



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

RECEIVED

MAR 28 2012

March 28, 2012

S.C. Supreme Court

Ms. Pamela Ozment-Cartee
Circuit Court Reporter
531 East Carolina Avenue
Hartsville, SC 29550

Dear Ms. Ozment-Cartee:

Please provide us with the following transcript:

Kendall Green v. State of South Carolina Case #: 09-CP-34-00211

County: Marlboro Date of Trial: September 12, 2011

Presiding Judge: William H. Seals, Jr.

To ensure 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.

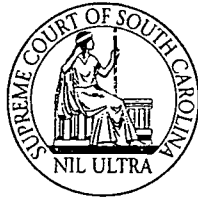
Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

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,

Lorlene French
Legal Services Coordinator

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



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

(803) 734-1080

FAX (803) 734-1499

March 16, 2012

James Marshall Biddle, Esquire
Biddle Law Firm, PA
P.O. Box 50460
Myrtle Beach, SC 29579

Re: Green, Kendall v. The State

Dear Mr. Biddle:

The Division of Appellate Defense has advised this office that it has contacted your office on several occasions to get information necessary to determine if Mr. Green is entitled to be represented by Appellate Defense, but has received no response. See Rule 71.1 (g), SCACR ("If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.").

Accordingly, we are marking our records to reflect that you will be representing Mr. Green in this matter. Rule 71.1(g) (counsel below "shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR."). If Mr. Green is in fact indigent, I would encourage you to immediately contact the Division of Appellate Defense to determine the information it needs to make a determination of indigency. Otherwise, it will be necessary for you to order the transcript(s) in this matter as

required by Rule 243(b), SCACR, within fifteen (15) days of the date of this letter.

Very truly yours,



CLERK

cc: Appellate Defense
Kendall Green #315971
Assistant Attorney General Karen Ratigan

S.C. SUPREME CT.
DANIEL E. SHEAROUSE
P.O. BOX 11330
COLUMBIA, S.C. 29211

3/9/12

RE: KENDALL GREEN V. STATE

RECEIVED

MAR 15 2012

DEAR MR. SHEAROUSE,
GREETINGS!

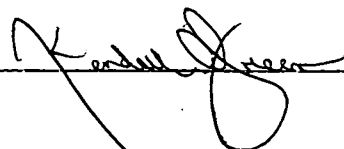
S.C. SUPREME COURT

I'M WRITING YOU AGAIN IN REGARDS TO THE ABOVE-REFERENCED CASE. MR. SHEAROUSE, I'M IN GRAVE NEED OF YOUR ASSISTANCE.

ON 3/8/12, JUST YESTERDAY A MRS. LORRAINE FRANCE SPOKE WITH AN OFFICIAL HERE AT PERRY C.I. AND INFORMED THEM THAT THEIR OFFICE (THE APPELLATE DEFENSE OFFICE) HAD TRIED TO TWICE CONTACT MR. J. MARSHALL BIDDLE, THE ATTORNEY WHO REPRESENTED ME ON PCR. IN REGARDS TO PERFECTING MY APPEAL, BUT THAT HE WASN'T ANSWERING HIS PHONE NOR RETURNING THEIR CALLS. SHE ALSO SAID THAT THEY'D GIVEN HIM A FORM TO SEND TO ME, WHICH HE NEVER SENT TO ME, AND THAT IF HE DIDN'T RETURN THEIR CALLS THEIR CALLS THEN MY APPEAL WOULD BE THROWN-OUT.

I'M ASKING YOU TO PLEASE ASSIST ME IN THIS MATTER SO THAT MY APPEAL WON'T BE THROWN-OUT. WHY CAN'T THE FORM BE SENT STRAIGHT TO ME FOR COMPLETION? AS I'VE ALREADY DONE TOLD YOU GUYS ONE TIME BEFORE MR. BIDDLE HAS SOMETHING AGAINST ME AND WISHES TO DESTROY MY CASE. PLEASE HELP ME! UNDER AUSTIN V. STATE I'M ENTITLED TO MY APPEAL FROM THE DENIAL OF THE PCR'S JUDGEMENT. I WOULD REALLY APPRECIATE YOUR HELP.

IN THIS MATTER, YOUR TIME AND ASSISTANCE IS HIGHLY APPRECIATED. THANKS! PEACE & BLESSINGS!

(5) 

P.S. PLEASE KEEP ~~THE~~ THE ORIGINAL COPY OF THIS LETTER AND FORWARD ME A COPY. PLEASE GET BACK WITH ME WITHIN YOUR EARLIEST CONVIENCE.

cc: APPELLATE OFFICE OF DEFENSE.

