

**RECEIVED**

AUG 15 2014

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2013-CP-10-4159

Thompson White, Appellant,


v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Thompson White appeals the denia of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable R. Markley Dennis on April 16, 2014.

August 12, 2014

  
Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Ashleigh Wilson, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

---

Case No.: 2013-CP-10-4159

---

Thompson White,

Appellant,

v.

State of South Carolina,

Respondent.


---

PROOF OF SERVICE

---

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Ashleigh Wilson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on August 13, 2014.

August 13, 2014



---

Rodney D. Davis  
400 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

Other Counsel of Record:  
Ashleigh Wilson, Assistant Attorney General  
Office of the Attorney General, State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

CC  
SOL  
GS  
AT  
AG

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Thompson White, #349723, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2013-CP-10-4159

**AMENDED  
ORDER OF DISMISSAL**

FILED  
2014 JUL 16 PM 3:32  
JULIE E. HARRIS, CLERK  
CLERK OF COURT  
COUNTY OF CHARLESTON

Presiding Judge: The Honorable R. Markley Dennis  
Applicant's Attorney: Rodney Davis, Esquire  
Respondent's Attorney: Ashleigh R. Wilson, Esquire  
Trial Counsel: Andrew Savage, Esquire  
Date of Hearing: April 16, 2014  
Court Reporter: Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed July 16, 2013. The Respondent made its Return on December 3, 2013. An evidentiary hearing into the matter was convened on April 16, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Andrew Savage, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the Respondent's Return thereto, and the one exhibit submitted by the State<sup>1</sup>.

<sup>1</sup> State's Exhibit 1- Providency Form signed by the Applicant

*pmof/11*

## PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the March 2011 term of the Charleston County Grand Jury for murder (2011-GS-10-1229). Andrew Savage, Esquire, represented the Applicant. The Applicant pled guilty to the lesser included offense of voluntary manslaughter on February 14, 2012. The Honorable T.L. Hughston, Jr., sentenced the Applicant to confinement for twelve years. The Applicant filed a Motion to Reconsider Sentence which was granted. Judge Hughston amended the Applicant's sentence to confinement for ten years by Order dated February 11, 2013. The Applicant did not appeal his conviction or sentence.

## ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. 6<sup>th</sup> and 14<sup>th</sup> amendment violations.
  - b. Counsel failed to investigate the law and facts governing his case.
  - c. Counsel failed to pursue available remedies which precluded criminal proceeding, conviction, and confinement.
2. Involuntary guilty plea.
  - a. 14<sup>th</sup> amendment and due process violations.

At the hearing, the Applicant proceeded on the claims of ineffective assistance of counsel for counsel's failure to pursue and advise the Applicant of the possibility of pursuing a self-defense claim or seeking immunity using the provisions of the Protection of Persons and Property Act. This Court finds no evidence, testimony, or argument was presented at the evidentiary hearing in support of any other allegations raised by the Applicant, therefore, this Court deems all allegations not addressed by the Court in this Order abandoned by the Applicant.

*AMCJ/z*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### Summary of Testimony

The Applicant was present and testified he entered a guilty plea to voluntary manslaughter and was represented by Andrew Savage, Esquire. He testified counsel did not pursue the Castle Doctrine as a defense in his case. He testified he spoke with counsel about self-defense, but does not recall how counsel explained self-defense. He testified his case was a death by shooting case and he was not on his property at the time. He testified there was an altercation before the shooting and he was approached by people at his residence. The Applicant testified he left his home armed and thought the victim was armed when he approached.

The Applicant testified he did not discuss immunity or the "Stand Your Ground" law with counsel. He testified before he pled guilty he did not understand self-defense or the Protection of Persons or Property Act. He testified he pled guilty because counsel told him he was guilty since he was not on his property. He testified he also visited the scene with counsel since the shooting took place on the side of his residence in the street.

Andrew Savage, Esquire, was present and testified he has been practicing criminal law for 39 years. He testified the Applicant's family first came to him and he referred them to Allen Mastatuno, Esquire. He testified the family then came back to him and retained him to assist

Mastatuno for a reduced fee. Counsel testified he reviewed the State's evidence with the Applicant many times.

Counsel testified the Applicant was accused of shooting the victim after an altercation with his girlfriend. Counsel testified the Applicant had a non-violent prior record and substance abuse issues. He testified the Applicant bonded out and was involved in a substance abuse program. Counsel testified the Applicant had deficiencies which were caused by his substance abuse. Counsel testified he was cautious about the Applicant's understanding of the proceeding based on his limited memory of the event. He testified he had the Applicant evaluated and the Applicant was found competent.

