



The Supreme Court of South Carolina

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September 4, 2014

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

Re: Johnny Randy Hitt v. State
Appellate Case No. 2014-001873
Lower Court Case No. 2013-CP-23-02302

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as

required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Except for the allegation that your client was denied a direct appeal from his guilty pleas,¹ 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) of the South Carolina Appellate Court Rules 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 claim regarding a denial of a direct appeal, the PCR judge determined that petitioner was not entitled to a belated direct appeal. However, even if petitioner were ultimately to prevail on this issue, the most he would receive would be a belated appeal from his guilty pleas and in that appeal 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.²

¹ See *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

² 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

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

Very truly yours,

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

CLERK

cc: Karen Christine Ratigan, Esquire

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.