

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Lexington County

NOV - 1 2013

Clifton Newman, Circuit Court Judge

\_\_\_\_\_

S.C. Supreme Court

JEFFERY T. LUCAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000455

APPENDIX

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Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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This Court finds that the allegation that the Applicant was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. See White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). 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 appellate rights, the Applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i), SCRAP; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

This Court finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. This Court concludes that the Applicant is entitled to a belated review of his conviction(s). A petition for belated review pursuant to White v. State can remedy the Applicant's lack of a direct appeal.

#### All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so.

BETTY A. CANNING  
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EDINGTON, SC  
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Therefore, any and all remaining allegations are denied and dismissed.

V. CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice, with the exception of the grant of a belated direct appeal.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

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LEXINGTON, SC

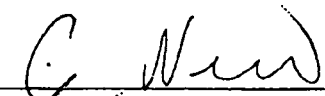
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**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice;
2. That the Applicant is granted a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. 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 243(i) for the appropriate procedure for securing belated appellate review; and
3. That the Applicant be remanded to the custody of Respondent

AND IT IS SO ORDERED this 11<sup>th</sup> day of February, 2013.

  
 \_\_\_\_\_  
 Clifton Newman  
 Presiding Judge

Walter Bero, South Carolina

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 BETTIE A. O'NEILL  
 CLERK OF COURT  
 LEXINGTON, SC

WITNESSES

Lexington County Sheriffs Department

David Pritchard

Law Enforcement Case #:

DOCKET NO. 2009GSS3200536

The State of South Carolina

County of Lexington

ARREST WARRANT NUMBER

SEM

COURT OF GENERAL SESSIONS

MARCH TERM 2009

09-STR-00037

ACTION OF GRAND JURY

Jeffery Thomas Lucas

**TRUE BILL**

THE STATE  
vs.

Foreperson of Grand Jury  
Date: 3-2-09

CDR #: 2766

VERDICT

*Guilty*

Indictment for

Infliction of Great Bodily Injury  
Upon a Child

§ 16-03-0095(A)

*Donald W. Myers*  
Foreperson of Petit Jury  
Date: 3-18-09

DONALD W. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

INDICTMENT FOR  
Infliction of Great Bodily Injury Upon a Child

§ 16-03-0095(A)

At a Court of General Sessions, convened on March 2009, the Grand Jurors of Lexington County present upon their oath:

That **Jeffery Thomas Lucas** did in Lexington County, South Carolina on or about May 24, 2006, inflict great bodily injury upon a child, to wit: the defendant, through the application of physical acts, caused permanent damage to a two (2) year old child's (Bryson Kelly), head, spine, intestines and genitals causing life-threatening injuries, in violation of Section 16-3-95 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.
Mr. Jeffery Thomas Lucas
AKA:
Race: W Sex: M Age: 44
DOB: SS#
Address: Gaston, SC 29053
DL#: SID#

INDICTMENT/CASE#: 2009GS3200536
A/W#: 09-STR-00037
Date of Offense: 5/24/2006
S.C. Code § 16-03-0095(A)
CDR Code #: 2766

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was [X] CONVICTED OF or [ ] PLEADS TO: Abuse / To inflict great bodily injury upon a child

in violation of § 16-03-0095(A) of the S.C. Code of Laws, bearing CDR Code # 2766
[ ] NON-VIOLENT [X] VIOLENT [ ] SERIOUS [ ] MOST SERIOUS [ ] Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: [X] As Indicted, [ ] Lesser Included Offense, [ ] Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: [ ] Without Negotiations or Recommendation, [ ] Negotiated Sentence, [ ] Recommendation by the State.
ATTEST:

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [ ] County Detention Center, for a determinate term of 20 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: ANXIETY & DEP. IS CURRENTLY ON MEDICATION FOR DEPRESSION & SHOULD BE SCDC
[X] 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.
[X] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms: days/hours Public Service Employment

[ ] set by SCDPPPS

Table with columns for Recipient, \*Fine, and various assessment codes (e.g., § 14-1-206, § 14-1-211(A)(1), § 14-1-211(A)(2), § 56-5-2995, § 56-1-286, § 35.13, § 73.3, § 33.7, § 50-21-114, § 56-5-2942(J), 3% to County, § 90.11 TP) and their corresponding amounts.

TOTAL \$130
Beth A. Pauley
Clerk of Court/Deputy Clerk

Court Reporter: J. Sheppard

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: PAY COURT COSTS WITHIN 1HR. OF BEGINNING COMMUNITY SUPERVISION

[ ] Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Willie P. Blodgett
Judge Code: 2101510
Sentence Date: MARCH 18, 2009