

R. MILLS ARIAIL, JR.  
ATTORNEY AT LAW

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January 12, 2015

**Via US Mail**

Daniel Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

***Re: Notice of Intent to Appeal from Taurine Lee Fleming vs. State of South Carolina C.A. No.: 2013-CP-23-4180***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable 's Order of Dismissal to be challenged on appeal. I must inform the Supreme Court that as an officer of this Court, I am unable to identify any issue which can be reviewed on appeal. By copy of this letter, I am instructing Appellant that if he must notify this Court, in writing, no later than twenty (20) days from the date of this letter, of any arguable basis for an appeal from his guilty plea as required by Rules 203(d)(1)(B) of the South Carolina Appellate Court Rules. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

**RECEIVED**

JAN 20 2015

**S.C. SUPREME COURT**

Sincerely,  
LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law

  
R. Mills Ariail, Jr.

RMAjr/dl  
Enclosures (as stated)

cc: Greenville County Clerk's Office  
Greenville County Courthouse  
305 East North Street  
Greenville, SC 29601

Karen C. Ratigan  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211-11549

Taurine Fleming SCDC# 250908  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, South Carolina 29669

SC Commission of Indigent Defense  
Division of Appellate Defense  
PO Box 11433  
Columbia, SC 29211-1433

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2013-CP-23-04180

**RECEIVED**

JAN 20 2015

**S.C. SUPREME COURT**


Taurine Fleming,..... Appellant,

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable Letitia H. Verdin's Order of Dismissal dismissing Appellant's application for post-conviction relief. On December 8, 2014, the Honorable Letitia H. Verdin signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on December 20, 2014. A copy of the Honorable Letitia H. Verdin's Order of Dismissal is attached.

  
\_\_\_\_\_  
R. Mills Ariail, Jr.  
Attorney at Law  
11 North Irvine St., Suite 11  
Greenville, SC 29601  
Telephone (864) 232-9390  
Facsimile (864) 232-9392  
Attorney for Taurine Fleming

Greenville, South Carolina  
January 12, 2015

**RECEIVED**

JAN 20 2015

**S.C. SUPREME COURT**

Other Counsel of Record and Interested Parties:

Karen C. Ratigan, Esq.  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211

Greenville County Clerk's Office  
Greenville County Courthouse  
305 East North Street  
Greenville, SC 29601

SC Commission of Indigent Defense  
Division of Appellate Defense  
PO Box 11433  
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Taurine Fleming SCDC# 250908  
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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

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Letitia H. Verdin, Circuit Court Judge

Case No.2013-CP-23-04180

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Taurine Fleming,..... Appellant,

v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this January 12, 2015, I served upon the below named individuals copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

**Karen C. Ratigan, Esq.**  
**Assistant Attorney General**  
**PO Box 11549**  
**Columbia, SC 29211**  
**Attorney for the State of South Carolina**

**Greenville County Clerk's Office**  
**Greenville County Courthouse**  
**305 East North Street**  
**Greenville, SC 29601**

**Taurine Fleming SCDC# 250908**  
**Perry Correctional Institution**  
**430 Oaklawn Road**  
**Pelzer, South Carolina 29669**

**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
**PO Box 11433**  
**Columbia, SC 29211-1433**

*Denise Tanner LaBeck*  
Denise Tanner LaBeck

January 12, 2015

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2013CP2304180

FILED-11  
GREENVILLE COUNTY, S.C.  
PAUL B. WICKENSIMER  
2013 DEC 19 PM 4 45

**Taurine L Fleming vs. South Carolina State Of**

**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):**  
SCRCP (Vol. Nonsuit);  Rule 43(k). SCRCP (Settled);  Rule 12(b). SCRCP;  Rule 41(a).  
 Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other: \_\_\_\_\_  
 Rule 40(j) SCRCP;  Bankruptcy;
- 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;  Statement of Judgment by the Court:  
Dated at Greenville, South Carolina, this .

Court Reporter:

\_\_\_\_\_  
**PRESIDING JUDGE - Letitia H Verdin**

This judgment was entered on the . and a copy mailed first class this . to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
R. Mills Ariail Jr. 11 North Irvine Street, Suite 11  
Greenville, SC 29601

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
Karen Christine Ratigan PO Box 11549 Columbia,  
SC 29211

**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Taurine Lee Fleming, )  
 S.C.D.C. No. 250908, )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

C.A. No. 2013-CP-230180

CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL J. WENSHNER  
 19 OCT 19 PM 4:45

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 2, 2013. The Respondent made its return on April 10, 2014. A hearing into the matter was held on October 21, 2014 before Judge Letitia H. Verdin at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, H. Chase Harbin. The Court had before it the transcript of the sentencing hearing; the Greenville County Clerk of Court records, including the arrest warrant, indictment and sentencing sheet; the Applicant's South Carolina Department of Corrections Records; the PCR Application; and the Return.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections Pursuant to orders of commitment of the Clerk of Court for Greenville County. Applicant was indicted at the October 2009 term of the Greenville County Grand Jury for attempted armed robbery (2009-GS-23-3602), discharging a firearm into a dwelling (2009-GS\_23-3606), armed robbery (2009-

GS-23-3605), two counts of first-degree burglary (2009-GS-23-3607, count 1 and 2009-GS-23-8713), and possession of a weapon during the commission of a violent crime (2009-GS-23-3607, count 2). He was represented by H. Chase Harbin, Esquire.

On March 30, 2010, the Applicant pled guilty to the charges as indicted. He was sentenced by the Honorable Robin B. Stilwell to concurrent terms of ten years for attempted armed robbery, five years for discharging a firearm into a dwelling, fifteen years for armed robbery, twenty years for each count of first degree burglary, and five years for possession of a weapon during the commission of a violent crime. The Applicant did not file a direct appeal.

### **ALLEGATIONS**

In his application for PCR, the Applicant argues he is entitled to relief for the following reasons:

1. He received ineffective assistance of plea counsel, particularly:
  - a. Failure to conduct or investigate the Applicant's mental health prior to advising him to plea guilty;
  - b. Failure to request a Blair hearing;
  - c. Failure to file a timely notice of appeal; and
2. He suffered from violations of his Constitutional right to due process of law.

The State filed a Motion to Dismiss the Application in part due to the belated nature of the Applicant's appeal.

### **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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2014).



### State's Motion to Dismiss

South Carolina law requires that an application for PCR be filed within one year after the latest of three events: (1) the entry of a judgment of conviction; (2) the sending of a remittitur to the lower court from an appeal; or (3) the filing of the final decision upon an appeal. S.C. Code Ann. § 17-27-45(a) (2014).

The Applicant pled guilty to the offenses at issue in this PCR proceeding on March 30, 2010. Therefore, the Applicant was required by law to file his application before March 30, 2011. The application in this case was actually filed on August 2, 2013—more than two years and four months after the statutory filing period.

Furthermore, this Court finds no compelling argument was made at the PCR hearing for the tolling of this statute of limitations. Therefore, this Court GRANTS the State's Motion to Dismiss this PCR action.

### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

### CONCLUSION

Based on all the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.



This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the State's Motion to Dismiss be GRANTED;
2. That the application for post-conviction relief be denied and dismissed with prejudice; and
3. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 8 day of <sup>Dec.</sup> November, 2014.



Letitia H. Verdin  
Circuit Court Judge  
Thirteenth Judicial Circuit



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