KENDALL GREEN #315971
P.C.I. SMU-57-19
430 OAKLAND RD.
PENNER, S.C. 29669

AMS

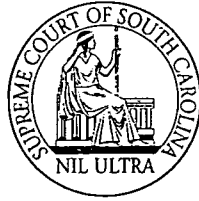
SUPREME COURT OF S.C.
DAVID E. SHEAROUSE
P.O. BOX 11830
COLA., S.C. 29211

RECEIVED

MAR 12 2012

P.C.I. MAILROOM

LEGAL MAIL



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

(803) 734-1080

FAX (803) 734-1499

February 2, 2012

Kendall Green #315971
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Green, Kendall v. The State

Dear Mr. Green:

This responds to your letter of January 26, 2012 to Chief Justice Toal. Please be advised the Chief Justice cannot intervene in your case. Any future correspondence should be addressed to the Clerk of Court.

Mr. Biddle filed a timely notice of appeal in your behalf. The Division of Appellate Defense is currently assessing your indigency status to determine if they can represent you for purposes of perfecting the appeal.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defense
James Marshall Biddle, Esquire
Assistant Attorney General Karen Ratigan

CHIEF JUSTICE TOAL
SUPREME CT. OF S.C.
P.O. BOX 11330
COLA.S.C. 29211

S.C. SUPREME COURT

FEB 08 2012

RECEIVED

JAN. 26, 2012

RE: LAWYER MISCONDUCT - CASE No: GREEN V. STATE 2009-CP-34-0211.

DEAR MADAM CHIEF JUSTICE TOAL,
GREETINGS!

I'M WRITING THIS LETTER IN REGARDS TO THE ABOVE-REFERENCED CASE, WHICH CONCERNS MY APPEAL ON PCR. MY PRIMARY PURPOSE FOR WRITING TO YOU IS BECAUSE I'M IN DIRE NEED OF YOUR HELP. I DON'T KNOW WHAT ELSE TO DO OR WHOM ELSE TO WRITE.

BACK IN SEPTEMBER OF 2011 I WENT TO MY PCR HEARING BEFORE THE HONORABLE WILLIAM H. SEALS. AN "ORDER OF DISMISSAL" WAS EXECUTED BY HONORABLE SEALS ON SEPT. 26, 2011 AND WAS FILED ON SEPT. 30, 2011. MR. JAMES MARSHALL BIDDLE, THE ATTORNEY WHO WAS MANDATED TO ASSIST MR. [REDACTED] A "NOTICE OF APPEAL" ON NOVEMBER 1, 2011, WHICH WAS FILED ON NOVEMBER 7, 2011 AT APPROX. 9:02. HOWEVER, MR. BIDDLE INTENTIONALLY WAITED UNTIL THE LAST MINUTE TO FILE MY "NOTICE OF APPEAL". (SEE ATTACHED [REDACTED] DOCUMENTATION). MOREOVER, I FOUND OUT THAT HE DELIBERATELY SENT THE "NOTICE OF APPEAL" TO THE WRONG ADDRESS. (SEE ATTACHED "NOTICE OF APPEAL"). I BELIEVE THE APPELLATE DIVISION NEVER RECEIVED MY "NOTICE OF APPEAL". MR. BIDDLE HAS DONE THIS OUT OF RETALIATION FOR ME COMPLAINING ABOUT HIS MISCONDUCT. (SEE ATTACHED DOCUMENTATION). I'VE WRITTEN TO YOUR COURT ABOUT MR. BIDDLE'S MISCONDUCT AS WELL AS MANY OTHER PEOPLE. I'VE ALSO WRITTEN TO MR. DANIEL SHEAROUSE AND FOUND OUT THAT NO [REDACTED] "WRIT" OR NOTHING HAS BEEN FILED IN THE SUPREME COURT OF S.C.

MADAM TOAL, I ASK YOU TO PLEASE LET ME HAVE MY ONE BITE AT THE APPLE. I'M NOT AN ATTORNEY AND I'M ENTITLED TO MY APPEAL AS WELL AS ANY OTHER APPELLANT. I SHOULDN'T BE HELD ACCOUNTABLE BECAUSE OF MY ATTORNEY "MALPRACTICE." I'M WILLING TO BET THAT AN "NOTICE OF APPEAL" NEVER REACHED THE APPELLATE DIVISION. COULD YOU PLEASE GRANT ME THIS RIGHT TO PROCEED ON AN APPEAL? OR TELL WHAT I NEED TO DO.

IN THIS MATTER, YOUR TIME AND ASSISTANCE IS HIGHLY APPRECIATED. THANKS! PEACE & BLESSINGS!

P.S. COULD YOU PLEASE KEEP THE ORIGINAL COPY OF THIS LETTER AND FORWARD ME A COPY? PLEASE GET BACK WITH ME WITHIN YOUR EARLIEST CONVENIENCE.

SINCERELY,
KENDALL GREEN

**FINANCIAL CERTIFICATE
FOR THE DISTRICT OF SOUTH CAROLINA**

(for use in § 1983, *Bivens*, and non-habeas civil actions filed by prisoners)

I request that an authorized officer of the institution in which I am confined, or other person designated to review financial information in relation to inmate trust funds, complete this Certificate. If I have insufficient funds in my account that prohibit me from paying the full filing fee required by 28 U.S.C. § 1914 (currently \$350.00), I will send with my complaint an initial installment payment, required by 28 U.S.C. § 1915, equal to the amount calculated and entered on line four by the authorized officer signing this form.

