

STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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OCT 30 2014

Appeal From Bamberg County  
The Honorable Doyet A. Early, III, Presiding Judge  
PCR 2012-CP-05-00059

**SC Court of Appeals**

Case No.: \_\_\_\_\_

Thomas Pierce, #345698 ..... Appellant,

v

State of South Carolina ..... Respondent.

NOTICE OF INTENT TO APPEAL DENIAL OF PCR, AND  
MOTION FOR DELIVERY OF DOCUMENTS AND APPOINTMENT OF COUNSEL  
FOR APPEAL OF PCR DENIAL

PROCEDURAL HISTORY

Applicant is presently confined to the SC Dept of Corrections pursuant to an Order of Commitment of the Bamberg County Clerk of Court. Applicant was indicted for Criminal Sexual Conduct With A Minor In The First Degree (2011-GS-05-00048), and on April 13, 2011, Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Doyet A. Early, III, to 35 years imprisonment. No Direct Appeal of Applicant's conviction and sentence was filed.

The current matter is before This Court by way of an Application for Post Conviction Relief filed March 20, 2012. The State made its Return on June 14, 2012. A hearing on the matter was convened at the Aiken County Courthouse on July 18, 2013. Applicant was present and represented by W.D. Rhoad, IV, Esq. The State was represented by David Spencer of the SC Attorney General's Office. The Court heard testimony from Applicant and his plea counsel, Nicholas R. McCauley.

STATEMENT OF THE PCR ISSUES

In the referenced Application, Applicant asserts he is being held in

custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:

"My guilty plea attorney failed to discuss or explain the nature and crucial elements of the offense of sex/criminal sexual conduct with minor - victim under 11 years of age - First Degree, prior to or during my trial."

2. Due Process Violation:

"I contend that I was denied Due Process and Equal Protection of Law under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution as well as Article I Section 3 of the South Carolina Constitution, through and by way of Ineffective Assistance of Counsel. Guilty plea attorney failed to file a motion for Direct Appeal, against his client's wishes or request."

STATEMENT OF CASE

After more than a year of trying to get PCR counsel to communicate with him, Applicant, on August 27, 2014, wrote the Clerk of Court of Bamberg County and the Chief Administrative Judge for the Second Judicial Circuit, seeking assistance. Mailed September 9th due to lockdowns, Applicant, on September 15 received from the Clerk of Court a True Copy of an Order of Dismissal in his PCR case. Applicant therewith learned, for the first time, that his PCR had been denied. No cover letter was included so no further instructions were provided to Applicant.

Applicant asserts that not only has he been denied a fair "PCR" due to counsel's failures, but that he has thereafter also been denied a fair "appeal of the denial" of his Application for Post Conviction Relief. "To be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair", Evitts v Lucey, 105 S.Ct 830 (1895).

ARGUMENT

Applicant "now" asserts "continued" violation of his 5th, 6th, and 14th Amendment and Due Process rights due to the ineffective assistance of his "PCR" counsel, as stated below:

1. PCR counsel failed to meet with Applicant even once to discuss Applicant's Application for PCR, the issues, investigation needs, and expected testimony, prior to the PCR hearing. Lounds v State; SCRCP, Rule 407: "Communication".
2. PCR counsel failed to provide Applicant with a copy of the plea hearing transcript, neither before "nor after" Applicant requested the same.
3. PCR counsel failed to communicate with Applicant, in response to Applicant's letters, prior to "and" after Applicant's PCR hearing, reference to the facts of Applicant's case and assertions Applicant wanted counsel to make, and reference to amending the pleadings prior to the decision. SCRCP: "Communication", & Rule 15.
4. PCR counsel failed to notify Applicant of the PCR decision denying relief, depriving Applicant of the Due Process right to "seek" appellate review. SCRCP: "Communication".
5. PCR counsel failed to notify Applicant of his right to appeal the PCR denial. SCRCP: "Communication"; State v Bray , 366 SC 137 (2005).
6. PCR counsel failed to file Notice of Intent to Appeal the PCR denial. SCRCP, Rule 71.1(g).
7. PCR counsel's failures "after the PCR hearing alone" constitute prejudicial Ineffective Assistance. PCR counsel must advise an Applicant of the right to seek appellate review of a PCR order. State v Bray. And, PCR counsel must serve and file a notice of appeal on Applicant's behalf when Applicant wishes to appeal a PCR order. SCRCP, Rule 71.1(g).
8. Applicant desires to appeal the PCR denial.
9. Applicant questions the PCR decision's agreement with the Record, and Applicant needs a copy of the PCR transcript to certify inaccuracies and properly document references to the Record.
10. Applicant questions plea counsel's testimony reference to the plea hearing and needs a copy of the plea hearing transcript in order to certify inaccuracies and properly document references to the Record.
11. Applicant requests Appointment of Competent, Experienced Counsel pursuant to Austin v State. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. "This" Motion is not "Applicant's" work, but instead is that of an assisting inmate whose access and availability is severely limited, such that it has taken a month to produce this Motion. Law Library staff here cannot be relied upon for the necessary indigent assistance.

