

December 15, 2013

South Carolina Supreme Court
Daniel E. Shearouse
Clerk of the Court
P.O.B. 11330
Columbia, S.C. 29211

RECEIVED

DEC 27 2013

S.C. SUPREME COURT

REFUSED FOR

FILED

[Signature]

CCENK

Re: State v. Nesbitt, Appellate Case: 2013-002372

Dear Mr. Shearouse:

Thank you for your kind letter of December 11, 2013 in which you indicate that you are returning my submission on behalf of Brenda Nesbitt, however there was no returned submission included(?)

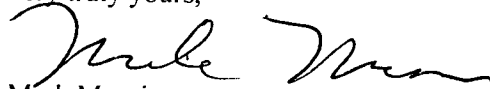
It is nice to hear from you even if it is only your usual threat regarding your apparent misunderstanding of Constitutional law. You might note that even with the expedited submission and Ms. Nesbitt's informal power of attorney asking me to submit the document, compliance was still impossible because of the limited time parameters of your court which only function to deny access. I would think that the court could on its own motion properly consider the appropriateness of Ms. Nesbitt's non-prejudicial premature notice of appeal.

I am still awaiting further explanation from your office as to why you continue to threaten me with felony practice of law, as this was not done (your explanation) following our last exchange on the subject, the explanation, that is of your threat *vis a vis* Constitutional law.

You might note that the South Carolina Supreme Court has established that habeas corpus supersedes and encompasses habeas corpus procedure (*Gibson v. State*, 329 S.C. 37, 40, 495 S.E.2d 426, 428) *Gibson* curiously does not define the nature of the petitioner. See: South Carolina Constitution Art. 5, Sect 5. Under 28 U.S.C.A. 2242, application for habeas corpus may be by "someone acting in his behalf." You might further study: that it is unconstitutional to prevent jailhouse lawyers from providing assistance, *Johnson v. Avery*, 393 U.S. 483, 488, (1969) *Bounds v. Smith* 430 U.S. 817 (1977), *Lewis v. Casey*, 518 U.S. 343 (1996). Please note Third Circuit rulings: *Carter v. McGrady* 292 F.3d 152 [5] (2002) *Sanaleer v. Feder*, 2006 WL 266125 (2006), *Abdul-Akbar v. Watson* 901 F.2d 320 [6] (1990) I do not see any basis for your threats as South Carolina and United States Constitutional law provides for "authorized to perform (activities of law)" as described in S.C. Code Ann. 40-5-310 as you quote, which would appear to include "activities of law" such as assisting inmates with quasi habeas "activities of law" and routine legal matters which after reading the above cited case law you may better apprehend. What say you?

I would hope that the Court is more inclined to root out injustice, but if you are willing to continue to threaten me with this, rather than deal with more fundamental matters of justice, could you kindly explain so within the context of Constitutional law? Thanking you in advance,

I am
very truly yours,

A handwritten signature in cursive script, appearing to read "Mark Marvin".

Mark Marvin
135 Mills Road
Walden, N.Y. 12586

CC: Nesbitt, Rattigan



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

December 11, 2013

Mr. Mark Marvin
135 Mills Road
Walden, NY 12586

Re: Brenda Nesbitt v. State
Appellate Case No. 2013-002372

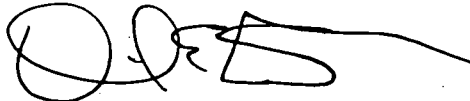
Dear Mr. Marvin:

Enclosed is a document dated December 3, 2013, which you sent to this Court relating to the above matter. This document was received by this Court on December 9, 2013, in an envelope post-marked December 3, 2013. Since this document is not signed by the petitioner and you are not licensed to practice law in South Carolina, I cannot accept it for filing. Therefore, no action will be taken on this document and I am returning it to you.

Engaging in the unauthorized practice of law in South Carolina is a felony punishable by imprisonment for up to five years. S.C. Code Ann. § 40-5-310 (2011) ("No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina"). The practice of law includes the preparation and filing of documents in cases pending before the courts of this State. *State v. Robinson*, 321 S.C. 286, 486 S.E.2d 290 (1996), *State v. Despain*, 319 S.C. 317, 460 S.E.2d 576 (1995); *In re Duncan*, 83 S.C. 186, 65 S.E. 210 (1909). I have previously warned you about attempting to file motions or other documents with this Court on behalf of other

I note that any petition for rehearing regarding this Court's order of November 15, 2013, had to be *actually received* by this Court on or before December 2, 2013. Rule 221, SCACR. Additionally, the remittitur was sent to the circuit court on December 3, 2013. The sending of the remittitur ended appellate jurisdiction over this matter, and no further motions can be considered in this matter. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a long horizontal stroke extending to the right.