I recognize that by filing this case, I am required to pay the full filing fee (or the remaining unpaid portion of the filing fee by installments if necessary) under 28 U.S.C. § 1915(b) even though I am requesting to proceed *in forma pauperis*. I authorize and consent to collection of the filing fee in accordance with 28 U.S.C. § 1915 until the filing fee is paid in full.

INMATE NAME (PRINTED)

INMATE (PRISONER) NUMBER

INMATE SIGNATURE

PLACE OF CONFINEMENT

- ◆ (1) Average monthly deposits
to the inmate's account.....\$

- ◆ (2) Average monthly balance
in the inmate's account
calculated for the prior
six months period.\$

- ◆ (3) Current Balance\$

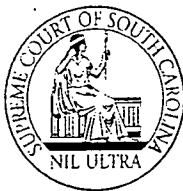
- ◆ (4) Initial Installment Payment
(Take 20 percent of the greater
of lines 1 or 2).....\$

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

Authorized Officer's Signature

Date

Authorized Officer's Name and Title



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
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

October 6, 2011

James Marshall Biddle, Esquire
Biddle Law Firm, PA
P.O. Box 50460
Myrtle Beach, SC 29579

Re: Kendall Green #315971

Dear Mr. Biddle:

This will acknowledge receipt of a letter from Mr. Green dated September 30, 2011. Since you are counsel of record for Mr. Green, we are forwarding you a copy of his recent letter for any assistance you may be able to give him.

Very truly yours,

CLERK

/bs

Enclosure

CC: Mr. Kendall Green #315971

DANIEL E. SHEARHOUSE
CLERK OF COURT
P.O. BOX 11330
COLA., S.C. 29211

S.C. SUPREME COURT

11/14/11

NOV 21 2011

RECORDED

RE: GREEN V. STATE, 2009-CP-34-0211

DEAR MR. SHEARHOUSE,

I'M WRITING THIS LETTER IN REGARDS TO MY PDR CASE. TODAY AN "ORDER OF DISMISSAL" FROM JUDGE SEALS OF MARION FORWARD BY MY CLERK OF COURT OF MARLBORO COUNTY, MR. ZUTERBURK. THIS ORDER WAS FILED ON SEPT. 30, 2011 AT 2:03 PM. I'M JUST NOW RECEIVING IT "AFTER A WHOLE MONTH AND A HALF." MY ATTORNEY MR. BIDDLE NEVER SENT ME A COPY NOR THE COPY OF "NOTICE OF INTENT TO APPEAL". THOUGH IT'S NOT SURPRISING BECAUSE HE NEVER CORRESPONDS WITH ME. BASICALLY, I WANT TO KNOW IF A NOTICE OF INTENT TO APPEAL WAS FILED IN YOUR OFFICE OR ANYWHERE ELSE. COULD YOU PLEASE LET ME KNOW OF SUCH BECAUSE MR. BIDDLE WILL NOT HELP ME OR WON'T CORRESPOND WITH ME.

IN THIS MATTER YOUR TIME AND ASSISTANCE IS APPRECIATE.

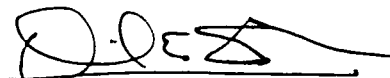
(s) 

P.S. PLEASE FORWARD ME A COPY OF THIS LETTER ~~AND~~ LOCK-STAMPED. KEEP THE ORIGINAL FOR YOUR FILE.

CC: CLERK OF COURT, MARLBORO COUNTY

NOV. 21, 2011

THIS OFFICE CAN FIND NO RECORD OF A NOTICE OF APPEAL BEING FILED IN THE ABOVE MATTER.



CCGNK

A CERTIFIED TRUE COPY
STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
CLERK OF COURT
MARLBORO COUNTY
APPEAL FROM MARLBORO COUNTY
COURT OF COMMON PLEAS

William H. Seals, Jr., Circuit Court Judge

Case No. 2009-CP-34-0211

State of South Carolina,

Respondent,

vs.

Kendall Green, S.C.D.C. #315971,

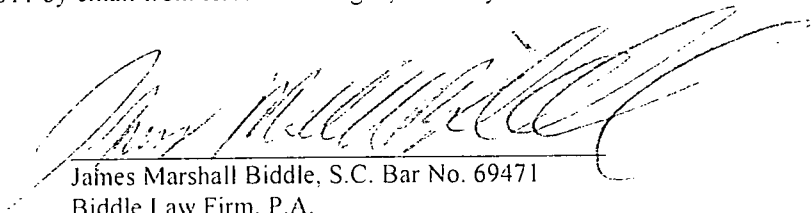
Appellant.

