

Law Office of Lawrence W. Crane

101 WHITSETT STREET
GREENVILLE, SOUTH CAROLINA 29601

LAWRENCE W. CRANE, ESQ.
ELIZABETH P. WIYGUL, ESQ.
CAROLINE M. HORLBECK, ESQ.

TELEPHONE (864) 235-2900
FAX (864) 467-1916
TOLL FREE (800) 852-0899

January 13, 2012

Mr. Elliott Brown #43722 037
FCI Allenwood Medium
P. O. Box 2000
White Deer, Pa. 17887

Dear Mr. Brown:

I have been appointed to represent you on your PCR case. Please write me within the next two weeks and tell me the issues you believe are important in your case. Please give me the names, telephone numbers and addresses of witnesses you want me to contact.

Your PCR hearing has not been scheduled and I don't know when it will be scheduled. I will contact you as soon as the Court contacts me with the date of your hearing.

I look forward to hearing from you and working with you on your case.

Yours very truly,

Caroline M. Horlbeck /bh

Caroline M. Horlbeck

CMH/bh

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Elliott Brown,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-4514

**ORDER GRANTING RESPONDENT'S
 PARTIAL MOTION TO DISMISS AND
 APPLICANT'S REQUEST FOR
WHITE V. STATE BELATED APPEAL**

2013 MAY -3 PM 4:41
 CLERK OF COURT
 GREENVILLE COUNTY
 SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 8, 2011. The Respondent made its return and partial motion to dismiss on December 30, 2011. A hearing into the matter was convened on April 18, 2013 at the Greenville County Courthouse. The Applicant participated through teleconference and was represented at the hearing by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

The Applicant is confined in Federal Correctional Institution Allenwood Medium facility in White Deer, Pennsylvania. The Applicant was indicted at the February 2007 term of the Greenville County Grand Jury for trafficking marijuana (2007-GS-23-0592). He was represented by Monte Desai, Esquire.

On January 9, 2008, the Applicant pled guilty to possession with intent to distribute marijuana, second offense. He was sentenced by the Honorable Edward W. Miller to eighteen (18) months of home incarceration. The Applicant did not appeal.

1
 [Handwritten signature]

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Misadvised about the elements of the offense.
 - b. Failed to object to the factual basis for the guilty plea.
 - c. Failed to file an appeal.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Partial Motion to Dismiss

This Court finds the Respondent's partial motion to dismiss issues related to the Applicant's guilty plea must be granted due to failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant pled guilty to the offense he challenges in this Application on January 9, 2008. The Applicant was therefore required to file his application before January 9, 2009. This Application was filed on July 8, 2011, which was approximately two (2) years and six (6) months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from

2


the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, all issues related to the Applicant’s January 9, 2008 guilty plea hearing – except for the issue of a belated appeal – must be dismissed.

Belated Appeal

This Court finds the Applicant’s allegation that he was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (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, 18 L. Ed. 2d 493 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their 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)(1), SCACR; Davis v. State, 288 S.C. 290, 291, n.1, 342 S.E.2d 60, 60, n.1 (1986) (“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.”).

Counsel for Respondent stated she had spoken to plea counsel in this case, who admitted he failed to properly file an appeal. As such, the Respondent agreed the Applicant was entitled to a belated appeal from his guilty plea hearing. The Court affirmatively finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes the Applicant is entitled to a belated review of his conviction. The Applicant’s lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

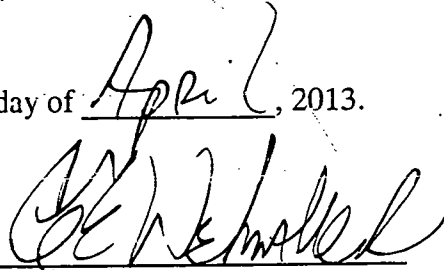
CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant is entitled to a belated direct appeal of his criminal conviction pursuant to White v. State.

IT IS THEREFORE ORDERED:

1. That the Respondent's partial motion to dismiss is granted;
2. That the Applicant's request for a belated appeal is granted; and
3. 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 convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and Rule 243(i), SCACR for the appropriate procedure for securing belated appellate review.

AND IT IS SO ORDERED this 24 day of April, 2013.



G. Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit



_____, South Carolina

Law Office of Lawrence W. Crane

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TOLL FREE (800) 852-0899

June 20, 2012

Elliot Brown #43722-037
FCI Allenwood Med
P. O. Box 2000
White Deer, Pa. 17887

Re: Letter dated June 11, 2012


Dear Mr. Brown:

Please be advised that your reply brief has already been filed with the government.

Also, be advised that I do not handle appeals at all so I will be unable to file any motions pertaining thereto.

Good luck in the future.

Sincerely,



Caroline M. Horlbeck

CMH/bh

CAROLINE M. HORLBECK

ATTORNEY AT LAW

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601
horlbecklawfirm@gmail.com

(864) 315-9919
Fax(864) 232-4756

May 29, 2013

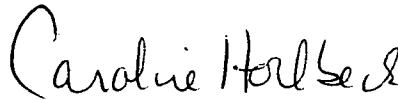
Mr. Elliott Brown #43722 037
FCI Allenwood
P.O. Box 2000
White Deer, PA 17887

Dear Mr. Brown:

Enclosed please find a copy of the final order in your PCR case and copy of the notice of appeal filed on your behalf. Unfortunately, the Judge denied your PCR petition but I have filed an appeal on your behalf. You will be represented on your appeal case by an attorney from the SC Office of Appellate Defense. Please address all correspondence regarding your appeal to:

SC Office of Appellate Defense
P.O. Box 11433
Columbia, SC 29211

Yours very truly,



Caroline M. Horlbeck

CMH:kmo
Enclosures

CAROLINE M. HORLBECK

ATTORNEY AT LAW

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601
horlbecklawfirm@gmail.com

(864) 315-9919
Fax(864) 232-4756

November 18, 2013

Mr. Elliott Brown 43722037
FCC Allenwood FCI
P.O. Box 2000
White Deer, PA 17887

Re: Your Letter

Dear Mr. Brown:

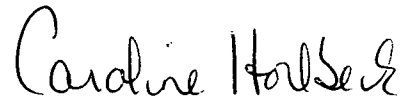
I have received and reviewed your recent correspondence regarding your appeal. I filed Notice of Appeal regarding 2007-23-GS-00592 (your criminal conviction for Possession with Intent to Distribute Marijuana 2nd). As stated in their letter to you dated October 4, 2013, the Supreme Court determined that the Notice of Appeal I filed on your criminal matter was a Notice of Appeal from the final order issued in your PCR case. I don't know why the Supreme Court made this determination. As you recall, both you and I were happy with the result of your PCR hearing and I didn't file an Appeal of the PCR final order.

I was greatly surprised when the Supreme Court requested a response from me regarding an Appeal of your final PCR order. As I was happy with the results of your PCR and didn't appeal the final order from your PCR hearing, I did not provide reasons to support such an appeal.

I have spoken to the Assistant Attorney General. She suggested that filing a PCR petition is the best way to correct the Court's mistake. Once the petition is filed, the AG's office may

issue a consent order and you may then file another appeal of your criminal conviction.

Yours very truly,

A handwritten signature in cursive script that reads "Caroline Horlbeck". The signature is written in black ink and is positioned above the printed name.

Caroline M. Horlbeck

CMH:kmo

The Supreme Court of South Carolina

Elliot J. Brown, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-001144


The Honorable Edward W. Miller
Greenville County
Trial Court Case No. 2011CP2304514

ORDER

Petitioner has failed to provide the explanations required by Rule 243(c) and/or Rule 203(d)(1)(B) of the South Carolina Appellate Court Rules, and requested by this Court's letter of June 11, 2013. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

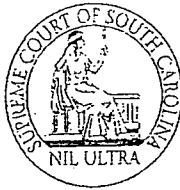
BY



CLERK

Columbia, South Carolina
July 9, 2013

cc: Caroline M.W. Horlbeck, Esquire
Karen Christine Ratigan
Office of Appellate Defense *LY*



Closed
13-314

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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29211

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COLUMBIA, SOUTH CAROLINA 29201

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FAX: (803) 734-1499

www.sccourts.org

July 25, 2013

RECEIVED

JUL 26 2013

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

SC OFFICE OF
APPELLATE DEFENSE

REMITTITUR

Re: Elliott J. Brown v. State
Lower Court Case No. 2011CP2304514
Appellate Case No. 2013-001144

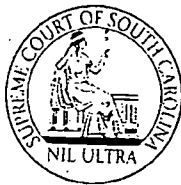
Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc: Caroline M.W. Horlbeck, Esquire
Karen Christine Ratigan, Esquire
Division of Appellate Defense *LF*



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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June 11, 2013

Caroline M.W. Horlbeck, Esquire
101 Whitsett Street
Greenville SC 29601

Re: Elliott J. Brown v. State
Appellate Case No. 2013-001144
Lower Court Case No. 2011-CP-23-04514

Dear Counsel:

Since this matter is a post-conviction relief case, the South Carolina Court of Appeals has transferred your notice of appeal in the above matter to this Court.

