

Randall Smith 312339

ACI-F3A-05

P.O. Box 1151

Fairfax, SC 29211

November 3, 2013

Daniel Shearhouse

S.C. Supreme Court Clerk

P.O. Box 11330

Columbia, SC 29211

Re: Court scheduling order

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S.C. SUPREME COURT

Dear Mr. Shearhouse:

I have been unable to get any extra time in our law library here to research my case and assist my appellate counsel because I do not have a document showing a court date on my appeal of my PCR. I was told to request a scheduling order for my writ petition filed by Mr Robert Pachak with SCCID. I explained to Ms McQueen, our director of education, that appeals are decided on briefs and that I did not think there would be a "court date".

I showed her a copy of my petition and the State's return as well as the rules of court book to no avail. If there is no date you can send me; perhaps you could call her and explain how appeals are processed. Extra library time is very important since we are only getting two,

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of the three scheduled times for the library. We often lose our library day altogether due to 'disruptive movement' days in which we are confined to our dorms. Add to that the fact we only get 1 hour of computer time per day on one of the two computers and the last copy of the "Southeastern Reporter" stopped in 2002. We can only read with the computers. We have no word processor software or printers and have to hand copy everything. We don't even have typewriters. For someone like me who has used computers for more than 30 years, this seems antediluvian.

I am aware you cannot dispense legal advice but I hope you can answer a few questions as to my options should I not prevail on appeal. My direct appeal missed an issue of court error that prima facie evidence exist in my trial transcript that I seriously believe to reversible and prejudicial. My PCR counsel failed to present the issue and did not file a 59(c) motion to preserve issues not in the court order either.

The trial court ruled testimony as excited utterance that impermissibly corroborated the accusing witness. This was 22 to 24 hours after the alleged assault so it was not according to Whisonant a part of the res gestae. My PCR counsel was to address the hearsay issue but did not and I did not find Whisonant until two weeks after the PCR hearing while doing a search on WestLaw. Until then I did not have an understanding of excited utterance exceptions. In Whisonant it was 9 hours after the alleged assault.

My PCR counsel told me that Jennings killed hearsay as an issue overruling Jolly. This is not the case as this year Vail was reversed on hearsay grounds. The prosecutor in the transcript points out the last date of an assault as Dec. 11th, 2003 and that the allegations were made around 10 pm on Dec. 12th, 2003 24 hours latter. My question is: Is there any way to get this before the court? Can it be presented in a state habeas petition or do I have to file a collateral petition against my PCR counsel as is provided by Martinez v Ryan, 132 S.Ct 1309, (2012).

There was also the issue of pitting my PCR counsel failed to present at the hearing and the transcript clearly shows a Sapps violation which I believe to be reversible also. However, I worry most about my pending writ. My SCCID attorney presented only one issue in the writ and there are two issues that I think are more likely to prove reversible. I have written a brief on one issue and the other issue would be simple to brief. Vail stated that trial counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness and I think in both issues his reasons stated were moot and both affected my credibility.

Can I submit these briefs to the court or do I have to wait and file them as a hab. pet. should my appeal fail? My appeal counsel does not write back and is nearly impossible to catch on the phone. Therefore I would like to know what my options are if you could let me know it would be appreciated.

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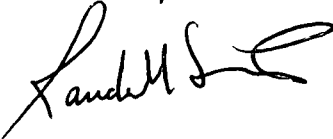
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I have one last question. Is there a time limit in which to file a state habeas writ should the court not rule in my favor? I have assumed that I have 1 year to file a state hab from the date of the remitter. I only have a few weeks left to file a Federal habeas writ due to AEDPA.

Your help in resolving the library access problem and answers to the questions posed will be greatly appreciated. It might be simplest to phone Ms McQueen to resolve the library access. I am filing a grievance on this. We really are at a serious disadvantage with the limited access to resources to research law and the lack of modern tools to challenge our convictions. The AG's office can do more in an hour than we can do in months. Plus they can file briefs electronically. This can't be fair,

Sincerely yours,


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