CLERK

Enclosure

cc: Karen Christine Ratigan, Esquire
Ms. Brenda Nesbitt, # 139726

persons. If petitioner needs legal advice or assistance, she should consult with an attorney licensed to practice law in this State.

The Supreme Court of South Carolina

Brenda Nesbitt, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-002372

Lower Court Case No. 2011-CP-23-00547

ORDER

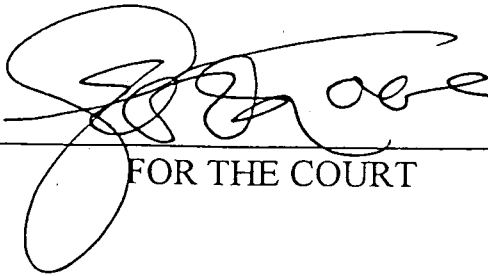
This is the third application for post-conviction relief that petitioner has filed regarding guilty pleas entered in 1997. After issuing a conditional order of dismissal dated March 23, 2011, the circuit court issued a final order of dismissal dated May 25, 2011.

Petitioner has now filed two notices of appeal with this Court.¹ The first, which is entitled "Reply Motion to Dismiss and Notice of Appeal," is dated March 29, 2011, and the second, which is entitled "Order Dismissing PCRA Should Not Be Made Final Notice of Appeal," is dated April 18, 2011.

At the time these notices of appeal were served and filed, there was no appealable decision in this matter. *See Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006) (since "only a final decision or judgment in a post-conviction relief action is subject to review" in a post-conviction relief case, a conditional order of dismissal is not an appealable order). Accordingly, these notices of appeal are dismissed without prejudice to whatever right petitioner may now have to timely serve and file a notice of appeal from the final order of dismissal. The remittitur will be sent

¹ These documents were apparently filed with the clerk of the circuit court but were not filed with this Court. A copy of these notices of appeal was not received by this Court until November 1, 2013.

as provided by Rule 221(b) of the South Carolina Appellate Court Rules.



C.J.
FOR THE COURT

Columbia, South Carolina
November 15, 2013

cc: Karen Christine Ratigan, Esquire
Ms. Brenda Nesbitt, # 139726

IN THE SUPREME COURT OF SOUTH CAROLINA

BRENDA NESBITT
Appellant

Re: Nesbitt v. State
2011-CP-23-00547

Against

THE STATE OF SOUTH CAROLINA
Respondent

MOTION FOR PERMISSION TO ALLOW LATE FILING OF NOTICE OF APPEAL

BRENDA NESBITT, respectfully moves this court for permission for late filing of notice of appeal. She has under separate cover served the documents requested by this court and has requested help with the preparation of this motion to complete this court's requirements.

She had filed with the post conviction relief court, a notice of appeal on about March 31, 2011, which the court acknowledged in its order dated May 25, 2011. The court had been notified; and there was prejudice to no party, and all issues were settled preceding ("premature") notice of appeal. The Notice of Appeal was timely filed with the PCRA court, and judicially economical.

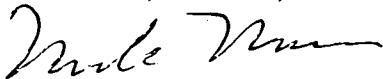
"Moreover, notions of fair play and substantial justice combine with the strong public interest in assuring the lawfulness of convictions to favor a reading of (rule) that would not dismiss a prematurely filed but subsequently ripened criminal appeal....in a criminal case in which a sentence of imprisonment is involved, there is a public interest against denial of consideration on appeal of substantial questions as to the lawfulness of the conviction. For if the conviction is erroneous it is abhorrent to justice that a defendant shall nevertheless suffer such a penalty for the crime charged." (U.S. v. Hashagen, 816 F.2d 899, 3d. Cir. 1987) As the action of the PCRA court "so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final." (Ashenfelder v. City of Georgetown, (2009) Opinion 4725, filed August 11, 2010 Court of Appeals, quoting: Adickes v. Allison & Bratton, 21 S.C. 245, 259, (1884), Henderson v. Wyatt, 8 S.C. 112, 112 (1877)) Given that the matter is final the appeal is essentially not premature nor "piecemeal" (Penn-Am Insurance Co. v. Mapp, 521 F.3d 290, 294-95, 4th. Cir. 2008, Cohen v. Beneficial Indus. Loan Corp. 337 U.S. 541, 545-46, (1949) (See also: South Carolina Board of Dentistry v. F.T.C. 455 F.3d 436, 441, 4th. Cir. 2006)

Accordingly she requests that this matter be docketed and her appeal proceed *nunc pro tunc*.

