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February 7, 2014

SENT VIA US MAIL

Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

**RE: Bernard Othello Gilliard, Petitioner v. State of South Carolina,
Respondent, Case No. 2012-CP-10-7484**

Dear Mr. Shearouse:

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 order finding that applicant is entitled to a White v. State review.
- 4) A copy of the letter to the court reporter requesting a transcript.

Sincerely,



T. Dyllan Rankin

Enclosures

Ashleigh R. Wilson
RECEIVED

FEB 10 2014

S.C. SUPREME COURT

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 9:44
CLERK OF COURT
STRONG

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.

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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

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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).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.

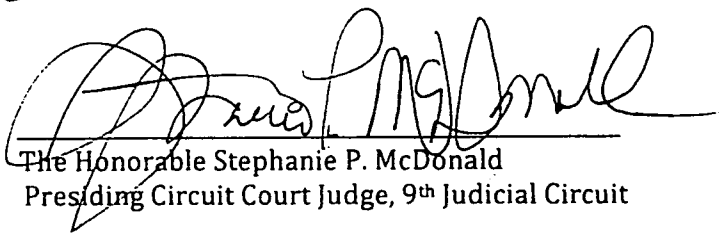


IT IS THEREFORE ORDERED:

1. That this current Application for post-conviction relief be dismissed with prejudice; *except that*
 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.

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

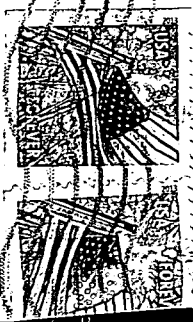

The Honorable Stephanie P. McDonald
Presiding Circuit Court Judge, 9th Judicial Circuit

Charleston, South Carolina

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CHARLESTON SC 294

ON FEB 2014 PM 2 1



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