

RODNEY W. RICHEY
LOLA S. RICHEY

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JUL 23 2014

S.C. Supreme Court

July 20, 2014

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The Honorable Daniel E. Shearouse
Clerk of Court
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

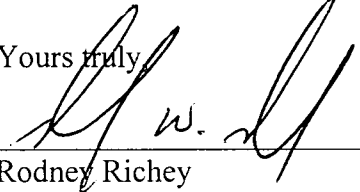
Re: John Forrest Ham SCDC# 240615 vs. The State of South Carolina
Case No: 2012-CP-39-0177

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/tlg
enclosures
cc: Ashley A. McMahan, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

HONORABLE ROBIN B. STILWELL

2012-CP-39-0177

JOHN FORREST HAM, JR., SCDC# 240615

APPELLANT,

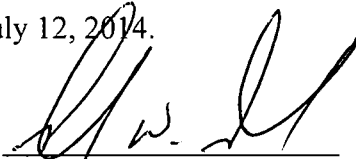
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

John Forrest Ham, Jr. appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Robin Stilwell, Circuit Judge on June 18, 2014 and Order issued on July 6, 2014 and filed on July 9, 2014. The Appellant received notice of the judgment on July 12, 2014.



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

Other Counsel of Record:
Ashley A. McMahan, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE ROBIN B. STILWELL

2012-CP-39-0177

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JUL 23 2014

S.C. Supreme Court

JOHN FORREST HAM, JR., SCDC#: 240615,

against

STATE OF SOUTH CAROLINA,

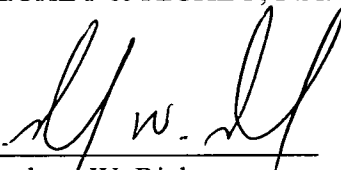
RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on July 20, 2014, addressed to their attorney of record, Ashley A. McMahan, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: July 20, 2014

RICHEY & RICHEY, P.A.



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

THE COURT OF COMMON PLEAS
FOR THE 13th JUDICIAL CIRCUIT
Case No: 2012-CP-39-0177

John Forrest Ham, Jr., ~~20140015~~ 9 A 9 15)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**ORDER OF DISMISSAL
WITH PREJUDICE**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 2, 2012. The Respondent filed an Amended Return and Motion to Dismiss on or about May 16, 2014. A hearing was convened at the Greenville County Courthouse on June 18, 2014. The Applicant was present and represented by Rodney W. Richey, Esquire. Assistant Attorney General Ashley A. McMahan was present on behalf of the State.

Respondent's Motion to Dismiss

At the hearing the Respondent requested that the plea agreement be enforced and moved to dismiss the PCR application based upon this plea agreement signed by the Applicant on April 9, 2010. Respondent noted that the plea court questioned the Applicant regarding his waiver of his right to appeal and to file a PCR. Applicant indicated that he understood the plea agreement, he went over it with his attorney, that the agreement was binding, and that he was pleading guilty freely and voluntarily. See transcript dated January 25, 2010, page 6, lines 3-11, and page 11, lines 14-15.

Further, trial counsel testified that the plea agreement was signed voluntarily and that the Applicant received the benefit of pleading to reduced charges in exchange for the plea.

This Court agrees and grants Respondent's Motion to Dismiss. The Applicant's waiver of his right to file a direct appeal and PCR have been established by the record as voluntary and knowing through a colloquy between the court and Applicant at the guilty plea, through the plea agreement, and through trial counsel's testimony at the PCR hearing. Therefore, since the waiver of his right to file a PCR was knowingly, willingly, and voluntarily made, the PCR application is dismissed pursuant to Spoone v. State, 379 SC 138, 665 SE2d 605 (2008).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Respondent's motion to dismiss the PCR application is well taken. Therefore, this Court finds as a substantive matter that counsel was not deficient and the application for post-conviction relief is dismissed *ab initio*.

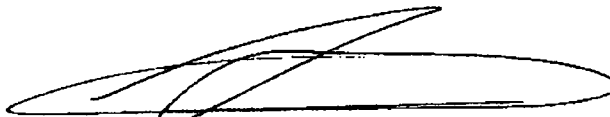
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel

must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**;
2. The Applicant must be remanded to the custody of the Respondent.

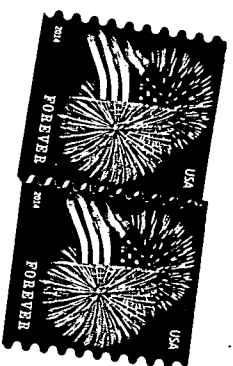
AND IT IS SO ORDERED!



Robin B. Stilwell
Presiding 13th Circuit Court Judge

July 6, 2014
Greenville, South Carolina

Richey & Richey, PA
Attorneys at Law
Post Office Box 10916
Greenville, South Carolina 29603



The Honorable Daniel E. Shearouse
Clerk of Court
The Supreme Court of South Carolina
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