

② NOTICE OF APPEAL IN A CIVIL CASE
THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

RECEIVED
SEP 15 2014
SC Court of Appeals

APPEAL FROM Horry County
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2008 - CP - 26 - 0489

State of South Carolina, Respondent,
Michél A. Dukes^{SR.} #311176, V.
..... Appellant.

NOTICE OF APPEAL

Michél A. Dukes^{SR.} appeals the order [Judgment] of the Honorable
Michael G. Nettles dated December 9, 2008. Appellant recieved written
notice of entry of this order [Judgment] on December 12, 2008.
Sept. 11, 2014

Other Counsel of Record:
Assistant Attorney General
Joshua L. Thomas, Esquire
Post office Box 11549
Columbia, SC
29211 - 1549

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

PROOF OF SERVICE OF A NOTICE OF APPEAL
THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

Appeal from Horry County
Court of Common Pleas
Edward B. Cottingham, Circuit Court Judge
Michael G. Nettles,

Case No. 2008-CP-26-0489

STATE OF SOUTH CAROLINA, Respondent,
v.
MichêL A. Dukes^{SR.} #311176, Petitioner.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on State of South Carolina by depositing a copy of it in the United States Mail, Postage Prepaid, on Sept. 9, 2014, addressed to Tanya A. Gee, Clerk of South Carolina Court of Appeals, Post office Box 11629 Columbia, South Carolina 29211 and melanie-Huggins-ward, Clerk of court of Horry County, Post office Box 677 Conway, South Carolina 29528-0677.

Date: Sept. 11, 2014

/s/ MichêL A. Dukes #311176
ECI-FI-211-B
610 Hwy 9 West
Bennettsville, SC
29512

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SEP 15 2014
SOUTH CAROLINA COURT OF APPEALS

LETTER TO CLERK OF LOWER COURT FILING
NOTICE OF APPEAL

Sept. 11, 2014

The Honorable Melanie Huggins-Ward
Clerk of Court for Horry County
Post office Box 677
Conway, South Carolina 29528-0677

RE: State of South Carolina, Respondent, v. MichéL A. Dukes^{SR},
#311176, Appellant, Case No. 2008-CP-26-0489

Dear Mrs. Huggins-Ward:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,

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

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SEP 15 2014

SC Court of Appeals

LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL

RECEIVED

SEP 15 2014

SC Court of Appeals

The Honorable Tanya A. GEE
Clerk, South Carolina Court of Appeals
Post office Box 11629
Columbia, South Carolina 29211

The Honorable Melanie Huggins-
Ward Clerk, Court of Horry
County
P.O. Box 677
Conway, South Carolina
29528-0677

[The Honorable Daniel E. Shearouse]
Clerk, Supreme Court of South Carolina
Post office Box 11330
Columbia, South Carolina 29211

RE: STATE OF SOUTH Carolina, ^{Respondents,} vs. Michel A. Dukes, ^{SR.} #311176, Appellant,
Case No. 2008-CP-26-0489

Dear Ms. Gee:

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 petition for writ of certiorari in post-conviction relief actions which is to be challenged on appeal.
- (3) This appeal is being filed with the Court of Appeals because see rule 203(d)(1)(B), for when an appeal can be filed with the Court of Appeals. Also see 242(B)(4), 242(B)(1), 239(d)(2), 243(a), 201(a).

Sincerely,
/s/ Michel A. Dukes, SR. #311176
ECI-FI-211-B
616 Hwy 9 west
Bennettsville, SC
29512

② PETITION FOR A WRIT OF CERTIORARI IN
POST-CONVICTION RELIEF ACTIONS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

RECEIVED

SEP 15 2014

SC Court of Appeals

APPEAL FROM Horry County
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2008-CP-26-0489

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

PETITION FOR A WRIT OF CERTIORARI

MichêL A. Dukes^{SR.} #311176
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Other Counsel of Record:
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Joshua L. Thomas, Esquire
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Questions Presented

- I. Did the Circuit Court err in holding that petitioner's trial counsel was not ineffective in failing to challenge the unsigned arrest warrant; which is a fourth amendment claim ???
- II. Did the Circuit Court err in holding that petitioner's trial counsel was not ineffective in failing to challenge or make a motion to suppress the drugs ???

Statement of the Case

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Appellant was indicted at the November 2003 term of the Horry County Grand Jury for trafficking in crack cocaine, 10-28 Grams (2003-65-26-3445). Appellant was represented in the charge by Paul Archer, Esquire. On August 8-9, 2005, Appellant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Appellant guilty as indicted. Judge Cottingham sentenced Appellant as a third drug offender to confinement for a period of eighteen (18) years. Appellant timely filed a notice of appeal, and an appeal pursuant to Anders v. California, 386 U.S. 738 (1967), was perfected on Appellant's behalf by Aileen P. Clare, Esquire. His conviction and sentence were both affirmed by the South Carolina Court of Appeals on October 8, 2007. See State v. Dukes, 2007-UP-423, and rehearing was denied on November 16, 2007. The case was remitted to the Circuit Court on December 21, 2007. The Anders brief raised the issue of whether the trial court erred in denying the directed verdict motion, which was based upon a failure to prove actual or constructive possession. Appellant raised numerous issues in his pro se brief and petition for Rehearing. Appellant then brought this action seeking post-conviction relief in

January 18, 2008, by Michel A. Dukes, SR. He alleged the following: (1) that Counsel was ineffective for failing to make a motion to suppress the drugs; (2) that Counsel was ineffective for failing to challenge the arrest warrant; and (3) that Counsel was ineffective for allowing, without objection, the Jury to be selected in his absence.

