

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2012-CP-39-0885

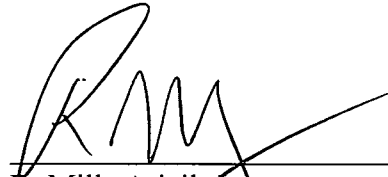
Billy Deon-Andre Hodge,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Billy Deon-Andre Hodge appeals the Honorable Robin B. Stilwell's Order of Dismissal dismissing Hodge's application for post-conviction relief. On November 6, 2013 The Honorable G. Robin B. Stilwell signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on January 7, 2014. A copy of Judge Stilwell's Order is attached.



R. Mills Ariail, Jr.
Attorney at Law
11 North Irvine St., Suite 11
Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Billy Deon-Andre Hodge

Greenville, South Carolina
January 1, 2014

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S.C. Supreme Court

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JAN 13 2014

SC Court of Appeals

Other Counsel of Record and Interested Parties:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
803-734-3970
Attorney for the State of South Carolina

Pickens County Clerk's Office
Pickens County Courthouse
214 E. Main Street
Pickens, SC 29671

Pickens County Solicitor's Office
Pickens County Courthouse
214 E. Main Street
Pickens, SC 29671

SC Commission of Indigent Defense
Division of Appellate Defense
1122 Lady Street
Columbia, SC 29201-3218

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Robin B. Stilwell, Circuit Court Judge

Case No. 2012-CP-39-0885

Billy Deon-Andre Hodge, Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this 7th day of January, 2014 I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Pickens County Solicitor's Office
Pickens County Courthouse
214 E. Main Street
Pickens, SC 29671

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SC Commission of Indigent Defense
Division of Appellate Defense
1122 Lady Street
Columbia, SC 29201-3218

Denise Tanner LaBeck

Denise Tanner LaBeck
Paralegal to R. Mills Ariail, Jr.
LAW OFFICE OF R. MILLS ARIAIL, JR.

January 7, 2014
Greenville, SC

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

January 7, 2014

Via US Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Notice of Intent to Appeal from Billy Deon-Andre Hodge v. State of South Carolina, C.A. No.: 2012-CP-39-0885

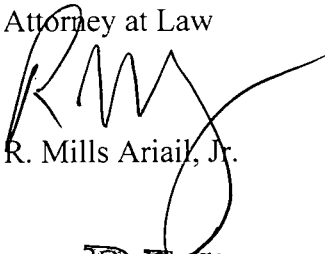
Dear Ms. Kitchings:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of Judge Stilwell's Order of Dismissal to be challenged on appeal. I must inform the Court of Appeals that as an officer of this Court, I am unable to set forth an arguable basis for any appealable issue resulting from Judge Stilwell's Order of Dismissal. By copy of this letter, I am specifically advising Mr. Hodge that he should notify this Court, in writing, of any arguable basis for an appeal from his guilty plea as required by Rule 243 of the South Carolina Appellate Court Rules. By copy of this letter, I am also serving counsel for the State of South Carolina, the Pickens County Solicitor's Office, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Pickens County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,

LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RMAjr/dcd
Enclosures (as stated)

cc:

Greenville County Solicitor's Office
305 East North Street
Greenville, SC 29601

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SC Court of Appeals

Karen C. Ratigan
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-11549

Billy Deon-Andre Hodge
Register # 16945-171
Federal Correctional Institution - Yazoo City Medium
2225 Haley Barbour Parkway
Yazoo City, MS 39194

Pickens County Solicitor's Office
Pickens County Courthouse
214 E. Main Street
Pickens, SC 29671

SC Commission of Indigent Defense
Division of Appellate Defense
1122 Lady Street
Columbia, SC 29201-3218

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS,) C.A. No. 2012-CP-39-0885

2013 NOV 13) P 2:56
Billy Deon-Andre Hodge,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

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JAN 13 2014

ORDER OF DISMISSAL
SC Court of Appeals

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 12, 2013. A hearing was convened on August 26, 2013 at the Pickens County Courthouse. The Applicant was not present at the hearing but was represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent. The Court had before it the transcript of the guilty plea hearing, the Pickens County Clerk of Court records, the PCR application, the return and partial motion to dismiss, and the guilty plea transcript.¹

PROCEDURAL HISTORY

The Applicant is confined in the Federal Correctional Institution Yazoo City Medium in Yazoo City, Mississippi. The Applicant waived presentment to the Pickens County Grand Jury for financial transaction card fraud (2007-GS-39-2372), financial transaction card theft (2007-GS-39-2373), and petit larceny (2007-GS-39-2374). He was represented by Steven L. Alexander, Esquire.

