

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
ROBERT HOOD, CIRCUIT COURT JUDGE

RECEIVED

JAN 15 2015

S.C. Supreme Court

2013-CP-40-1334

Quintis Tyler,.....Petitioner.

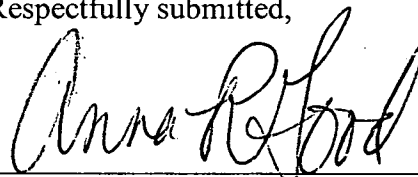
vs

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Quintis Tyler appeals the Honorable Robert Hood's December 19, 2014, order denying post-conviction relief to the Petitioner. Undersigned counsel received notice of entry of the order on January 13, 2015. A copy of the order on appeal is attached to this notice.

Respectfully submitted,



Anna R. Good, Esquire
O'Neil, Good & Li, LLC
PO Box 7284
Columbia, South Carolina 29202
Telephone: (803) 661-6752
Fax: (803) 403-8752

Attorney for the Petitioner.

January 15, 2015.

Megan Jameson
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

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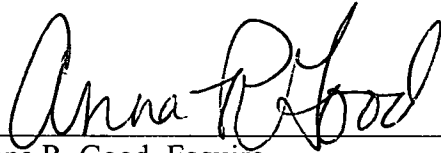
vs

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PROOF OF SERVICE

I, Anna Good, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record, Megan Jameson, P.O. Box 11549, Columbia, South Carolina 29211-1549. I further certify that all parties required by Rule to be served have been served this 15th day of January 2015.

Respectfully submitted,



Anna R. Good, Esquire
O'Neil, Good & Li, LLC
PO Box 7284
Columbia, South Carolina 29202

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

Received
1-13-15
State of South Carolina

JUDGME. IN A CIVIL CASE

CASE NUMBER: 2013CP4001334

Quintis #330074 Tyler

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 30 December 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Quintis #330074 Tyler

Anna Rawl Good

Megan Harrigan Jameson

Quintis #330074 Tyler

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
))
))
Quintis Tyler, #330074,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-1334

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2014 DEC 19 AM 9:40
JEANNETTE W. JOHNSON
C.C.P. & G.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 5, 2013. The Respondent made its Return and Motion to Dismiss all claims except for a White v. State¹ claim on May 28, 2013. An evidentiary hearing into the matter was convened on September 5, 2014, at the Richland County Courthouse. Anna Good, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General’s Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Mary D. LaFave, Esquire also testified. This Court also had before it a copy of the records of the Richland County Clerk of Court, and the Applicant’s application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was true bill indicted during the April 2008 term of the Richland County Grand Jury for Armed Robbery (2008-GS-40-2875). Mary LaFave, Esquire, represented Applicant. On July 23, 2008, Applicant pled guilty as

¹ 263 S.C. 110, 108 S.E.2d 35 (1974)

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indicted before the Honorable J. Michelle Childs, who sentenced Applicant to ten years imprisonment. Applicant did not appeal his guilty plea or sentence.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a) "Counsel failed to file a direct appeal"
2. "Subject matter jurisdiction"
3. "Violation of SC Code of Law 24-13-40"
4. Involuntary guilty plea.

At the PCR hearing, the State and Counsel for Applicant agreed that the only claim Applicant was proceeding on was whether Applicant was entitled to a belated review of direct appeal issue pursuant to White v. State.

SUMMARY OF TESTIMONY

Applicant testified he pled to Armed Robbery and received a ten-year sentence in July of 2008. Applicant then stated he met with Counsel and reviewed his paperwork and rights. However, Applicant claimed Counsel did not review his right to appeal with him. Applicant also stated the plea judge did not discuss his right to appeal with him during the guilty plea and the transcript confirms this. Applicant then testified he did not meet with Counsel after the guilty plea, but heard about how to appeal from other inmates.

Applicant then testified he started serving his sentence while at the Department of Juvenile Justice as he was fifteen years old when he was arrested and sixteen years old when he pled guilty. He also wanted to convert his sentence to a Youthful Offender Act sentence, but the PCR court advised him that was not possible during this proceeding. Applicant lastly testified that he was asking for a belated review of direct appeal issues and that had he known about the appellate process,

he would have requested an appeal.

Counsel testified she was appointed to Applicant's case as an assistant public defender and that Applicant pled guilty to Armed Robbery. Counsel then testified that while she did not have a document in her file that specifically stated she advised Applicant concerning his right to appeal from his guilty plea, it was her practice to always advise clients concerning the right to appeal. Counsel further testified Applicant did not ask her for an appeal because she vividly remembers only one client asking for an appeal from a guilty plea and it was not Applicant. She also stated that the sentence was legal as Applicant received the minimum sentence for the charge.

On cross-examination, Counsel testified she was not 100% sure that Applicant was advised of his right to appeal his guilty plea. Counsel also stated she would have met with Applicant after the plea if he was dissatisfied.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Belated review of Direct Appeal issues pursuant to White v. State

This Court finds Applicant's allegation that Counsel was ineffective for failing to preserve Applicant's right to a direct appeal is without merit. This Court finds Counsel's testimony credible while Applicant's testimony is not credible. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v.

Flores-Ortega, 528 U.S. 470, 480 (2000). They instead held that “counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Id. “[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id.

This Court also finds Applicant has failed to carry his burden of proving he expressed his desire to appeal to plea counsel. This Court finds there is no proof that any appeal taken from Applicant’s guilty plea would have been meritorious. This Court also finds there is no proof that a rational defendant would want to appeal especially since Applicant received ten years, the minimum sentence for Armed Robbery, instead of thirty years. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective in this regard.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of PCR.

Rule 71.1(g), SCRCF, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

ReHood

Robert E. Hood
Presiding Circuit Court Judge
Fifth Judicial Circuit

Nov 25, 2014

Columbia, South Carolina