

LETTER TO THE APPELLATE COURT CLERK FILING THE NOTICE OF APPEAL ^{PCR}

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

RE: MichêL A. Dukes^{SR.}, #311176 v. THE STATE, Respondent, case No. 2008-CP-26-0489.
Appellant

Dear MR. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondents.
- (2) A copy of the issue concerning PCR Court's inadequate order under §17-27-80 dealing with ineffective assistance.
- (3) This appeal is being filed with the Supreme Court because.... (see Rule 243^(a) and 243^(c) for when an appeal can be filed with the Supreme Court).

Sincerely,

S/ MichêL A. Dukes^{SR.}, #311176
Pro-se Litigant

RECEIVED

AUG 25 2014

S.C. SUPREME COURT

MichêL A. Dukes^{SR.}, #311176
ECI-FI-211-B
610 Hwy 9 West
Bennettsville, SC
29512

Date: 8-19-14

NOTICE OF APPEAL FROM THE DENIAL OF
POST CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Horry County Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge
2008-CP-26-0489

Case No: 2003-GS-26-3445

MichêL A. Dukes^{SR.} #311176 Petitioner,
V.
The State of South Carolina Respondent.

NOTICE OF APPEAL

Petitioner hereby appeals his denial of post conviction by which he was convicted of trafficking in cocaine and received a prison sentence of eighteen years after a jury found him guilty in the Court of General Sessions, Horry County, on August 9, 2005..

RECEIVED

AUG 25 2014

S.C. SUPREME COURT

MichêL A. Dukes^{SR.} #311176

MichêL A. Dukes^{SR.} #311176

Pro-se Litigant

ECI-FI-211-B

610 Hwy 9 west

Bennettsville, SC

29512

Date: 8-19-14

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Horry County
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge
2008-CP-26-0489

MICHEL A. DUKES, ^{sr.} PETITIONER,
STATE OF SOUTH CAROLINA, ^{v.} RESPONDENT.

PROOF OF SERVICE

I hereby certify that I have served a copy of the Petition for Writ of Certiorari upon Respondents by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

South Carolina Attorney General office
Joshua L. Thomas, Assistant Attorney General
Post office BOX 11549
Columbia, SC
29211-1549

The Supreme Court of
South Carolina
DANIEL E. SHEAROUSE,
CLERK OF COURT
Post office Box 11330
Columbia, SC
29211

I further certify that all parties required by Rule to be served have been served.

This 19th day of August, 2014

Michel A. Dukes
Michel A. Dukes ^{sr.} #311178
ECI-F1-211-B
610 Hwy 9 west
Bennettsville, SC
29512

STATE OF SOUTH CAROLINA
In The Supreme Court
Appeal From Horry County

The Honorable Michael G. Nettles, Circuit Court Judge
2008-CP-26-0489

MichêL A. Dukes, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

Notice of Appeal

PETITION FOR WRIT OF CERTIORARI

MichêL A. Dukes^{SR.} #311176
Pro.se Litigant

ECI-F1-211-B
610 Hwy 9 west
Bennettsville, SC
29512

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ISSUE PRESENTED

Was Post Conviction Court in error for dismissing movant's ineffective assistance of Counsel allegations without making findings of fact on specific allegations raised, in which violated Statute §17-27-80 and precluded appellate Review???

STATEMENT OF THE CASE

Petitioner was indicted in November 2003 by the Horry County Grand Jury for trafficking in Crack Cocaine, 10-28 grams. On August 8-9, 2005, Petitioner was tried before the Honorable Edward B. Cottingham. The jury found him guilty, and Judge Cottingham sentenced him to eighteen years. A Notice of Appeal was timely filed, and the South Carolina Court of Appeals affirmed the convictions on October 8, 2007. The petition for Rehearing was denied on November 16, 2007, and the case was remitted to the Circuit Court on December 21, 2007.

Petitioner filed an Application for post-conviction relief on January 18, 2008. Respondent made a Return on March 31, 2008. Petitioner submitted an amendment on July 18, 2008. An evidentiary hearing was convened before the Honorable Michael G. Nettles on November 17, 2008. On December 9, 2008, Judge Nettles issued an order of Dismissal. A timely Notice of Appeal was filed on petitioner's behalf, and his petition for Writ of Certiorari followed.

ARGUMENT

The Post Conviction Court was in error for dismissing movant's ineffective assistance of Counsel allegations without making findings of fact on specific allegations raised, which violated Statute §17-27-80 and precluded appellate review.

Petitioner Michel A. Dukes^{SR.} seeks Certiorari from the denial of post-conviction relief (PCR), alleging that the PCR Court failed to make the required findings of fact concerning his claims of ineffective assistance of Counsel.

Michel A. Dukes^{SR.} was convicted on trafficking in crack cocaine. He sought PCR, alleging that trial Counsel was ineffective in failing to make a motion to suppress the drugs, that Counsel was ineffective for failing to challenge the arrest warrant, and that Counsel was ineffective for allowing, without objection, the jury to be selected in his absence.

The PCR Court dismissed Dukes' allegations of ineffective assistance of Counsel without making findings of fact on the specific allegations raised, and used misapplication of law, and the order contained erroneous findings of facts, and there was intervening authority relevant to an issue in the case, which made the order inadequate.

See Criminal Law key-998⁽¹⁸⁾ and 1181.5⁽²⁾ and states that remand was required on appeal from denial of post conviction relief where post conviction court dismissed movant's ineffective assistance of Counsel allegations without making findings of fact on specific allegations raised, violating statute and precluding appellate review.

Code 1976, §17-27-80; U.S.C.A. Const. Amend. 6. See also McCray v. State, 408 S.E.2d 241, 241 (S.C. 1991) (reversing order denying applicant relief and remanding for a new PCR hearing where PCR court's order failed to make specific findings of fact and conclusions of law sufficient for appellate review.

S.C. Code Ann. §17-27-80 (1976), requires the PCR court to "make specific findings of fact, and state expressly its conclusion of law, relating to each issue presented."

The PCR Court's conclusions regarding ineffective assistance are insufficient for appellate review and fail to meet the standard set forth in the Statute.

CONCLUSION

For the reasons discussed above, petitioner submits that this Court should grant the petition for Writ of Certiorari. However, if this Court grants certiorari, the petitioner asks permission to readdress the PCR Court to properly preserve the issues for appellate review.

Respectfully Submitted,

Michel A. Dukes^{SR.} #311176

Pro. se Litigant

ECI-FI-211-B
610 Hwy 9 West
Bennettsville, SC.

29512

Michel A. Dukes^{Jr.} #311176

Pro. se Litigant

MR. Michel A. Dukes, ^{SR}#311196

ECI-F1-B211

610 Hwy 9 west

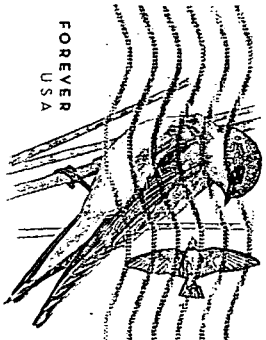
Bennettsville, SC

29512

COLUMBIA, SC 29901

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AUG 19 2014



The Supreme Court of South

Carolina

Daniel E. Shearousey

CLERK OF COURT

Post office Box 11330

Columbia, SC 29911

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