Respectfully submitted,

Brenda Nesbitt, 139726
Leath Correctional Institution, Q2-102X
2809 Airport Road
Greenwood, S.C. 29649

I certify under penalty of perjury that I mailed a copy of this motion to the Attorney General,
P.O.B. 11549, Columbia, S.C. 29211-1549



Mark Marvin
135 Mills Road
Walden, 12586

Dated: November 5, 2013

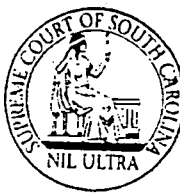
11-25-13

Mark,

I am sending you a copy of this letter from the courts, I just received this letter today. The guilt plea is in 1997 and it should be 1987. Mark I believe that they are giving me time to file a notice of appeal from the final order of dismissal.

Help me to understand everything was sent in 2011 and just received by the Supreme Court 11-1-13. I really do believe that these people are giving me the run around. What do you think? I need for you to help me with the remittitur and appeal.

Thanking You
Brenda Nebitt



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 22, 2013

Ms. Brenda Nesbitt
Leath Correctional Institution
2809 Airport Road
Greenwood, SC 29649

RE: *Nesbitt v. State*, 2011-CP-23-00547

Dear Ms. Nesbitt:

This responds to your letter dated October 10, 2013. This Court can find no record of a notice of appeal being filed in the above matter.

If you did timely serve a notice of appeal from the final order in the post-conviction relief case, it will be necessary for you to serve and file a motion seeking permission to allow the late filing of the notice of appeal. That motion will need to be accompanied by a copy of the notice of appeal, a proof of service showing that the notice of appeal has been served on opposing counsel, a copy of the order(s) on appeal (including any conditional order of dismissal), the explanation required by Rule 243(c) of the South Carolina Appellate Court Rules if the application was dismissed as successive or as being barred by the statute of limitations, and a proof of service showing that a copy of the motion for late filing has been served on opposing counsel. This motion and documents should be filed with this Court within twenty (20) days of the date of this letter.

Sincerely,

Daniel E. Shearouse

cc: Office of the Attorney General

10-28-13

Dear

Mark,

Praise God!!!

* I am writing you this letter to ask you to please do a letter for me, I am attaching the letter and me and my helper has already send copies of everything to them, but the motion for late filing on my appeal. She said hello and God bless you and I pray that you can help me with this I have just recieved the letter on Thursday pass October 24, 2013 Leath Mailroom.

1.) Order dismissing PCRA should not be made final (Notice of Appeal)

Dated: April 18, 2011

Mailed out with Signature on April 25, 2011

2.) Reply to Motion to Dismiss (Notice of Appeal)

Dated: March 29, 2011

Mailed out with Signature on April 4, 2011.

3.) Conditional Order of Dismissal

Recieved: April 6, 2011

4.) Application for PCR Brief will

I hope and pray that this will show my mistake and I will be forwarding a copy of a written order of my motion seeking permission to allow late filing

Only thing that have was a proof service's
I explained that the motion will follow
before my 20 days deadline.

Thanking You in Advance
~~Sandra Resh~~

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
2011-CP-23-0547

BRENDA NESBITT, 139726

Against

REPLY TO MOTION TO DISMISS

STATE OF SOUTH CAROLINA

NOTICE OF APPEAL

BRENDA NESBITT, Applicant is in receipt of Respondent's Return and Motion to Dismiss dated: March 18, 2011, and replies:

1. With reference to respondent's section IV, Applicant was denied effective assistance of counsel resulting in prior frivolous applications and appeal, and is not guilty. Since the Post-Conviction Relief Act subsumed habeas corpus relief, which under this State's Constitution cannot be suspended by the Act, the Applicant is entitled to relief. See Application.

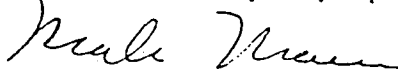
2. In the event this court dismisses her Application for relief she herewith files this document as a NOTICE OF APPEAL.

Respectfully submitted,

Brenda Nesbitt 139726
Leath Correctional Institution, PA 101A
2809 Airport Road
Greenwood, S.C. 29649

I mailed a copy of this Reply and Notice of Appeal to the Attorney General, P.O.B. 11549, Columbia, S.C. 29211-1549

Affirmed as true under penalty of perjury.



Mark Marvin
135 Mills Road
Walden, N.Y. 12586
Dated: March 29, 2011

SC Attorney General
RECEIVED

MAR 31 2011

Referred to 

Answered _____

To: Court of Common Pleas, 135 South Main Street, Greenville, S.C. 29601

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2011-CP-23-0547

SC Attorney General
RECEIVED

BRENDA NESBITT, Applicant

Against

STATE OF SOUTH CAROLINA, Respondent

APR 21 2011

Referred to

Answered

ORDER DISMISSING PCRA SHOULD NOT BE MADE FINAL
NOTICE OF APPEAL

BRENDA NESBITT is in receipt of this Court's CONDITIONAL ORDER OF DISMISSAL dated March 23, 2011 and submits the following reasons as to why dismissal is in error. Because of delay in mail from the prison, this answer may be late through no fault of the Applicant and she requests this court's indulgence.