FILED
2011 NOV 7 AM 9 02
WILLIAM B. FURCHBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

NOTICE OF APPEAL

Kendall Green, S.C.D.C. Inmate No. 315971, by and through his undersigned court-appointed attorney, hereby appeals the Order of Dismissal of the Honorable William H. Seals, Jr. dated September 26, 2011 and filed September 30, 2011. Counsel for the Appellant was served with an executed copy of the Order of Dismissal by regular mail on September 28, 2011 and actually received clocked copy of this Order of Dismissal on October 5, 2011 by email from Karen C. Ratigan, Attorney with the Office of the Attorney General.

November 1, 2011



James Marshall Biddle, S.C. Bar No. 69471
Biddle Law Firm, P.A.
Post Office Box 50460
Myrtle Beach, South Carolina 29579
843-903-1600
Attorney for the Appellant

Other Counsel of Record:

Karen C. Ratigan, Attorney at Law
Office of the S.C. Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent
803-734-3737

The S.C. Commission of Indigent Defense
Appellate Division
Post Office Box 11433
Columbia, South Carolina 29211-1433

WRONG ADDRESS
P.O. Box 11589

FILED

CLERK OF COURT
MARLBORO COUNTY

2011 NOV 7 FILED 9 AM '11

10/30/11

WILLIAM B. FUNDERSBURK
CLERK OF COURT
~~WILLIAM B. FUNDERSBURK~~
~~WILLIAM B. FUNDERSBURK~~
P.O. BOX 996
B. JILLE, S.C. 29512 MARLBORO COUNTY, S.C.

RE: ~~State v. Kendall Green~~ STATE, 2009-CP-34-0211
Kendall Green

DEAR SIR OR MADAM,

I'M WRITING IN REGARDS TO MY PCR APPEAL THAT I'D NOT LONG AGO WENT TO, DURING THE SEPTEMBER TERM OF COURT. I WAS BEFORE THE HONORABLE MR. SEALS, IF I'M NOT MISTAKEN.

I'M DEVASTATED TO HAVE TO WRITE SUCH A LETTER BUT I FIND THAT IT IS TRULY NECESSARY. IN THE EVENT THAT THE HONORABLE JUDGE DECIDE TO NOT GIVE ME RELIEF ON MY PCR I JUST WANT THE RECORD TO REFLECT THAT "I DO" WISH TO APPEAL HIS DENIAL WITHIN THE REASONABLE TIME LIMIT. MY PURPOSE FOR SAYING SUCH IS BECAUSE THE ATTORNEY ASSIGNED TO ASSIST ME, MR. J. MARSHALL BIDDLE HAS BEEN INTENTIONALLY ~~STRIVING~~ STRIVING TO TAMAR MY CASE. AND FOR THESE REASONS I'M AFRAID THAT HE MAY NOT COMPLY WITH THE DUTY SET OUT FOR HIM AS HE'D NEVER DONE SO. NOT TO SAY THAT I WON'T BE AFFORDED RELIEF, BUT I WRITE THIS LETTER SOLELY FOR JUST IN CASE PURPOSES. HE WON'T COMMUNICATE WITH ME.

I ALSO WOULD LIKE TO KNOW IF A RULING HAS BEEN MADE YET?

IN THIS MATTER, YOUR TIME AND ASSISTANCE IS APPRECIATED.

P.S. PLEASE KEEP A COPY OF ~~THE~~ ORIGINAL AND FORWARD ME A COPY ~~TO~~ CLOCK-STAMPED.

THANKS!

PEACE

BLESSINGS!!!

(S) Kendall Green
Kendall Green
ucc 93-407

WILLIAM B. FUNDERBURK
CLERK OF COURT
P.O. BOX 996
B. JILLE, S.C. 29512

A CERTIFIED
TRUE COPY

William B. Sunderland
CLERK OF COURT
MARLBORO COUNTY

11/14/11

RE: Kendall Green v. STATE 2009-CP-34-0211

DEAR MR. FUNDERBURK,

I'M WRITING THIS LETTER IN REGARDS TO RECEIPT OF THE LETTER THAT WAS FORWARD BY YOU ALONG WITH THE JUDGE'S "ORDER OF DISMISSAL" THAT I JUST RECEIVED NOT EVEN 10 MINUTES AGO FROM THE MAILROOM PERSONNEL. BASICALLY, I WANT TO KNOW WHY AM I JUST RECEIVING THIS "ORDER OF DISMISSAL" WHEN IT WAS FILED "OVER" A MONTH AGO? I ALSO WANT TO KNOW IF AN "INTENT TO APPEAL" WAS FILED WITHIN YOUR OFFICE BY MR. BIDDLE, THE ATTORNEY THAT WAS ASSIGNED TO MY CASE? IF SO, THEN PLEASE FORWARD ME A COPY. IF NOTS THEN WHY?

IN THE EVENT THAT I'M ON APPEAL I ~~DO~~ "DO NOT" WANT MR. BIDDLE REPRESENTING ME. I REPEAT, I "DO NOT" WANT MR. BIDDLE REPRESENTING ME. HE'S NOT HERE TO HELP ME. HE DON'T EVEN CORRESPOND WITH ME!