CONCLUSION

To the end that justice be done, Applicant requests the Court appoint competent, experienced appellate counsel to represent Applicant in the denial of his PCR and pursuit of a new PCR hearing, and to amend this Motion if necessary.

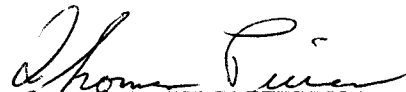
As Applicant is currently "pro se", Applicant requests the Court also Order that a copy of the guilty plea hearing transcript and all other documents in Applicant's General Sessions Court file be delivered to "Applicant" by the Clerk of Court via US Mail without delay, per Law and the SCFOIA, as Applicant has previously requested these documents without success.

Further, Applicant requests a copy of the PCR transcript be provided as soon as available.

Applicant asserts that, with appropriate counsel and the documents pertaining to his case, Applicant will be able to both perfect an appeal of the denial of his PCR and show the Court cause to grant a new PCR hearing that fairly presents Applicant's case on appeal to the Court.

Applicant prays for the requested relief.

Respectfully,



Thomas Pierce, #345698  
McCormick CI, ALU-155  
386 Redemption Way  
McCormick, SC 29899

Applicant/Appellant, Pro Se

This 21st day of October, 2014.  
McCormick, SC

CERTIFICATE OF SERVICE

I, Thomas Pierce, SCDC #345698, do hereby certify that I served on the below listed (a) Applicant's "Notice Of Intent To Appeal Denial Of PCR, And Motion For Delivery Of Documents And Appointment Of Counsel For Appeal Of PCR Denial" and (b) a one page letter requesting filing and then forwarding of a clock-stamped copy of the above Motion to both me and the Attorney General's Office on my behalf since I'm unable to due to indigency and prison regulations, by depositing the same in the US Mail via the MCCI Mailroom, dated October 21, 2014, First Class postage prepaid, addressed as follows:

Honorable Kenneth Richstad, Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211-1629



Thomas Pierce, #345698  
McCormick CI, Alu-155  
386 Redemption Way  
McCormick, SC 29899

Applicant/Appellant, Pro Se

SWORN TO and SUBSCRIBED before me  
this 21 day of OCT, 2014

  
Notary Public for South Carolina

My Commission Expires 12-16-2019

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**SC Court of Appeals**

Thomas Pierce, #345698  
McCormick CI, ALU-155  
386 Redemption Way  
McCormick, SC 29899

October 21, 2014

Honorable Kenneth Richstad, Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211-1629

RE: PCR 2012-CP-05-00059

Dear Clerk:

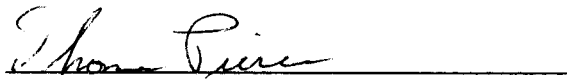
Please find enclosed Applicant's "Notice Of Intent To Appeal Denial Of PCR, And Motion For Delivery Of Documents And Appointment Of Counsel For Appeal Of PCR Denial", with certificate Of Service.

Please clock-stamp, file, and return a copy of the same to both me and the Attorney General's Office. I do not have the means of making copies of documents that have not first been clock-stamped by the Court.

Please let me know if there is anything else I must do to have my Motion ruled upon and appropriate counsel appointed.

Thank You for your assistance.

Sincerely,



Thomas Pierce, #345698

Enclosures

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**SC Court of Appeals**

Honorable KENNETH Richstad  
South CAROLINA Court of  
Post office Box 11629  
Columbia, S.C 29211

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