The PCRA permits raising of issues not adequately raised in prior actions before this court as a result of ineffective assistance of counsel. (See: PCRA, 17-27-90) These issues were not adequately raised by counsel. Kindly re-read the PCRA. Applicant notes that under Constitutional law habeas corpus cannot be suspended, and under the PCRA habeas corpus was subsumed by the Act, therefore the Applicant seeks habeas relief under the Act, which has no time bar and is incorporated under the provisions of the Act. And further, case law referring to her PCRA provides for relief for cases of miscarriage of justice, as it is not in the Court's interest to imprison persons who are not guilty, however inconvenient for the Court to have to deal with these issues.

Applicant submits this document as NOTICE OF APPEAL as it is apparent that the Court does not wish to deal with her petition, and intends to dismiss regardless.

Respectfully submitted,

Brenda Nesbitt, 139726
Leath Correctional Institution, PA 101 A
2809 Airport Road
Greenwood, S.C. 29640

To: Attorney General, P.O.B. 11549, Columbia, S.C. 29211-1549
Court Clerk, County of Greenville, 133 South Main Street, Greenville, S.C. 29601

I certify under penalty of perjury that I mailed a copy of this document to the Attorney General.

Mark Marvin
135 Mills Road

Walden, N.Y. 12586 Dated: April 18, 2011

December 17, 2013

United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue
Washington, D.C. 20530

RECEIVED

DEC 27 2013

S.C. Supreme Court

Re: Complaint:
Systematic denial of right to counsel
in South Carolina

Dear Sirs:

My name is Mark Marvin and I was asked by Brenda Nesbitt who is incarcerated in South Carolina to help her with submission of papers regarding her post-conviction relief application. Ms. Nesbitt asked me to help her because she found that she could not obtain satisfactory assistance with her matter in the South Carolina legal/penile system.

I had previously suggested that she submit a premature notice of appeal on the impending denial of her petition for post-conviction relief to avoid a late notice of appeal. This is of course consistent with United States law because the substantive matters for appeal were fixed. The PCRA court failed to comprehend the implications and moment of this notice of appeal and essentially terminated her appeal unlawfully for two years. I helped her with an application to the South Carolina Supreme Court which denied her Application for permission to appeal based on the legitimate, though premature notice of appeal. I submitted the papers ex post haste, with an informal power of attorney in the form of a letter from Ms. Nesbitt asking that I submit the Application on her behalf, because of the impossible time limit imposed by the Court. I also provided case citation from the United States Courts which established that a premature appeal is permissible when non prejudicial.

Rather than gratefully acknowledge my interest in justice, I received a letter from Mr. Daniel Shearouse, Clerk of the South Carolina Supreme Court, threatening me with unauthorized practice of law, essentially for promoting justice, and ignoring the "jailhouse lawyer" exception that the United States Supreme Court has recognized, and also finds essential in furthering inmate causes. (Johnson v. Avery, 393 U.S. 483, 488, (1969) Bounds v. Smith 430 U.S. 817 (1977), Lewis v. Casey, 518 U.S. 343 (1996); Third Circuit rulings: Carter v. McGrady 292 F.3d 152 [5] (2002) Sanaleer v. Feder, 2006 WL 266125 (2006), Abdul-Akbar v. Watson 901 F.2d 320 [6] (1990)

Mr. Shearouse's letter is particularly disturbing because it suggests that the South Carolina Supreme Court, for whom he is acting, is willing to resort to illegal prosecution/persecution of inmates who are denied competent counsel and who must resort to extra-professional assistance, as sanctioned by the United States Courts, to further the interests of justice.

For the record, I am not paid to assist inmates and do so as a moral duty as a Quaker who was subjected to miscarriage of justice myself. (References upon request)

I ask that the Justice Department investigate this matter as representative of a systematic effort to restrict inmates in South Carolina from access to effective assistance of counsel, and denial of the state recognized right to appeal. One might note that the South Carolina Supreme Court relies on its own decision (Lewis v. State, 368 S.C. 630, 630 S.E.2D 464, 2006) prohibiting premature non-prejudicial notice of appeal, which is internally inconsistent, (the decision recognizes the legitimacy of premature notice of appeal, but holds that impermissible anyway) and which does not square with the precedent of the United States Supreme Court.

I am very truly yours,

Mark Marvin
135 Mills Road
Walden, N.Y. 12586

Enc.