PLEASE GET BACK WITH ME AS SOON AS POSSIBLE.

THANKS!!!

(s) Kendall Green J. Sec. 3-4

CC: ~~DELETED~~ SUPREME CT. OF S.C.

11/18/11


Rendall Green, # 315-971

Regarding your mail from
the mailroom - you need
to speak to them about
how long they hold it

Enclosed is another copy
of the notice of appeal

Regarding your attorney
you need to contact
~~and~~ the office of the
attorney General.

Thank



LETTER TO THE
CLERK OF COURT

KENDALL GREEN #3159171
PCI - SMU-CX-5
430 OAKLAND RD.
PELZER, S.C. 29669

ALW

CHIEF JUSTICE TOAL
SUPREME CT. 07 S.C.
P.O. BOX 11380
COLA, S.C. 29211

RECEIVED

JAN 30 2012

P.C.I. MAILROOM

LEGAL MAIL

LEGAL MAIL

STATE OF SOUTH CAROLINA)

COUNTY OF MARLBORO)

Kendall Green,
S.C.D.C. No. 315971,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

C.A. NO. 2009-CP-34-021J

William B. Sundquist
CLERK OF COURT
MARLBORO COUNTY

ORDER OF DISMISSAL

FILED
2011 SEP 30 PM 2:00
CLERK OF COURT
MARLBORO COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 4, 2009. The Respondent made its return on December 23, 2009. An evidentiary hearing into the matter was convened on September 12, 2011 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by J. Marshall Biddle, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Janice Green and the Applicant's trial counsel, Frank E. Cain, Jr., Esquire. The Court had before it the trial transcript, the records of the Marlboro County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.¹

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections

¹ After the conclusion of the hearing, counsel for the Applicant produced a "Pro Se Brief of Applicant" and this court admitted the document as Court Exhibit 1.

pursuant to orders of commitment from the Marlboro County Clerk of Court. The Applicant was indicted at the May 2005 term of the Marlboro County Grand Jury for grand larceny (2005-GS-34-0473), kidnapping (2005-GS-34-0474), and murder (2005-GS-34-0475). He was represented by Frank E. Cain, Jr., Esquire.

After the State called the case to trial, the Applicant was found guilty. On June 14, 2006, the Honorable Edward B. Cottingham sentenced the Applicant to consecutive terms of ten (10) years for grand larceny and life imprisonment without parole for murder.²

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Green, Op. No. 2008-UP-592 (S.C. Ct. App. filed October 17, 2008).

ALLEGATIONS

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

1. Lack of subject matter jurisdiction.
2. Ineffective assistance of trial counsel.
3. Ineffective assistance of appellate counsel.
4. Fifth and Fourteenth Amendments due process violation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

² Pursuant to S.C. Code Ann. § 16-3-910 (Supp. 2004), the Applicant was not sentenced on the kidnapping charge.

FILED
2011 SEP 30 PM 2:03
WILLIAMSON COUNTY CLERK
M/M

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel should have challenged the indictments because the Grand Jury was not convened on the date the indictments were true-billed. The Applicant stated that, while he gave trial counsel the names of alibi witnesses, counsel did not pursue that information. The Applicant stated trial counsel should have hired an expert witness regarding the footprint and blood evidence. The Applicant admitted, however, that he did not believe his own expert would refute the State but that it might have helped his case. The Applicant stated that, as he was kept in shackles during the trial, trial counsel should have requested a cautionary

charge to the jury in order to avoid prejudice. The Applicant stated trial counsel failed to impeach the State's key witness, Tyrone King, when he lied during his testimony. The Applicant stated trial counsel failed to object to an erroneous jury charge on reasonable doubt.

The Applicant's cousin, Janice Green, stated she told trial counsel that the Applicant was at their grandmother's house on the day in question. Ms. Green stated the Applicant was at the house, was picked up by King to attend a basketball game, and was at the house the next day. Ms. Green stated she did not know where the Applicant was after the basketball game.

Trial counsel testified he received discovery materials from the State and reviewed those items with the Applicant. Trial counsel testified the Applicant was very solemn and did not give him much information when they discussed the case. Trial counsel testified he did not perceive any problem with the indictments and that he would have objected if there had been an issue. Trial counsel stated the Applicant did not give him the names of any alibi witnesses. Trial counsel stated he did speak to the Applicant's grandmother and another witness, but that they did not want to testify. Trial counsel stated he did not hire independent experts but that he did speak to the State's experts prior to their testimony. Trial counsel stated he objected to the Applicant wearing handcuffs during the trial but did not recall discussing whether a jury instruction on the matter should be given. Trial counsel testified that such a charge would not have been helpful to the Applicant anyway. Trial counsel testified he adequately cross-examined Tyrone King and did not believe there were glaring inconsistencies in his testimony. Trial counsel testified he did all he could for the Applicant but that the State had an extremely strong case against him.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his

representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the indictments because there was no General Session/Grand Jury term scheduled to convene when his indictments were signed. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003). Trial counsel testified he would have objected to the indictments if he perceived any problems with them. This Court finds the indictments were validly issued and the Applicant failed to meet his burden of proving trial counsel should have objected to them.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated alibi witnesses. This Court finds credible trial counsel's testimony that he was never provided names of alibi witnesses. This Court also finds credible trial counsel's testimony that, while he spoke to two potential witnesses, neither wished to testify. Though the Applicant's cousin, Janice Green, testified she would have been able to provide an alibi for the day in question, this Court does not find her testimony to be credible. This finding is made in part, because of the lack of evidence that Ms. Green provided this alleged alibi to either the police or defense at any time after the December 2004 murder. This Court also notes that, even if Ms. Green's testimony was taken as true, it would not have established a complete alibi for the Applicant. This Court further notes that it cannot speculate about what other potential alibi witnesses could have stated at trial, as they did not testify at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to

establish prejudice from the witness' failure to testify at trial.”) (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have hired an expert witness to testify regarding the footprint and blood evidence. The Applicant, however, failed to articulate how an independent expert would have been beneficial. SLED agent Hallman testified at trial that, while the footprint on the victim's body was consistent with the Applicant's shoe, she could not conclude it was from his shoe. (App.pp.283-88; p.299). Further, SLED agent Ortuno testified there was no DNA match to the Applicant (or King) with any of the items he process. (App.p.312). Regardless, the Applicant failed to present any expert testimony at the PCR hearing in order to substantiate his allegation. Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested a cautionary jury charge because the Applicant was in restraints. This Court notes trial counsel did object to the Applicant wearing handcuffs during trial but the trial judge cited safety concerns when he declined to remove the restraints. (App.pp.52-53). The South Carolina Court of Appeals affirmed the trial judge's decision. See State v. Green, Op. No. 2008-UP-592 (S.C. Ct. App. filed October 17, 2008) (citing Deck v. Missouri, 544 U.S. 622, 125 S. Ct. 2007 (2005)). While the Applicant argues trial counsel should have requested a jury instruction on the issue, he points to no case law to support his argument that such a charge would have been required. In light of the overwhelming evidence against the Applicant, this Court finds he has failed to meet his burden of proving either that this jury instruction was mandated or that he was prejudiced by the lack of said instruction. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result

does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have impeached Tyrone King's testimony. This Court has reviewed the record and finds trial counsel adequately cross-examined King. This Court finds the Applicant failed to articulate the basis upon which trial counsel should have impeached King and how such questioning would have changed the outcome of the case. This Court notes a different outcome in this case was especially unlikely because of the strong evidence of the Applicant's guilt. See id.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the reasonable doubt charge. This Court has reviewed the reasonable doubt instruction that was charged to the jury and notes it has been found to be adequate. (App.p.361). See State v. Simmons, 384 S.C. 145, 178-79, 682 S.E.2d 19, 37 (Ct. App. 2009). Further, the Applicant failed to articulate how an alternative charge on reasonable doubt would have positively impacted his case.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

matter 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 has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.


This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of Sept., 2011.

FILED
2011 SEP 30 PM 2 03
WILLIAM H. SEALS, JR.
CLERK OF COURT
FOURTH JUDICIAL CIRCUIT
COLUMBIA, SOUTH CAROLINA



William H. Seals, Jr.
Presiding Judge
Fourth Judicial Circuit

Manion, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

KENDALL GREEN, 315971

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

A CERTIFIED TRUE COPY IN THE COURT OF COMMON PLEAS

William B. Sundt

CLERK OF COURT 2009-CP-34-0211
MARLBORO COUNTY

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Order of Dismissal** of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

**J. Marshall Biddle, Esquire
Post Office Box 50460
Myrtle Beach SC 29579**

DATED this 28th day of September, 2011.

FILED
SEP 30 PM 2 03
CLERK OF COURT
MARLBORO COUNTY S.C.

Judy A. C. Carey
Judy A. C. Carey, Legal Assistant
For Respondent

J. Marshall Biddle
marshall@biddlelawfirm.net

4012 POSTAL WAY, SUITE - A
MYRTLE BEACH, SOUTH CAROLINA 29579
TELEPHONE (843) 903-1600

BIDDLE LAW FIRM, P.A.
ATTORNEY AND COUNSELOR AT LAW

www.biddlelawfirm.net

POST OFFICE BOX 50460
MYRTLE BEACH, SOUTH CAROLINA 29579
FACSIMILE (843) 903-6209

November 1, 2011

Honorable William B. Funderburk
Clerk of Court, Marlboro County
Post office Drawer 996
Bennettsville, SC 29512-0996

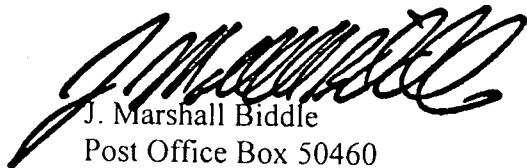
RE: State of South Carolina, Respondent, v. Kendall Green, #315971 Appellant,
Case No. 2009-CP-34-0211

Dear Mr. Funderburk:

Enclosed for filing is an original notice of appeal, along with four (4) copies in the above case.