¹ In addition, an affidavit and a copy of a plea checklist are attached to this Order and incorporated herein.

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On December 10, 2007, the Applicant pled guilty. He was sentenced by the Honorable Edward W. Miller to concurrent terms of five years suspended on time-served and thirty months probation for financial transaction card fraud, five years suspended during probation for financial transaction card theft, and time-served for petit larceny. The Applicant did not file an appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "Failure to explain nature of offenses."
 - b. "Failure to file direct appeal, explain Boykin rights."
2. Involuntary guilty plea.

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

Expiration of Statute of Limitations

This Court finds that – except for the issue of whether the Applicant is entitled to a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) – this PCR application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). 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

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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 South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offenses he challenges in this application on December 10, 2007. The Applicant was therefore required to file his application before December 10, 2008. This Application was filed on June 14, 2012, which was more than three years and six months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, this Court finds that all issues (except for whether the Applicant is entitled to a review of direct appeal issues pursuant to White v. State) are summarily dismissed.

Review of Direct Appeal Issues

In his PCR application, the Applicant alleged plea counsel failed to file a notice of appeal. Attached to this Order and incorporated herein is an affidavit from plea counsel and a copy of a guilty plea checklist signed by the Applicant. These documents indicate plea counsel explained to the Applicant that he had the right to appeal his guilty plea within ten days but that the Applicant never asked counsel to file an appeal.

Plea counsel has a constitutionally imposed duty to consult with the defendant about an

appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, “courts must take into account all the information counsel knew or should have known.” Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id. This Court finds the Applicant has failed to meet his burden of proving he is entitled to a review of his direct appeal issues. This Court finds the Applicant was advised of his appellate rights and chose not to pursue them.

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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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 guilty plea and sentencing proceedings. 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 IT IS SO ORDERED this 6 day of NOV, 2013.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

G'VILLE, South Carolina.

STATE OF SOUTH CAROLINA (

 COUNTY OF PICKENS (IN THE COURT OF COMMON PLEAS

 BILLY DEON-ANDRE HODGE, (Case # 2012-CP-39-885

 Plaintiff, (

 -vs- (AFFIDAVIT OF STEVEN L. ALEXANDER

 STATE OF SOUTH CAROLINA, (

 Defendant. (

PERSONALLY appeared before me the undersigned deponents who first

 being duly sworn, state the following as fact:

I, Steven L. Alexander, was the attorney for the Plaintiff

 Billy Hodge for the underlying criminal charges relating to this

 post conviction relief action, which he pled guilty to. I have

 attached a copy of a form which explained to Mr. Hodge, among

 other things, the constitutional rights he was giving up by

 pleading guilty and that he had the right to appeal his guilty

 plea within 10 days of the plea. I verbally went over this form

 with Mr. Hodge prior to his guilty plea and Mr. Hodge signed the

 form in my presence.

Mr. Hodge pled guilty to the charges and never requested I

 file an appeal on his behalf.

IN WITNESS WHEREOF, I have placed my hand and seal this

 ___ day of ___, 2013.

Steven L. Alexander

 Steven L. Alexander

SWORN to before me this

11th day of Sept, 2013.

Donald C. Alexander

 NOTARY PUBLIC FOR SOUTH CAROLINA

 My commission expires: _____

If applicable, I understand this is a waiver of presentment to the grand jury.

I have been informed that I have the right to remain silent and that I do not have to talk about my involvement in this case unless I want to. I understand that if I plead guilty, that I will have to give up this right to remain silent, and tell the Judge what I did wrong.

I have been informed that I have the right to a jury trial and the right to make the State prove this case against me. I do not want a jury trial, and want to enter a plea of guilty as I have signed.

I have been informed that I have the right not to testify and that the State would have to prove the case against me without any statement I may have made to the police, if I have a jury trial.

I have been informed that the maximum sentence I could get in this guilty plea is 5 yrs, 1 yr, 30 day and the minimum, if applicable, is _____

I have been informed and understand the plea bargain and/or recommendation as follows:

Probation w/ Restitution

I have been informed that I have the right to appeal this guilty plea and sentence if I inform my lawyer within ten (10) days of this plea, or I file the paperwork myself within this time.

I am pleading guilty to this/these cases of my own free will, and no one is forcing me to do this. I understand there are no promises or guarantees, and the only recommendations are outlined above.

Date: 11/16/07

Witness: GA W

Billy Hooge
Defendant's Signature



R. MILLS ARIALL, JR.

11 NORTH IRVINE STREET, SUITE 11
GREENVILLE, SC 29601

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211



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SC Court of Appeals