

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston  
STATE VS.

BERNARD OTHELLO GILLIARD

AKA: \_\_\_\_\_

Race: B Sex: M Age: 23

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL#: \_\_\_\_\_ SID#: SC01556943

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  
TO: Armed Robbery

INDICTMENT/CASE#: 2010GS1002060

A/W#: K304492

Date of Offense: 4/21/2009

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

ON 5/27/10  
 CONVICTED BT or  PLEADS

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentation to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] 73247 [Signature] [Signature] 68666  
Duke, G. Rutledge SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 25 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: Amynudy Heffner

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: THE DEFENDANT WAS TRIED  
THE 2ND TIME FOR MURDER ON  
2/25/11 & SERVED FOR ARMED  
ROBBERY

Condition Discharge, § 44-53-450(C) requires  
\$350 be paid to the Clerk prior to case disposition

Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Presiding Judge [Signature]

Judging Code: 2134

Sentence Date: 5/27/10

SCCA217 (06/2010) DEFENDANT WAS TRIED ON MAY 27, 2010 FOR MURDER & ARMED ROBBERY AND CONVICTED OF ARMED ROBBERY BUT SENTENCING WAS NOT COMPLETED.

RECEIVED

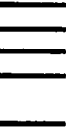
JAN 31 2014

SC Court of Appeal

**JULIE J. ARMSTRONG**  
CLERK OF COURT, C.P. & G.S.  
100 BROAD STREET, SUITE 105  
CHARLESTON, SC 29401-2258  
RETURN SERVICE REQUESTED



[www3.charlestoncounty.org](http://www3.charlestoncounty.org)



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THOMAS DYLLAN RANKIN  
55 BROAD ST STE 100  
CHARLESTON SC 29401-2922

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC**

**Order of dismissal & granting belated appeal**

**CASE NO: 2012CP1007484**  
**Bernard O Gilliard VS South Carolina State of**

This judgment was entered on the 13th day of January, 2014, and a copy mailed first class on Thursday, January 16, 2014, to all counsel of record and/or all parties entitled to receive notice.



On May 27, 2010, the Applicant proceeded to trial on all charges. He was found guilty of armed robbery. On February 25, 2011, the Applicant proceeded to trial for the second time on the remaining charges – the result was a hung jury. After the second trial, the Applicant was sentenced by the Honorable J. C. Nicholson, Jr. to twenty-five (25) years for armed robbery. On April 21, 2011, the Applicant pled guilty to voluntary manslaughter as a lesser included offense of murder, possession of a weapon during the commission of a violent crime, and unlawful carrying of a pistol. The Honorable Thomas L. Hughston sentenced the Applicant to five (5) years for possession of a weapon, one (1) year for unlawful carrying of a pistol, and twenty years (20) for voluntary manslaughter. The applicant did not appeal his convictions or sentences.

#### **ALLEGATIONS**

At the November 20, 2013 hearing, the Applicant alleged that he was denied effective assistance of counsel when trial counsel failed to file a direct appeal and failed to inform him of his right to appeal his Armed Robbery conviction.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court agrees that Applicant's allegation that he was denied his right to appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. See White. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White, Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his or her appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct

QPM  
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appeal issues pursuant to White v. State. See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).<sup>1</sup>

This Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his Armed Robbery conviction. Pursuant to White v. State, a petition for belated review can remedy the Applicant's lack of a direct appeal.

#### **ALL OTHER ALLEGATIONS**

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant has abandoned such allegations. Therefore they are hereby denied and dismissed.

#### **CONCLUSION**

Based on all the forgoing, this Court finds and concludes that granting the belated direct appeal is proper. This Court further finds that based upon Applicant's testimony, the dismissal of this application for post-conviction relief (with the exception for the belated appeal request) is voluntary and that Applicant has knowingly and intelligently elected to have his application dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal this Court's ruling within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is 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.

[Signature on the following page.]

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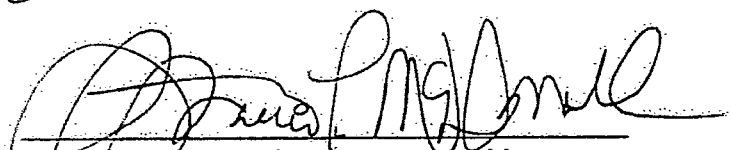
<sup>1</sup> Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

IT IS THEREFORE ORDERED:

1. That this current Application for post-conviction relief be dismissed with prejudice; *except that*
- ~~2. That the Applicant is granted a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's conviction. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review;~~
- and
3. The Applicant shall be remanded to the custody of Respondent.

*SPM*

AND IT IS SO ORDERED this 8<sup>th</sup> day of January, 20    .

  
The Honorable Stephanie P. McDonald  
Presiding Circuit Court Judge, 9<sup>th</sup> Judicial Circuit

Charleston, South Carolina