Should you have any questions or need any additional information, please do not hesitate to contact my office.

Sincerely,
Biddle Law Firm, P.A.



J. Marshall Biddle
Post Office Box 50460
Myrtle Beach, South Carolina 29579
(843) 903-1600
Attorney for Appellant

JMB/alb
Enclosures: as stated

CC:
Karen C. Ratigan, Attorney at Law
Office of the S.C. Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

The S.C. Commission of Indigent Defense
Appellate Division
P.O. Box 11433
Columbia, SC 29211-1433

BIDDLE LAW FIRM, P.A.

ATTORNEY AND COUNSELOR AT LAW

S.C. Court of Appeals
Clerk of Court
P.O. Box 11629
Columbia, SC 29211

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARLBORO COUNTY
COURT OF COMMON PLEAS

William H. Seals, Jr., Circuit Court Judge

Case No. 2009-CP-34-0211

State of South Carolina,

Respondent,

vs.

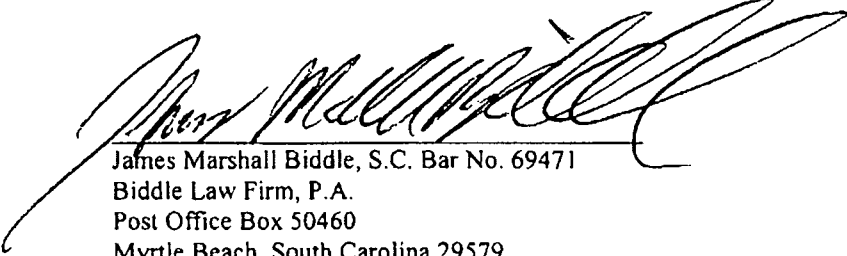
Kendall Green, S.C.D.C. #315971,

Appellant.

NOTICE OF APPEAL

Kendall Green, S.C.D.C. Inmate No. 315971, by and through his undersigned court-appointed attorney, hereby appeals the Order of Dismissal of the Honorable William H. Seals, Jr. dated September 26, 2011 and filed September 30, 2011. Counsel for the Appellant was served with an executed copy of the Order of Dismissal by regular mail on September 28, 2011 and actually received clocked copy of this Order of Dismissal on October 5, 2011 by email from Karen C. Ratigan, Attorney with the Office of the Attorney General.

November 1, 2011



James Marshall Biddle, S.C. Bar No. 69471
Biddle Law Firm, P.A.
Post Office Box 50460
Myrtle Beach, South Carolina 29579
843-903-1600
Attorney for the Appellant

Other Counsel of Record:

Karen C. Ratigan, Attorney at Law
Office of the S.C. Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent
803-734-3737

The S.C. Commission of Indigent Defense
Appellate Division
Post Office Box 11433
Columbia, South Carolina 29211-1433

RECEIVED

JAN 06 2012

S.C. SUPREME COURT

S.1 1-6-12 3:20
D. Called Clerk's
C. office - ~~By~~ Sherry
P. Advised Biddle
C. was atty.

DECEMBER 30, 2011

RE: KENDALL GREEN V. STATE, 2009-CP-34-0211

DEAR MR. SHEAROUSE,

GREETINGS! HAPPY NEW YEARS!

I'M WRITING IN REGARDS TO THE ABOVE REFERENCED CASE. NOT LONG AGO I'D WRITTEN TO YOU ASKING IF WHETHER A NOTICE OF APPEAL HAD BEEN ~~FILED~~ FILED ON MY CASE. YOU'D STATED THAT IT HASN'T BEEN FILED. I'VE TRIED WRITING THE APPELLATE DIVISION AND ATTORNEY GENERAL'S OFFICE BUT THEY'RE NOT RESPONDING TO MY ~~QUERIES~~ QUERIES.

IF POSSIBLE, COULD YOU PLEASE CHECK WITH THE APPELLATE DIVISION AND ATTORNEY GENERAL'S OFFICE TO SEE IF I HAVE AN APPEAL ON RECORD? MY CLERK OF COURT SENT ME A COPY OF THE NOTICE OF APPEAL FILED IN HIS OFFICE ON 11/7/11. HOWEVER, MR. BIDDLE, THE ATTORNEY MANDATED TO ASSIST ME AT MY PCR HEARING AND ON PCR, ~~FILED~~ FILED THIS NOTICE ON 11/1/11, THREE DAYS BEFORE THE DEADLINE TO FILE. THERE'S NO TELLING WHEN HE SENT THIS NOTICE OUT, IT'S JUST DATED 11/1/11 WITH HIS SIGNATURE. AND HONESTLY, I KNOW HE'S DONE THIS INTENTIONALLY. WHY WOULD HE DISREGARD MY LIFE AND WAIT UNTIL THE LAST MINUTE TO SEND IN A NOTICE OF APPEAL? I MEAN, IT'S OBVIOUS! I'VE WRITTEN YOU GUYS ABOUT HIS MISCONDUCT ONCE BEFORE AS WELL AS OTHERS.

