

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
General Sessions

J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-GS-10-2060

State of South Carolina, Respondent,
v.
Bernard Othello Gilliard, Appellant.

NOTICE OF APPEAL

Appellant Bernard O. Gilliard appeals his armed robbery conviction of May 27, 2010, and the sentencing thereof, by the Honorable J. C. Nicholson, Jr., on February 25, 2011. Appellant filed an application for post-conviction relief on November 15, 2012 seeking a belated direct appeal of the above conviction and sentencing. At a hearing held November 20, 2013, in case number 2012-CP-10-7484, the Honorable Stephanie P. McDonald granted the belated direct appeal sought in the application. Appellant received written Notice of the Entry of Order Granting Belated Direct Appeal on January 17, 2014.

January 24, 2014



T. Dyllan Rankin
55 Broad Street, Suite 100
Charleston, SC 29401
(843) 628-3158 (t)
(877) 804-6016 (f)
Attorney for Appellant

Other Counsel of Record:

Ashleigh R. Wilson
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street
Charleston, SC 29401

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JAN 31 2014

SC Court of Appeals

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Case No. 2010-GS-10-2060

State of South Carolina,

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v.

Bernard Othello Gilliard,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all counsel of record by depositing a copy in the United States mail, with sufficient postage affixed, on January 24, 2014, addressed as follows:

Ashleigh R. Wilson
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street
Charleston, SC 29401



T. Dyllan Rankin
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Attorney for Appellant

Charleston, South Carolina
January 24, 2014

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SC Court of Appeals

55 BROAD STREET
SUITE 100
CHARLESTON, SC 29401

THE LAW OFFICE OF
T. DYLLAN RANKIN, LLC

(843) 628-3158 TELEPHONE
(877) 804-6016 FACSIMILE
dyllan@therankinlawfirm.com

January 24, 2014

SENT VIA US MAIL

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

**RE: State of South Carolina, Respondent, v. Bernard Othello Gilliard,
Appellant, Case No. 2010-GS-10-2060**

Dear Ms. Kitchings:

Enclosed for filing are the following:

- 1) Notice of appeal.
- 2) Proof of service of the notice of appeal on all counsel of record.
- 3) A copy of the orders to be challenged on appeal.
- 4) A copy of the cover letter sent to the lower court accompanying the notice of appeal.

Please be advised that the undersigned is already in possession of a complete transcript of the trial proceeding, which was obtained for the purpose of the post conviction-relief application. Therefore, appellant is not furnishing counsel of record, the Office of Court Administration, and the appellate court clerk with any correspondence with the court reporter pursuant to Rule 207 at this time.

Sincerely,


T. Dyllan Rankin

cc: Ashleigh R. Wilson (1 and 2 only)
Ninth Circuit Solicitor's Office (1 and 2 only)

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SC Court of Appeals

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January 24, 2014

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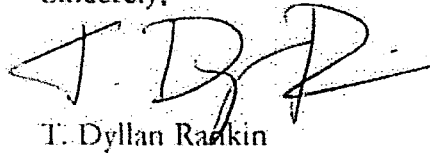
Charleston County Family Court Clerk
100 Broad Street, Suite 143
Charleston, South Carolina 29401

**RE: Notice of Appeal
Case No.: 2010-GS-10-2060**

Dear Sir or Madam:

Enclosed for filing are two copies of a notice of appeal in the above case.
Please mail the clocked copy to my office in the return envelope provided.

Sincerely,



T. Dyllan Rankin

cc: Jenny A. Kitchings, Clerk, Court of Appeals

RECEIVED

JAN 31 2014

SC Court of Appeals

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#: SC01556945

*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 OF 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] 73944 [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	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.3 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: Amynody Hefner

Presiding Judge [Signature]
Judge Code: 2154
Sentence Date: 5/27/10

SCCA217 (06/2010) DEFENDANT WAS TRIED, ON MAY 27, 2010 FOR MURDER OF ROBERTY + 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 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org



10



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.

AG
AT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Bernard O. Gilliard, #314249,)
Applicant,)
)
VS.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-7484

**ORDER OF DISMISSAL AND
GRANTING BELATED APPEAL**

FILED
2014 JAN 13 AM 9:14
COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Presiding Judge: The Honorable Stephanie P. McDonald
Applicant's Attorney: T. Dyllan Rankin, Esquire
Respondent's Attorney: Ashleigh R. Wilson, Esquire
Trial Counsel: John Michael Bosnak, Esquire
Date of Hearing: November 20, 2013
Court Reporter: Sharon Vizer

This matter came before the Court by way of an Application for post-conviction relief (PCR) filed November 15, 2012, and amended on November 8, 2013. The Respondent made its Return on or about June 26, 2013.

An evidentiary hearing was held on November 20, 2013, at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by T. Dyllan Rankin, Esquire. Ashleigh Wilson of the South Carolina Attorney General's Office represented the Respondent.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the March 2010 term of the Charleston County Grand Jury for possession of a firearm during commission of a violent crime (2010-GS-10-2059), armed robbery (2010-GS-10-2060), murder (2010-GS-10-2061), and unlawful carrying of a pistol (2010-GS-10-2173). Applicant was represented by John Michael Bosnak, Esquire.

APM
-1-

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
12-

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).¹

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.

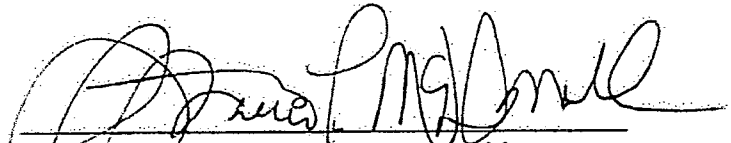
[Signature on the following page.]

¹ 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*
- APM*
- ~~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.

AND IT IS SO ORDERED this 8th day of January, 20 .


The Honorable Stephanie P. McDonald
Presiding Circuit Court Judge, 9th Judicial Circuit

Charleston, South Carolina

THOMAS DYLLAN RANKIN
The Law Office of T. Dyllan Rankin, LLC
518
1 Street, Suite 100
Charleston, SC 29401

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JAN 31 2014

SC Court of Appeals

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

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