Except for the allegation seeking a belated direct appeal under White v. State, the PCR judge determined that this action is barred by the statute of limitations. If this ruling on the statute of limitations is to be challenged on appeal, then Rule 243(c), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper.

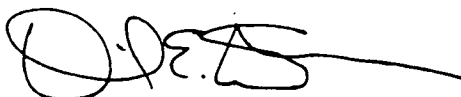
In the event you determine that you do not have a good faith explanation to provide pursuant to Rule 243(c), you must provide this Court with a letter stating that as an officer of the Court you are unable to set forth any arguable basis for asserting the determination by the PCR judge was improper. The letter should also advise the petitioner that he has twenty (20) days from the date of the letter to file a pro se

explanation as to why the petitioner believes that this determination by the circuit court was improper. Dennison v. State, 371 S.C. 221, 639 S.E.2d 35 (2006). The letter filed with this Court should include proof of service showing that a copy of the letter has been sent to the petitioner.

As to the White v. State claim, the PCR judge determined that petitioner is entitled to a belated direct appeal from guilty plea in 2007-GS-23-00592. However, to pursue an appeal from a guilty plea, 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 required for a guilty plea appeal.¹

I ask that you either provide the explanations or the responses permitted by Dennison within fifteen (15) days of the date of this letter.

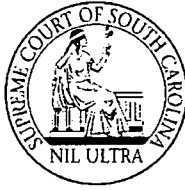
Very truly yours,



CLERK

cc: Division of Appellate Defense
Karen Christine Ratigan, Esquire

¹ In the event you determine that you do not have a good faith explanation to provide, I would recommend that you follow a procedure similar to that provided for in Dennison v. State, 371 S.C. 221, 639 S.E.2d 35 (2006), for the explanation required by Rule 243(c), SCACR. This will give the petitioner an opportunity to provide a pro se explanation for allowing an appeal from the guilty plea.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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October 04, 2013

Mr. Elliott J. Brown
#43722037
FCI Allenwood Medium
P.O. Box 2000
White Deer, PA 17887

Re: Elliott J. Brown v. State
Appellate Case No. 2013-001144
Lower Court No. 2011CP2304514

Dear Brown:

This responds to your letter to the South Carolina Court of Appeals dated September 30, 2013. As you know, the post-conviction relief (PCR) judge determined that you were entitled to a belated appeal from your guilty plea pursuant to *White v. State*. As to all other allegations, the PCR judge determined that they were barred by the statute of limitations.

While your counsel did file a notice of appeal with the Court of Appeals which stated that it was an appeal from 2007-GS-23-00592, it was determined that this was actually a notice of appeal from the final order issued in the above PCR case and the notice of appeal was transferred to this Court. *See also* Rule 243(i) of the South Carolina Appellate Court Rules (SCACR) (discussing special procedures where relief is sought pursuant to *White v. State*).

By letter dated June 11, 2013, your counsel was asked to provide the explanations required by Rule 203(d)(1)(B), SCACR, for an appeal from a guilty plea and by

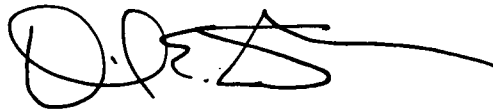
Rule 243(c), SCACR, for those claims barred by the statute of limitations.¹ When no response was received, this matter was dismissed by order dated July 9, 2013.

Further, when no petition for rehearing was received within the time specified by Rule 221, SCACR, the remittitur was sent to the circuit court on July 25, 2013.

The sending of the remittitur ended appellate jurisdiction over this case. *Wise v. South Carolina Department of Corrections*, 372 S.C. 173, 642 S.E.2d 551 (2007).

In short, the notice of appeal filed by your counsel has been resolved by the order of dismissal issued in this matter. This includes your claim seeking a belated direct appeal under *White v. State*.