PLEASE CHECK INTO THIS MATTER FOR ME, MR. SHEAROUSE. AND IF I DON'T HAVE AN APPEAL ON ~~A~~ RECORD THEN I'M ASKING FOR THIS LETTER TO GO TO "MRS. CHIEF JUSTICE TOAL" ASKING CAN I APPEAL THE ~~ORDER~~ ORDER OF DISMISSAL OF ~~HON.~~ HON. SEALS, JR. BECAUSE I SHOULD NOT BE HELD ACCOUNTABLE BECAUSE OF MY ATTORNEY'S MISCONDUCT AND WILLFUL NEGLIGENCE.

OR PLEASE POINT IN THE RIGHT DIRECTION.

IN THIS MATTER, YOUR TIME AND ASSISTANCE IS HIGHLY APPRECIATED. THANKS! PEACE AND BLESSINGS!!

P.S. PLEASE KEEP THE ORIGINAL COPY OF THIS LETTER. AND FORWARD ME A COPY.

Sincerely,

KENDALL GREEN

CC: ~~B~~ MRS. LESLEY COGGIOLA - DISCIPLINARY COUNSEL

UNITED STATES DISTRICT COURT

District of _____

Plaintiff

V.

Defendant

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND AFFIDAVIT

CASE NUMBER: _____

I, _____ declare that I am the (check appropriate box)
 petitioner/plaintiff/movant other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? Yes No (If "No," go to Part 2)

If "Yes," state the place of your incarceration _____

Are you employed at the institution? _____ Do you receive any payment from the institution? _____

Attach a ledger sheet from the institution(s) of your incarceration showing at least the past six months' transactions.

2. Are you currently employed? Yes No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

- a. Business, profession or other self-employment Yes No
- b. Rent payments, interest or dividends Yes No
- c. Pensions, annuities or life insurance payments Yes No
- d. Disability or workers compensation payments Yes No
- e. Gifts or inheritances Yes No
- f. Any other sources Yes No

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

KENDALL GREEN #315971
P.C.I. - SMU-DX-#9
430 OAKLAND RD.
PELZER, S.C. 29669

AMJ

S.C. SUPREME COURT
MR. DANIEL SHEARSON
P.O. Box 11330
COLA., S.C. 29201

LEGAL MAIL ROOM

RECEIVED

JAN 03 2012
P.C.I. MAIL ROOM

11-21-11
net' d orig.
w/ note
11/14/11

DANIEL E. SHEARHOUSE
CLERK OF COURT
P.O. BOX 11330
COLA. S.C. 29211

S.C. SUPREME COURT

NOV 21 2011

RECEIVED

RE: GREEN V. STATE, 2009-CP-34-0211

DEAR MR. SHEARHOUSE,

I'M WRITING THIS LETTER IN REGARDS TO MY PCR CASE. TODAY AN "ORDER OF DISMISSAL" FROM JUDGE SEALS OF MARION FORWARD BY MY CLERK OF COURT OF MARLBORO COUNTY, MR. FINDERBURK. THIS ORDER WAS FILED ON SEPT. 30, 2011 AT 2:03 PM. I'M JUST NOW RECEIVING IT "AFTER A WHOLE MONTH AND A HALF." MY ATTORNEY MR. BIDDLE NEVER SENT ME A COPY NOR THE COPY OF "NOTICE OF INTENT TO APPEAL". THOUGH IT'S NOT SURPRISING BECAUSE HE NEVER CORRESPONDS WITH ME. BASICALLY, I WANT TO KNOW IF A NOTICE OF INTENT TO APPEAL WAS FILED IN YOUR OFFICE OR ANYWHERE ELSE. COULD YOU PLEASE LET ME KNOW OF SUCH BECAUSE MR. BIDDLE WILL NOT HELP ME OR WON'T CORRESPOND WITH ME.

IN THIS MATTER YOUR TIME AND ASSISTANCE IS APPRECIATE

(s) Randall Green

P.S. PLEASE FORWARD ME A COPY OF THIS LETTER ~~AND~~ LOCK-STAMPED 3. KEEP THE ORIGINAL FOR YOUR FILE.

CC: CLERK OF COURT, MARLBORO COUNTY

NOV. 21, 2011

THIS OFFICE CAN FIND NO RECORD OF A NOTICE OF APPEAL BEING FILED IN THE ABOVE MATTER.

D. DES
CCGAK

Green
finderburk-3

KENDALL GREEN #315971
PCI - SMU-DY-15
430 ONKLAND RD.
PELZER, S.C. 29669

AMS

SUPREME COURT OF S.C.
CLERK OF COURT
P.O. BOX 11330
COLA., S.C. 29211

RECEIVED

NOV 15 2011

P.C.I. MAILROOM

LEGAL MAIL