



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

November 18, 2011

Via Hand Delivery

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

RECEIVED

NOV 18 2011

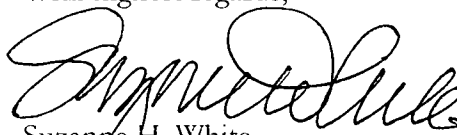
S.C. Supreme Court

RE: **Kandia Crate v. State of South Carolina**
2009-CP-42-6225

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above matter for filing in your office. By copy of this letter I am serving opposing counsel with this return today.

With highest regards,


Suzanne H. White
Assistant Attorney General

SHW/aam
Enclosures

cc: Kathrine H. Hudgins, Esquire (w/enclosure)

The Supreme Court of South Carolina

Kandia Crate,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2009-CP-42-06225

ORDER

For good cause shown, the request for an extension until November 18, 2011 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Luenda J. Shealy

Chief Deputy Clerk

Columbia, South Carolina

October 20, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Suzanne H. White



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

October 19, 2011

RECEIVED

OCT 19 2011

S.C. Supreme Court

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

**RE: Kandia Crate v. State of South Carolina
2009-CP-42-6225**


(2)

Dear Mr. Shearouse:

The Return to the Petition for Writ of Certiorari in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a 30-day extension in which to serve and file this Return.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload and made for good cause.

Yours very truly,


Suzanne H. White
Assistant Attorney General

SHW/aam

cc: Kathrine H. Hudgins, Esquire

The Supreme Court of South Carolina

Kandia Crate,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2009-CP-42-06225

ORDER

The request for an extension until October 19, 2011 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


Clerk

Columbia, South Carolina

September 20, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Suzanne H. White



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

September 19, 2011

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

RECEIVED

SEP 19 2011

S.C. Supreme Court

RE: **Kandia Crate v. State of South Carolina**
2009-CP-42-6225

Dear Mr. Shearouse:

The Return to the Petition for Writ of Certiorari in the above appeal is due to be served and filed on today's date. However, this is to respectfully request a 30-day extension in which to serve and file this Return.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload.

Yours very truly,

Suzanne H. White
Assistant Attorney General

SHW/aam

cc: Kathrine H. Hudgins, Esquire

The Supreme Court of South Carolina

Kandia Crate,

Petitioner,

v.

State of South Carolina,

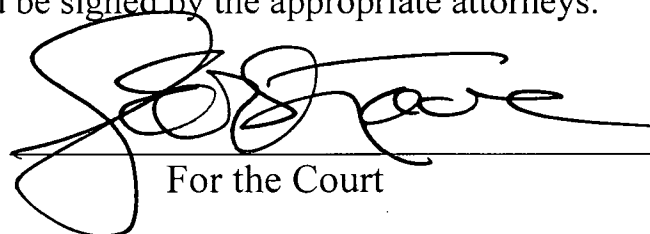
Respondent.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2009-CP-42-06225

ORDER

Petitioner seeks an extension until August 4, 2011 to serve and file the Petition for Writ of Certiorari and Appendix, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



For the Court C.J.

Columbia, South Carolina

July 6, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Suzanne H. White

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Appeal from Spartanburg County
Roger L. Couch, Special Circuit Court Judge

RECEIVED
JUL - 5 2011

S.C. Supreme Court

KANDIA CRATE,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE PETITION FOR WRIT OF CERTIORARI
AND ACCOMPANYING APPENDIX

(4)

Counsel for Kandia Crate petitions the Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case. In support of this petition, counsel shows:

1. The petition for writ of certiorari and accompanying appendix is due to be filed with the Court today..
2. Counsel for Mr. Crate respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the petition for writ of certiorari and accompanying appendix in Walter Gaines v. State on June 7, 2011. Counsel has not had time to complete the brief of petitioner in this case. Counsel filed the initial briefs of appellant and designations of matter in State v. Jeffrey Tolliver and State v. Tony Williams on June 13, 2011. Counsel had oral argument in the Court of Appeals in State v. Andre Jackson on June 15, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Lewis Pipher on June 20, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Charles Cochran on June 24, 2011. Counsel filed the petition for rehearing in State v.