Appellant would like to point the Courts direction to the order of dismissal with Prejudice in Appendix P. 226-232; in which Counsel for appellant failed to file a rule 59(c) on behalf of appellant causing the ineffective assistance claims to be abandoned within the Courts. I'd like to show unto the Courts that the order contains an erroneous finding of fact, a misapplication of law, and that there has been intervening authority relevant to an issue in the case. See Pruitt v. State, 423 S.E.2d 127 (S.C. 1992); Criminal Law Key-998 (18,200) - Counsel preparing proposed orders in Post-Conviction relief (PCR) proceeding should be meticulous in doing so, opposing Counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Also Criminal Law Key-998 (14,200) - After a Post-Conviction relief (PCR) order is filed, Counsel has an obligation to review the order and file a motion to alter or amend judgment if the order fails to set forth the required findings and reasons for those findings. Code 1976, § 17-27-80; Rules Civ. Proc., Rules 52(a); 59(c); U.S.C.A. Const. Amend. 6. Also Criminal Law Key-998 (18), 1181.5 (2) - 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 McCoy v. State, 408 S.E.2d 241 (S.C. 1991). Also see § 17-27-45(c) (2003) "Discovery Rule"

The Circuit Court denied the application on December 9, 2008, and a notice of appeal was served. Appellant now seeks a Writ of Certiorari to review this denial.

ARGUMENT

I. Counsel was ineffective for failing to challenge the arrest warrant which is a fourth amendment claim.

In the appendix p. 210 line 23 - p. 211 line 16 trial Counsel stated that he just assumed that the arrest was valid when in fact he had discovery and failed to investigate the issue of unlawful arrest and detention. See Sikes v. State, 448 S.E.2d 560 (S.C. 1994); and State v. Covert, 675 S.E.2d 740. The 14th Amendment governs the 4th Amendment and the 4th Amendment mirrors the South Carolina State Constitution which is SC Const. article 1, Section 10. Trial Counsel was ineffective for failing to challenge the warrant when dealing with two separate Statute. See § 17-13-140; and § 22-3-710, in which a warrant issued upon a statement of facts not sworn to is unconstitutional. See State v. Wimbury, 9 S.C. 309 (1878); and Town of Honea Path v. Wright, (S.C. 1940) 194 S.C. 461, 9 S.E.2d 924; Statute Code 1932, §§ 930, 952; Const. art. 1, § 18; Criminal Law Key-216. SEE ALSO Exclusionary Rule; Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); State v. Plath, S.C. 126, 284 S.E.2d 221 (1981).

(2)

II. Counsel was ineffective for failing to make a motion to Suppress the drugs.

In the appendix P, 210 line 17-20 Counsel stated that he could of made the motion and did^{nt} cause he assumed that the arrest was valid. A effective trial counsel Preserves claims to be considered on appeal, see Fed. rule crim. Proc. 52(b), and in federal habeas proceedings, Edwards v. Carpenter, 529 U.S. 446, 120 S.Ct. 1587, 146 L.Ed.2d 518 (2000). See also Criminal law key-1870; the right to the effective assistance of counsel at trial is a bedrock principle in our justice system. U.S.C.A. Const. Amend. 6. Also see Criminal Law Key-1710; Defense counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged.

To conclude discussion see State v. McKnight, 352 S.E.2d 471 (S.C. 1987);

Criminal law key-394.5(a). Defendant contesting legality of search because of defect under warrant statute need only show that the state is attempting to introduce evidence against him, rather than that he has a legitimate expectation of privacy in connection with searched premises. U.S.C.A. Const. Amend. 4; Code 1976, §17-13-140. SEE SC Const. Article I, Section 10; "Oath and affirmation". On the other hand, the rights afforded by Section 17-13-140 are not dependent upon a showing of an expectation of privacy in the searched premises. The primary purpose of the statute is to insure the timely recording of the testimony upon which the judicial officer relied in issuing the warrant. State v. Sachs, supra. However, the primary benefit of the statute "is to the person arrested or searched." 216 S.E.2d at 510. Therefore, one contesting the legality of a search because of a defect under Section §17-13-140 need only show that the state is attempting to introduce the evidence against him.

The PCR Judge's finding that Dukes received effective assistance of counsel is not supported by the record. See Gallman v. State, 307 S.C. 273, 414 S.E.2d at 782 (1992). "A PCR judges findings will not be upheld if such findings are not supported by probative evidence". Also see that Judge Nettles order denying relief does not address the questions where evidence was presented.

CONCLUSION

For the reasons stated, Petitioner asks this Court to grant the petition for a writ of certiorari, and entitle him the opportunity to file an amended application if necessary and the order shall address all issues properly raised at the hearing.

Respectfully Submitted,

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Date: September 11, 2014