

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
COURT OF COMMON PLEAS

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The Honorable Diane S. Goodstein, Circuit Court Judge  
Case No. 2012-CP-40-05497

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JEFFREY DOUGLAS WALKER-WILSON,

Respondent,

v.

STATE OF SOUTH CAROLINA

Petitioner.

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NOTICE OF APPEAL

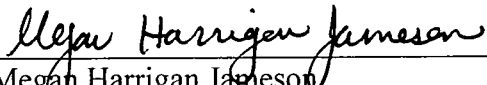
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The State of South Carolina hereby appeals from the Order Granting Post Conviction Relief of the Honorable Diane S. Goodstein, Presiding Judge, dated September 22, 2014, filed January 28, 2015, and received by the State on January 28, 2015, in the matter of Jeffrey Douglas Walker- Wilson v. State of South Carolina, Case No. 2012-CP-40-5497.

**RECEIVED**

FEB 06 2015

**S.C. SUPREME COURT**

  
Megan Harrigan Jameson  
Assistant Attorney General  
South Carolina Bar No. 100108

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

February 3, 2015

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
COURT OF COMMON PLEAS

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The Honorable Diane S. Goodstein, Circuit Court Judge  
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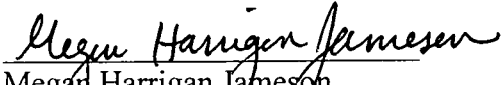
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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on February 3, 2015, to Louis H. Lang, Esquire, his attorney of record, to the address below.

Louis H. Lang, Esquire  
Callison Tighe & Robinson, LLC  
Post Office Box 1390  
Columbia, South Carolina 29202

  
Megan Harrigan Jameson  
Assistant Attorney General  
South Carolina Bar No. 100108

SWORN to before me this  
3<sup>rd</sup> day of February, 2015

  
Notary Public for South Carolina.  
My Commission Expires: 5/24/2024

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
Jeffrey Douglas Walker-Wilson, )  
#314361, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
Case No. 2012-CP-40-05497

**ORDER GRANTING  
POST CONVICTION RELIEF**

RICHLAND COUNTY  
FILED  
2015 JAN 28 PM 12:00  
JEANNETTE M. NORRIS  
C.C.P. & C.S.

This matter was heard before me on August 5, 2013.

At the hearing were Applicant, Jeffrey Douglas Walker-Wilson (Wilson), his counsel, Louis H. Lang, Esq., and counsel for the State of South Carolina, Assistant Attorney General Megan E. Harrigan, Esq.

After considering the testimony, exhibits, and arguments of counsel, I conclude Wilson should be granted relief as set forth below.

Wilson was indicted in January, March and July 2007 on two counts of armed robbery, two counts of possession of a pistol by a person under the age of twenty-one, and one count each of use of a firearm during the commission of a violent crime and unlawful carrying of a pistol. Wilson went to trial on these charges and was found guilty of all of them on July 25, 2007. Wilson was sentenced to fifteen years imprisonment on each of the armed robberies, the sentences to run concurrently; five years imprisonment on the use of a firearm during the commission of a violent crime to run concurrent with the armed robbery sentences; one year on the unlawful carrying of a pistol to run concurrently with the armed robbery sentences; and two years each on the possession of a pistol by a person under the age of twenty-one, these sentences

to run concurrent to one another, but consecutive to the armed robbery sentences; for a total custodial sentence of seventeen years.

Following his conviction and sentence, Wilson's trial defense counsel timely filed a notice of appeal. On August 4, 2008, Wilson's appellate defense counsel filed a brief under *Anders v. California*, 386 U.S. 738 (1967). By unpublished opinion filed November 23, 2009, Wilson's appeal was dismissed.

Wilson's application for post-conviction relief was filed August 13, 2012.

The State asserts Wilson's application should be dismissed as untimely under S.C. Code Ann. §17-27-45(a). I disagree.

Wilson was in pre-trial custody prior to his trial. Very shortly after his conviction and sentence, Wilson was transported to the South Carolina Department of Corrections (SCDC) reception and evaluation center. When initially processed at SCDC, Wilson was issued a picture identification card under the name Wilson, the name by which he had been indicted and convicted. Approximately 30 days into his stay at the reception and evaluation center, Wilson was issued a new identification card under the name of Walker, the name under which he has been known at SCDC since.

Wilson's appellate defense counsel testified she mailed Wilson copies of various appellate pleadings but under the name Wilson, not Walker. No copies of these forwarding letters were presented. Wilson's appellate counsel testified there was no record in her office of Wilson actually receiving a copy of the *Ander's* brief, copies of the trial transcripts, or a copy of the order dismissing Wilson's direct appeal. It is standard operating procedure for appellate defense counsel's office to forward such documents to clients, however, in this case those

documents would have been forwarded under the name of Wilson, not Walker. Copies of letters from the South Carolina Court of Appeals Clerk of Court were entered into evidence. Each was addressed, however, to Jeffrey Douglas Wilson, not Walker and each listed Wilson's home address, rather than his SCDC address. Wilson testified he did not receive notice of the *Anders* brief filing or the dismissal of his appeal until shortly before filing his application for post-conviction relief.

In *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002), our Supreme Court reversed the summary dismissal of a post-conviction application on timeliness grounds. The applicant in *Wilson* argued he instructed his trial defense counsel to file an appeal, which, unknown to the applicant, defense counsel failed to do. By the time the applicant discovered this failure, more than a year's time had passed following his conviction.