Counsel testified he has handled many immunity hearings and cases involving the Protection of Persons and Property Act. Counsel testified he discussed possible defenses with the Applicant including the Castle Doctrine and the "Stand Your Ground" law. He testified neither would apply as a defense for the Applicant. He testified the defenses were inapplicable because the Applicant went back to his home to retrieve the gun and went beyond the perimeter of his property to shoot at the victim. He testified he walked the perimeter of the Applicant's home with the Applicant many times to insure the Applicant was indeed outside of the perimeter when the incident took place. Counsel testified it was clear the Applicant was beyond the perimeter of his home and in the public street. He testified there was also no evidence of imminent threat or use of a gun by the victim in the prior assault on the Applicant. Counsel testified voluntary manslaughter was a more appropriate charge.

Counsel testified the State provided two plea options to the Applicant. He testified the State offered a plea to voluntary manslaughter with a cap of a fifteen year sentence or a ten year negotiated sentence. Counsel testified he thought the circumstances provided good mitigation

and advised the Applicant to accept the fifteen year cap plea offer. He testified when the Applicant was sentenced to twelve years he filed a motion to reconsider and the Applicant's sentence was reduced to ten years.

Counsel testified prior to the Applicant's guilty plea, he advised the Applicant of the consequences of his plea and informed him of his constitutional rights. Counsel testified he also had the Applicant sign a providency form acknowledging he was advised of certain rights.

### **Ineffective Assistance of Counsel**

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance

must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant’s constitutional rights, the Applicant’s version of the facts, and possible defenses or lack thereof. The record reflects that Applicant’s plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant was

advised by the Court of the constitutional rights he was waiving by pleading guilty and advised the Court that he had not been promised anything to plead guilty. (App. 3, 4).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to discuss with the Applicant the possibility of pursuing a traditional self-defense claim. This Court finds in light of counsel's extensive discussions with the Applicant about the Protection of Persons and Property Act, it is unlikely counsel did not discuss with the Applicant a traditional self-defense claim. This Court finds particularly telling the Applicant's own testimony that counsel discussed with his self-defense, but he did not recall the specific content of their discussion. This Court finds the Applicant has failed to show that he would have a viable self-defense claim had he proceeded to trial and that counsel's performance affected his decision to plead guilty.

This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to discuss with the Applicant the Castle Doctrine or the "Stand Your Ground" law and pursue immunity under the Protection of Persons and Property Act ("The

Act”). The common law Castle Doctrine was codified by the General Assembly in the Protection of Persons and Property Act §16-1-440(A). The Act provides:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

The Protection of Persons and Property Act §16-1-1-440(C)<sup>2</sup> also provides:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believed it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 19-1-60.

This Court finds counsel was not ineffective for failing to pursue immunity under the Protection of Persons and Property Act. This Court finds counsel has extensive experience handling immunity hearings under the Act and his conclusions about the applicability of the Act to the facts of the Applicant’s case were proper. The record reflects the Applicant freed himself from an altercation with the victim and others, went into his home to retrieve a gun, fired shots in the air causing the individuals to flee the property, and then stepped into the public street and fired shots down a street hitting the victim. (Plea Transcript 5:17-6:20). This Court finds both the Castle Doctrine and “Stand Your Ground” law inapplicable since the Applicant stepped outside the perimeter of his residence and there was no evidence the Applicant was facing any imminent threat when he stepped in the street to fire down the street towards the victim.

This Court also finds credible counsel’s testimony that he discussed the provisions of the

---

<sup>2</sup> This provision of the Protection of Persons and Property Act is commonly called the “Stand Your Ground” law.

*RMG/8*

Protection of Persons and Property Act with the Applicant. This Court also does not find credible the Applicant's testimony that counsel never discussed the Castle Doctrine with him prior to his guilty plea especially in light of the Applicant's testimony that he had talks with counsel about the significance of him not being on his property during the shooting. This Court finds the Applicant presented no testimony indicating how a discussion with counsel about the Protection of Persons and Property Act would have affected his decision to plead guilty. This Court finds this allegation is without merit.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Therefore, this Court deems the allegations abandoned by the Applicant.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant

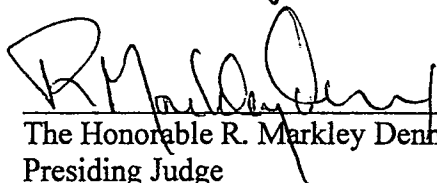
prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also 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 served and filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10<sup>th</sup> day of July, 2014.

