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DEC 30 2013

S.C. Supreme Court

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S.C. Supreme Court

December 23, 2013

Via Regular Mail

Mr. Daniel E. Shearouse
Clerk, The S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: BILLY DEON ANDRE HODGE v. State

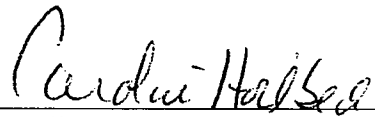
Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,


Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General
Office of Appellate Defense

1. The first part of the document is a list of names and addresses.

2. The second part is a list of names and addresses.

3. The third part is a list of names and addresses.

4. The fourth part is a list of names and addresses.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
THE HONORABLE ROBIN B. STILWELL

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DEC 30 2013

CA No. 2012-CP-23-3900

S.C. Supreme Court

BILLY DEON ANDRE HODGE,
APPELLANT,

vs.

STATE OF SOUTH CAROLINA
RESPONDENT.

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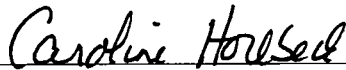
S.C. Supreme Court

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2013 DEC 5 AM 9 57

NOTICE OF APPEAL

Appellant BILLY DEON ANDRE HODGE, appeals from the Order of the Honorable Edward W. Miller, Circuit Court Judge clocked November 26, 2013

Respectfully submitted,


Caroline M. Horlbeck, Esq.
101 Whitsett St
Greenville, SC 29601

Date: December 4, 2013

Other Counsel of Record: Karen Ratigan, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

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APPENDIX



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STATE OF SOUTH CAROLINA)
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COUNTY OF GREENVILLE)
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Billy Deon-Andre Hodge,)
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Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-3900

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2013 NOV 26 PM 2 34

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 14, 2012. The Respondent made its return and partial motion to dismiss on February 13, 2013. A hearing was convened at the Greenville County Courthouse on October 22, 2013, at which time the Applicant was represented by Caroline Horlbeck, Esquire.¹ The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General.

At the hearing, the Respondent made a partial motion to dismiss, arguing the statute of limitations had expired. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the PCR application, and the return and partial motion to dismiss.

I. PROCEDURAL BACKGROUND

The Applicant is confined in the Federal Correctional Institution Yazoo City Medium in Yazoo City, Mississippi. The July 2006 term of the Greenville County Grand Jury indicted the Applicant for breaking and entering a motor vehicle (2006-GS-23-6171) and petit larceny (2006-

¹ The Applicant listened to the hearing and testified over the telephone.

GS-23-6172). He was represented by Stephen J. Henry, Esquire.

On January 17, 2007, the Applicant pled guilty. He was sentenced by the Honorable Michael G. Nettles to concurrent terms of thirty days for breaking and entering a motor vehicle and thirty days for petit larceny. The Applicant did not appeal.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "Failure to file Appeal after request to do so."
 - b. "Failure to explain Boykin Right, Nature of offense."
2. Involuntary guilty plea.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the pleadings and makes the following findings of fact and conclusions of law:

A.

This Court finds the Respondent's partial motion to dismiss must be granted. 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 offenses he challenges in this application on January 17, 2007. The Applicant was therefore required to file his application before January 17, 2008. This application was filed on June 14, 2012, which was more than four years and four months after the statutory filing period had expired.

The statute of limitations contained in section 17-27-45(a) sets forth a bright-line test that must be followed by this Court in determining whether an application for PCR was filed in a timely manner. The Applicant has failed to set forth any cognizable reason that would justify disregarding this one-year statute of limitations. As such, all issues related to the Applicant's guilty plea hearing – except for whether he is entitled to a review of his direct appeal issues – are summarily dismissed.

B.

This Court finds the Applicant is not entitled to a review of any direct appeal issues from his guilty plea hearing.

The Applicant stated he did not recall being represented by an attorney on these charges. The Applicant stated no one ever told him that he had the right to file an appeal. Plea counsel testified he was appointed to represent the Applicant and that they met before the plea hearing. Plea counsel testified the plea judge discussed the Applicant's appellate rights on the record and that – while he met with the Applicant after the plea hearing – the Applicant never asked him to file an appeal. Plea counsel testified that, in any event, there was no reason to file an appeal in this case.

This Court finds the Applicant failed to meet his burden of proof on this issue. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (“The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”). Initially, this Court notes the plea transcript and sentencing sheets indicate the Applicant was in fact represented by plea counsel at the hearing on January 17, 2007. Plea counsel testified the Applicant never asked him to file a notice of appeal. This Court finds plea counsel's testimony is credible. This Court also notes the Applicant's argument that no one ever advised him of the right to appeal is directly

refuted by the plea transcript, as the plea judge clearly advised him of the ten-day period. (Plea transcript, p.7). See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). This Court finds the Applicant was aware of his appellate rights and simply chose not to exercise them. Accordingly, this Court finds the Applicant has failed to meet his burden of proving he is entitled to an appeal of direct appeal issues.


IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds the PCR application must be dismissed. 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 the 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 THAT:

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED this 11 day of November, 2013.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

CAROLINE M. HORLBECK

Attorney At Law
101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601

GREENVILLE SC 29601
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Via Regular Mail

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