

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

January 24, 2014

R. Mills Ariail, Jr., Esquire
11 North Irvine St., Ste., 11
Greenville SC 29601

Re: Billy Deon-Andre Hodge v. State
Appellate Case No. 2014-000053
Lower Court Case No. 2012-CP-39-00885

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

In your letter dated January 7, 2014, you indicate that you do not have a good faith explanation to provide under Rule 243(c), SCACR. While your letter advised petitioner that he may file a *pro se* explanation, you did not advise him of the time he has to submit a *pro se* explanation.

Under *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006), the letter should have in addition to stating "that as an officer of the Court, [you are] unable [to] set forth any arguable basis for asserting the determination by the PCR judge that the PCR application was . . . barred by the statute of limitations was improper", the letter should have "further advise[d] the petitioner by copy of the letter that the petitioner should notify the Court, no later than twenty (20) days from the date of the letter, of any arguable basis the petitioner may wish to assert that the determination that the PCR application was . . . barred by the limitations was improper."

In the current case, this circuit court determined that all of the claims other than the *White v. State* claim¹ were barred as being untimely under the statute of limitations. If you continue to believe that you do not have a good faith as to these claims, I ask that you please file with this Court and serve on your client and the Attorney General, an amended letter that contains the language specified by *Dennison*. This revised letter should be served and filed within ten (10) days of the date of this letter.

As to the *White v. State* claim, the PCR judge determined that petitioner was not entitled to a belated direct appeal. However, even if petitioner were ultimately to prevail on this issue, the most he would receive would be a belated appeal from his guilty pleas and in that appeal petitioner would have to "provide a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal." Rule 203(d)(1)(B), SCACR (explanation required when an appeal is taken from a guilty plea, *Alford* plea, or plea of *nolo contendere*). Therefore, I ask that you please provide the explanation

¹ A claim that an applicant is entitled to a belated appeal under *White v. State* is not subject to the statute of limitations. *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002).

required for a guilty plea appeal. This explanation should be included in your amended letter.²

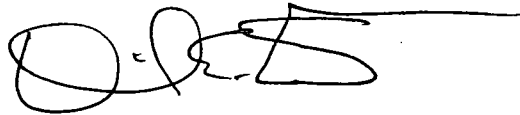
This is to advise that the title in this matter has been changed to read as follows:

Billy Deon-Andre Hodge, Petitioner,

v.

State of South Carolina, Respondent.

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

cc: Karen Christine Ratigan, Esquire

² In the event you determine that you do not have a good faith explanation to provide regarding an appeal from a guilty plea, I would recommend that you follow a procedure similar to that provided under *Dennison v. State* for the explanation required by Rule 243(c), SCACR. If you do so, you should specifically advise petitioner that he has twenty (20) days from the date of your letter to provide this Court a *pro se* explanation for an appeal from a guilty plea under Rule 203(d)(1)(B), SCACR.