEDURES FOR FORWARDING TO YOU. THE LETTER HAS BEEN NEITHER OPENED NOR INSPECTED IF THE WRITER RAISES A QUESTION OR PROBLEM OVER WHICH THIS FACILITY HAS JURISDICTION. YOU MAY WISH TO RETURN THE MATERIAL FOR FURTHER INFORMATION OR CLARIFICATION. IF THE WRITER ENCLOSES CORRESPONDENCE FOR FORWARDING TO ANOTHER ADDRESSEE, PLEASE RETURN THE ENCLOSURE TO THE ABOVE ADDRESS.

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