

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Honorable G. Edward Welmaker, Circuit Court Judge

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Case No: 2012-CP-46-3568

Hashin Alli Oneil..... Appellant  
S.C.D.C. No.: 350619

**RECEIVED**

OCT 07 2013

v.  
The State..... Respondent

**S.C. SUPREME COURT**

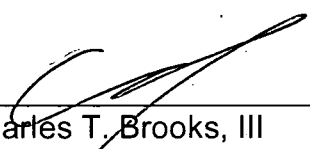
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NOTICE OF APPEAL

Hashin Alli ONEil appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable G. Edward Welmaker, on SEPTEMBER 23, 2013 , which I, Charles T. Brooks, III, received on October 3, 2013.

October 3, 2013

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Charles T. Brooks, III  
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Attorney for Appellant

Other Counsel on Record:  
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Case No: 2012-CP-46-3568

Hashin Alli Oneil.....Appellant  
S.C.D.C. No.: 350619

v.  
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**PROOF OF SERVICE**

I, the undersigned, do hereby certify that on this 3<sup>rd</sup> day of October, 2013, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Proof of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on DATE MAILED addressed to the following as indicated below:


South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: J. Rutledge Johnson, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

Hashin Alli ONEil, 350618  
MacDougall Correctional Institution  
1516 Old Gilliard Road  
Ridgeville, S. C. 29472

Dated: October 3, 2013



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Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Hashin Alli Oneil, #350619,

2012-CP-46-3568

Applicant,

v.

**ORDER OF DISMISSAL AND  
GRANT OF APPEAL PURSUANT  
TO WHITE V. STATE**

State of South Carolina,

Respondent.

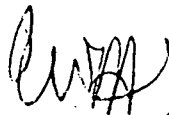
This matter comes before the Court by way of an Application for Post-Conviction Relief (PC) filed October 8, 2012. The Respondent made its Return on or about April 25, 2013.

An evidentiary hearing was held on August 16, 2013, at the Moss Justice Center in York, SC. Charles T. Brooks, III, Esquire represented the Applicant. J. Rutledge Johnson, Esquire of the South Carolina Attorney General's Office represented the Respondent.

**I.**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the April 2012 term of the York County Grand Jury for Attempted Murder (2012-GS-46-0977) and Possession of a Firearm during the Commission of a Violent Crime (2012-GS-46-0977A). Robert Muckenfuss, Esquire, represented him. On April 18, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty of Assault and Battery, 1<sup>st</sup> degree as a lesser included offense of Attempted Murder. The Honorable John C. Hayes, III sentenced the Applicant to confinement for ten (10) years for Assault and Battery, 1<sup>st</sup> degree. The Applicant did not appeal his conviction or sentence.

In his application for post-conviction relief the Applicant alleges that he is being held in



custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
  - a. "Failed to raise defenses and Failure to file appeal."
2. "Perjured testimony"
  - a. "The State's star witness(sic) statement and testimony are inconsistent."
3. "Instructions"
  - a. "Instructions given to jury were not justified by the evidence."

### SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified Counsel was appointed to him. He also stated Counsel failed to file an appeal on his behalf. He testified he thought the jury should not have been instructed concerning Assault and Battery, 1<sup>st</sup> degree as he was indicted for Attempted Murder. He also stated he wanted a verdict of simply guilty or not guilty on the Attempted Murder charge. He claims Counsel should have objected to this jury instruction. Applicant, lastly, stated he did not believe the trial court had subject matter jurisdiction as he was not indicted for Assault and Battery, 1<sup>st</sup> degree.

On cross-examination, Applicant stated he understood Assault and Battery, 1<sup>st</sup> degree was a lesser included offense of Attempted Murder under S.C. Code Ann. 16-3-600(B)(3). He also agreed that the facts, as presented at trial, showed he was the only one who could have fired the gun that shot Victim.

Counsel testified he fully discussed the jury instructions with the State and the trial judge in chambers and understood the trial judge would instruct the jury concerning Assault and Battery, 1<sup>st</sup> degree as a lesser included offense of Attempted Murder. Counsel also stated he discussed this with Applicant. Counsel admitted he did not file an appeal on Applicant's behalf, but discussed filing an appeal with Applicant in the holding cell immediately after the verdict was read. Counsel testified he believed Assault and Battery, 1<sup>st</sup> degree was a victory considering the evidence presented at trial. Counsel also stated he was successful in keeping the jury from learning of evidence which was damaging to Applicant's case. Counsel further testified he advised Applicant not to appeal the verdict



as he did not believe there would be a better outcome. He stated Applicant did not ask him to file an appeal, and it was his understanding that Applicant did not desire an appeal.

On cross-examination, Counsel testified again that Assault and Battery, 1<sup>st</sup> degree is a lesser included offense of Attempted Murder under S.C. Code Ann. 16-3-600(B)(3). He also stated he did not object to the jury instruction because he wanted the jury to have other options than Attempted Murder. Additionally, he testified the trial court had subject matter jurisdiction to sentence Applicant under Assault and Battery, 1<sup>st</sup> degree. He lastly testified the decision to appeal the case belonged to Applicant, but Applicant did not instruct Counsel to file an appeal.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the hearing, Applicant alleged that he was denied effective assistance of counsel when trial counsel failed to file an appeal his behalf.

This Court agrees that the allegation that the Applicant was denied a direct appeal is meritorious. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).<sup>1</sup>

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his conviction(s). A petition for belated review pursuant to White v. State can remedy the Applicant's lack of a direct appeal.

<sup>1</sup> "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." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

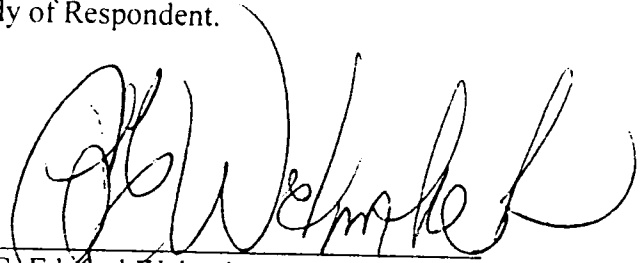
AWH 3

The Court also finds Applicant's other allegations are without merit. Applicant has failed to meet his burden of proof as to other PCR issues.

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED!



G. Edward Welmaker  
Presiding Circuit Court Judge  
Sixteenth Judicial Circuit

9-23-, 2013

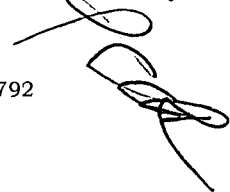
Fickeno, South Carolina.

# The Brooks Law Offices, LLC

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**Irma R. Brooks**  
Attorney



October 3, 2013

South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

RE: Hashin Alli ONeil v State of South Carolina  
Case No. 2012-CP-46-3568

Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.


If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

**RECEIVED**

Sincerely,

OCT 07 2013

  
Charles T. Brooks, III  
CTB/jlb

**S.C. SUPREME COURT**

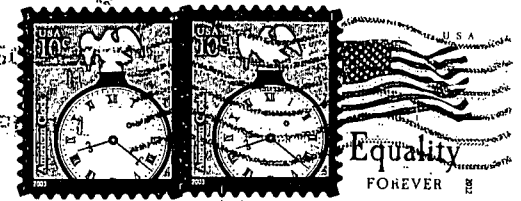
Enclosed as stated

Cc: J.Rutledge Johnson, Office of Attorney's General  
South Carolina Office of Appellate Defense  
Hashin Alli Oneil, 350619

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