Very truly yours,

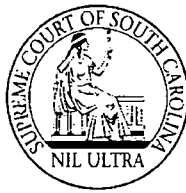
A handwritten signature in black ink, appearing to be "D. R. S.", with a long horizontal line extending to the right.

CLERK

Enclosure

ecc: Caroline M.W. Horlbeck, Esquire
Karen Christine Ratigan, Esquire

¹ Although you have apparently seen all the other relevant documents in this matter, I am enclosing a copy of the letter requesting these explanations.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
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October 16, 2013

Mr. Elliott J. Brown
#43722037
FCI Allenwood Medium
P.O. Box 2000
White Deer PA 17887

Re: Elliott J. Brown v. State
Appellate Case No. 2013-001144
Lower Court Case No.

Dear Mr. Brown:

This responds to your letter dated October 9, 2013. I cannot add anything further to what was stated in my letter of August 4, 2013, except to indicate that Caroline M. Horlbeck, Esquire, was your counsel of record during the entire time that the above matter was pending before this Court. *See* Rule 71.1(g) of the South Carolina Rules of Civil Procedure and Rule 264 of the South Carolina Appellate Court Rules.¹ There is no indication in the records of this office that the Division of Appellate Defense ever assumed responsibility for representing you in this matter.

As to your question regarding what further actions you can take, I do call your attention to the case of *Austin v. State*, 305 S.C. 453, 409 S.E.2d

¹ These court rules are available at www.sccourts.org/courtreg.

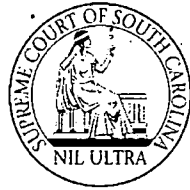
395 (1991). You may wish to consult with an attorney about this matter.

Very truly yours,

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

CLERK

cc: Caroline M.W. Horlbeck, Esquire
Karen Christine Ratigan, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
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November 07, 2013

Mr. Elliott J. Brown
#43722037
FCI Allenwood Medium
P.O. Box 2000
White Deer, PA 17887

Re: Elliott J. Brown v. State
Appellate Case No. 2013-001144

Dear Mr. Brown:

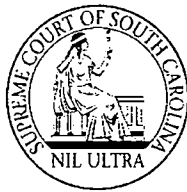
This responds to your letter dated November 3, 2013. Relief under *Austin v. State* is sought by filing a new application for post-conviction relief in the lower court. *Cf. King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (discussing appellate procedure to be followed depending on findings of PCR judge on the *Austin* claim).

Very truly yours,



CLERK

cc: Caroline M.W. Horlbeck, Esquire
Karen Christine Ratigan, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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May 30, 2014

Mr. Elliott J. Brown
#43722037
U.S.P. Terre Haute
P O Box 33
Terre Haute IN 47808

Re: Elliott J. Brown v. State
Appellate Case No. 2013-001144

Dear Mr. Brown:

This responds to your recent letter.

No petition for a writ of certiorari was filed in this matter. Instead, this matter was dismissed by order dated July 9, 2013, and the remittitur was sent on July 25, 2013. I have enclosed a copy of those documents.

Very truly yours,

CLERK

Enclosures

cc: Caroline M.W. Horlbeck, Esquire
Karen Christine Ratigan, Esquire
Paul B. Wickensimer

AFFIDAVIT OF TAVON PATTERSON

I, Tavon Patterson, hereby states as follows:

1.) That on November 24, 2006, while traveling with two of my female friends and (co-defendant) Elliot Brown, on 85 North through South Carolina, we were stopped for speeding. The officer stated to the driver (Sheena) that he smell marijuana and asked her could he search the vehicle. A drug dog was called where over 10lbs. of marijuana was found in the trunk of the vehicle.

2.) In the fall of 2007, Elliot Brown, his (father) Elliot Brown Sr. and I drove to South Carolina for a set down requested by both attorney's and the prosecutor about the case. When asked by the prosecutor about the drugs I stated that I was solely responsible for the marijuana, and that Elliot had nothing to do with drugs find in the vehicle, with no knowledge of any he was only there hanging out with me and my two female friends for the ride.

3.) On January 8, 2008, in open court I confessed responsibility for the marijuana in the vehicle, and was sentence to 2years that I agreed to at the meeting, according to the offer by the attorney's and prosecutors.

I, declare under the penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief.

4-22-13

Prudence S. Parker

PRUDENCE S. PARKER
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 25, 2015

TAVON PATTERSON