  
The Honorable R. Markley Dennis, Jr.  
Presiding Judge  
9th Judicial Circuit

Monck Corner, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
 )  
THOMPSON WHITE, )  
 )  
Applicant. )  
 )  
-versus- )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent. )

IN THE SUPREME COURT OF SOUTH CAROLINA

Case No.: 2013-CP-10-4159

REQUEST FOR REPRESENTATION ON APPEAL

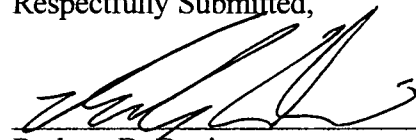
FILED  
2014 AUG 13 AM 11:47  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

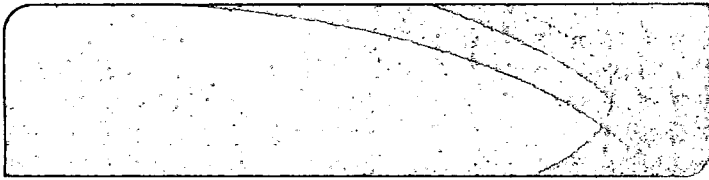
At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,

  
\_\_\_\_\_  
Rodney D. Davis  
South Carolina Bar #: 12396

August 13, 2014  
Charleston, South Carolina.





# Lowcountry Law Office

4000 Faber Place Drive, Suite 300  
Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101  
LowcountryLawOffice.com

**RECEIVED**

AUG 15 2014

**S.C. SUPREME COURT**

August 13, 2014

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

RE: Thompson White v. State of South Carolina, Case No.: 2013-CP-10-4159

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

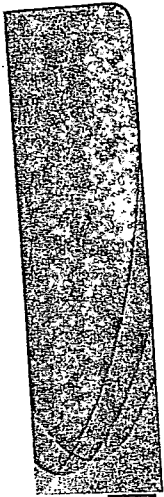
Sincerely,

Rodney B. Davis  
South Carolina Bar #: 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
[Davis@LowcountryLawOffice.com](mailto:Davis@LowcountryLawOffice.com)

CC: Ashleigh Wilson  
Assistant Attorney General

Kimberly McCall  
Appellate Division, SCCID

Lowcountry Law Office  
 Rodney D. Davis  
 4000 Faber Place Drive, Suite 300  
 Charleston, SC 29405



WRITE FIRMLY TO MAKE ALL COPIES LEGIBLE.

**CUSTOMER USE ONLY**  
 FROM: (PLEASE PRINT)

Rowley Davis  
 4000 Faber Place Dr., Suite 300  
 Charleston, SC 29405

PHONE ( ) \_\_\_\_\_

**PAYMENT (BY ACCOUNT # if applicable)**

**DELIVERY OPTIONS (Customer Use Only)**

- SIGNATURE REQUIRED Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature, OR 2) Purchases additional insurance, OR 3) Purchases COD service, OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.
- Delivery Options**
- No Saturday Delivery (delivered next business day)
- Sunday/holiday Delivery (additional fee, where available)
- 10:30 AM Delivery Required (additional fee, where available)
- \* Refer to USPS.com or local Post Office for availability.

TO: (PLEASE PRINT)

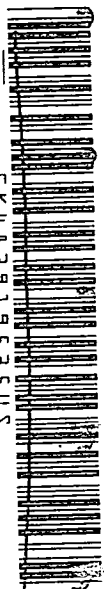
PHONE ( ) \_\_\_\_\_

Daniel Shearhouse  
 Clerk, Supreme Court of South Carolina  
 P.O. Box 11330  
 Columbia, SC

ZIP + 4 (U.S. ADDRESSES ONLY)

29211

- For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
- \$100.00 Insurance Included.



E K 4 8 2 9 1 9 5 3 5 U S



**UNITED STATES POSTAL SERVICE**  
**PRIORITY MAIL EXPRESS™**



1007  
 \$17.95  
 00053837-10

U.S. POSTAGE  
 PAID  
 MOUNT PLEASANT, SC  
 29564  
 AUG 13 11:14  
 RMDUNT

**ORIGIN/POSTAL SERVICE USE ONLY**

<input type="checkbox"/> 1-Day	<input type="checkbox"/> 2-Day	<input type="checkbox"/> Military	<input type="checkbox"/> PPO
PO ZIP Code	Scheduled Delivery Date (MM/DD/YY)	Postage	
029405	08/13/14	\$ 17.95	
Date Accepted (MM/DD/YY)	Scheduled Delivery Time	Insurance Fee	COD Fee
08/13/14	<input type="checkbox"/> 10:30 AM <input type="checkbox"/> 12 NOON <input type="checkbox"/> 3:00 PM	\$	\$
Time Accepted	10:30 AM Delivery Fee	Return Receipt Fee	Live Arrival Transportation Fee
		\$	\$
Weight	Flat Rate	Total Postage & Fees	
lbs. 10 ozs.	<input type="checkbox"/> Flat Rate	\$ 17.95	
Accompanying Employee Initials	Accompanying Employee Signature		

**DELIVERY/POSTAL SERVICE USE ONLY**

Delivery Address (MM/DD/YY)	Time	Employee Signature
1007	8:00 AM	[Signature]
Delivery Address (MM/DD/YY)	Time	Employee Signature
1007	8:00 AM	[Signature]