The Court said "every defendant has a right to file a direct appeal and one PCR application." *Id.* at 281, 559 S.E.2d, 582. Citing *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), the *Wilson* Court said the policy adopted in *Austin* would be frustrated if the applicant was denied his direct appeal due to counsel's failure to timely file a notice of appeal and then denied his right to a post-conviction relief application because the one year limitation period had run as a consequence of trial defense counsel's failure to notice his appeal.

As a result of Wilson's appellate defense counsel's failure, albeit unintentional, to provide him a copy of his *Anders* Brief, trial transcripts, and a copy of the dismissal of his direct appeal, Wilson was not provided notice of the dismissal of his direct appeal, and, therefore, he did not have notice of the beginning of the one year limitations period in §17-27-45(a). I conclude the holding in *Wilson* applies here and the policy to provide each criminal defendant

with the right to a direct appeal and one post-conviction relief application would be frustrated were I to grant the state's motion to dismiss on timeliness grounds.

Alternatively, I find the doctrine of equitable tolling should apply. "Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it ... [equitable tolling] has been applied where a litigant was prevented from suing because of an extraordinary event beyond his or her control." *Magnolia North Property Owners Asso., Inc., v. Heritage Comm. Inc.*, 397 S.C. 348, 371, 725 S.E.2d 112, 125 (Ct. App. 2012), quoting *Hooper v. Ebenezer Senior Services and Rehab. Center*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009).

Wilson had no control over the name by which he was known at SCDC, no control over SCDC's mail service, and no control over when and by what means his appellate defense counsel and the Court of Appeals' Clerk's Office forwarded him copies of the appeal documents.

I find Wilson's petition is timely.

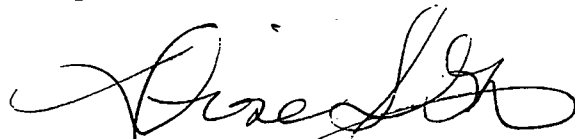
The Court listened to all witnesses and evidence and had an opportunity to judge each witness's credibility. While defense counsel failed to have specific memory of communicating to his client a plea offer and failed to have any writing in his file indicating he had, defense counsel testified it his normal practice to go over all plea offers with his clients. It is difficult to believe that counsel would have chosen to go to trial rather than communicate a plea offer to his client that he would have accepted. What is more plausible is that the offer was communicated and not accepted, the case proceeded to trial and the defendant was convicted and now wishes he had taken the offer. The Court finds it is not extraordinary that busy defense counsel would fail to remember a specific instruction to a particular client. The Court finds the defendant was

informed of the plea offer, and Counsel was not ineffective with regards to failing to communicate a plea offer to the applicant. Therefore, the Court denies the PCR on the basis that he failed to communicate a plea offer that would have been accepted by Applicant.

Wilson also asserted his sentencing was unconstitutional because the statute under which he was convicted, S.C. Code Ann. § 16-11-330, provides a 10 year mandatory minimum sentence in which a defendant is not eligible for parole consideration until he has served at least 7 years whereas S.C. Code Ann. § 24-13-100 declares Wilson's armed robbery charge to be a "no parole offense" the result of which requires him to serve at least 85% of the 15 years to which he was sentenced. Having considered this argument I find it to be without merit.

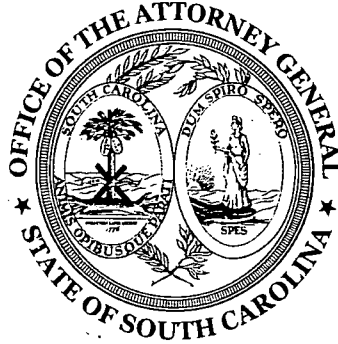
Wilson also argued the imposition of a term of two years community supervision under S.C. Code Ann. § 24-21-560, in addition to his sentence of incarceration, was unconstitutional. Having also considered this argument, I find it likewise to be without merit. Having fully addressed that matters raised, the Court hereby Grants to applicant his appeal pursuant to *Austin v. State, Supra*. As to the other grounds the applicant's petition is Denied.

AND IT IS SO ORDERED.



Diane S. Goodstein  
Presiding Circuit Judge

St. George, South Carolina  
September 22, 2014



ALAN WILSON  
ATTORNEY GENERAL

February 3, 2015

**RECEIVED**

FEB 06 2015

**S.C. SUPREME COURT**

The Honorable Daniel E. Shearouse  
Clerk of the Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: Jeffrey Douglas Walker Wilson, v. State of South Carolina**  
**2012-CP-40-05497**

Dear Mr. Shearouse:

Enclosed please find the following for the abovementioned post-conviction relief appeal:

1. Notice of Appeal
2. Proof of Service serving the of the Notice of Appeal on the Respondent
3. A copy of the order which is to be challenged on appeal.

As counsel for Respondent in the lower court proceeding was appointed, I am also serving the South Carolina Commission of Indigent Defense – Appellate Division. The State is already in possession of the evidentiary hearing transcript; therefore, I am calendaring the due date for the Petition for Writ of Certiorari and Appendix for forty-five days from today's date (March 20, 2015). Please advise if I have miscalculated the due date.

Sincerely,

Megan Harrigan Jameson  
Assistant Attorney General

MHJ/sbm  
Enclosures

cc: Louis H. Lang, Esquire  
The Honorable Jeanette W. McBride, Clerk of Court of Richland County  
The Honorable Daniel E. Johnson, Fifth Circuit Solicitor  
SCCID, Division of Appellate Defense  
David M. Tatarsky, Esquire  
Trisha Allen, Victims Services

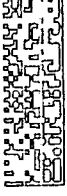
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The Honorable Daniel E. Shearouse  
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