Bobby Burdine on June 28, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Roy Bright on June 30, 2011. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the brief of petitioner. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

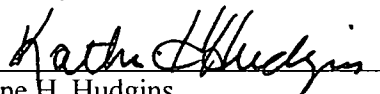
4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.


5. As indicated by signature below, Suzanne White, of the South Carolina Attorney General's Office, does not oppose this request


6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case based upon the above circumstances.

Respectfully submitted,

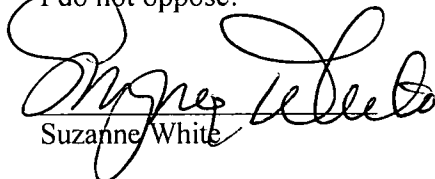

Kathrine H. Hudgins
Appellate Defender


Robert M. Dudek
Chief Appellate Defender


T. Patton Adams
Executive Director
J. Hugh Ryan, III
General Counsel

July 5, 2011

I do not oppose:


Suzanne White

The Supreme Court of South Carolina

Kandia Crate,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2009-CP-42-06225

ORDER

For good cause shown, the request for an extension until July 5, 2011 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


Clerk

Columbia, South Carolina

June 6, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Suzanne H. White

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Appeal from Spartanburg County

RECEIVED

Roger L. Couch, Special Circuit Court Judge

JUN 3 2011

S.C. Supreme Court

KANDIA CRATE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE PETITION FOR WRIT OF CERTIORARI
AND ACCOMPANYING APPENDIX

(3)

Counsel for Kandia Crate petitions the Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case. In support of this petition, counsel shows:

1. The petition for writ of certiorari and accompanying appendix is due to be filed with the Court today..
2. Counsel for Mr. Crate respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. Counsel filed the petition for rehearing in State v. Lawrence Burgess on May 5, 2011. Counsel filed the petition for rehearing in State v. Lawrence Burgess on May 5, 2011. The petition for writ of certiorari and accompanying appendix were filed in Corey Linder v. State on May 6, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in Eugene Kearns v. State on May 9, 2011. Counsel filed the brief of respondent in State v. Antonio Bordeaux on May 12, 2011. Counsel filed the petition for writ of certiorari and accompanying appendix in State v. Emmith Williams on May 26, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in State v.

Wesley Smith and Herbert English v. State and the initial brief of appellant and designation of matter in State v. Steve Lucas on May 31, 2011. Counsel has not had time to complete the brief of petitioner in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the brief of petitioner. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

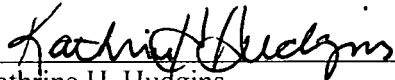
4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. As indicated by signature below, Suzanne White, of the South Carolina Attorney General's Office, does not oppose this request

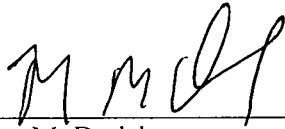
6. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case based upon the above circumstances.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

June 3, 2011

I do not oppose:



Suzanne White

The Supreme Court of South Carolina

Kandia Crate,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2009-CP-42-06225

ORDER

For good cause shown, the request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until June 3, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Arenda J. Stealy*
Chief Deputy Clerk

Columbia, South Carolina

May 6, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Suzanne H. White

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

RECEIVED

MAY - 4 2011

S.C. Supreme Court

KANDIA CRATE,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE PETITION FOR WRIT OF CERTIORARI
AND ACCOMPANYING APPENDIX

Counsel for Kandia Crate petitions the Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case. In support of this petition, counsel shows:

1. The petition for writ of certiorari and accompanying appendix is due to be filed with the Court today..
2. Counsel for Mr. Crate respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.
3. On April 1, 2011, counsel filed the initial brief and designation of matter in State v. Demetrius Price. On April 11, 2011, counsel was subpoenaed by the State as a witness in the PCR hearing in Alti Haskell v. State. Counsel filed the initial briefs of appellant and designations of matter in State v. Robert Baker and State v. Donald Williams on April 14, 2011. On April 19, 2011, counsel was in the Supreme Court for oral argument in State v. Jamey Reid. On April 20, 2011, counsel filed the return in Cazario Marshall v. State and the initial brief and designation in State v. Michael Fraley. Counsel filed a petition for rehearing in State v. Samuel Grier and the petition for writ of certiorari and accompanying


appendix in Thomas McCall, Jr. v. State on April 26, 2011. Counsel filed the initial brief of appellant and designation of matter in State v. Hazard Cameron and the petitions for writ of certiorari and accompanying appendices in State v. Steven Barnes and State v. Joelle Toney on April 29, 2011.

4. Counsel has not had time to complete the petition for writ of certiorari and accompanying appendix in this case. As a result, counsel respectfully asks this Court for a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a thirty day extension in which to file the petition for writ of certiorari and accompanying appendix in this case based upon the above circumstances.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

May 4, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

KANDIA CRATE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

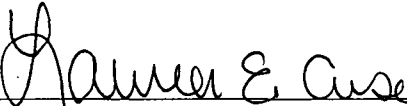
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for extension of time in which to file the petition for writ of certiorari in the above referenced case has been served upon Suzanne White, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 4th day of May, 2011.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT.

SUBSCRIBED AND SWORN TO before me
this 4th day of May, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

The Supreme Court of South Carolina

Kandia Crate,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable Roger L. Couch
Spartanburg County
Trial Court Case No. 2009-CP-42-06225

ORDER

The request for an extension until May 4, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 5, 2011

cc: Appellate Defender Kathrine H. Hudgins
Assistant Attorney General Suzanne H. White



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 4, 2011

RECEIVED

APR - 4 2011

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

(1)

S.C. Supreme Court

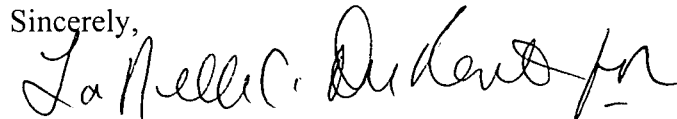
Re: Kandia Crate v. The State

Dear Mr. Shearouse:

The Petition for Certiorari and accompanying appendix are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting a thirty day extension in which to serve and file the petition.

By copy of this letter, I am informing Suzanne White, Esquire, of the Attorney General's Office, of my request.

Sincerely,


Kathrine H. Hudgins
Appellate Defender

KHH/lec

cc: Suzanne White, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 3, 2011

RECEIVED

FEB 03 2011

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

S.C. Supreme Court

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Kandia Crate v. State of South Carolina

2/3/2011

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

January 13, 2011

RECEIVED

JAN 13 2011

S.C. Supreme Court

Ms. Pamela E. Green
Circuit Court Reporter
121 Bradford Crossing Drive
Roebuck, SC 29376

Dear Ms. Green:

Our office has been requested to perfect the appeal arising out of:

Kandia Crate v. State of South Carolina Case #: 09-CP-42-06225

County: Spartanburg Date of Trial: September 13, 2010

Presiding Judge: Roger L. Couch

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Pamela E. Green
January 13, 2011
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,


Lorlene French
Legal Services Coordinator

cc: S.C Supreme Court
Attorney General's Office

Shawn M. Campbell
Kenneth P. Shabel
John R. Holland

Campbell & Shabel

ATTORNEYS AT LAW

OF COUNSEL:
Sean Giovannetti

Sender's Email: jmoss@gc-lawfirm.com

Thursday, December 09, 2010

VIA CERTIFIED MAIL

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

**Re: Kandia Crate, # 227541 vs. State of South Carolina
2009-CP-42-6225**

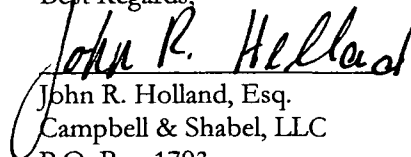
Dear Mr. Shearouse:

Enclosed for filing are an original and a copy of a notice of appeal in the above-referenced case. I have been appointed to serve as attorney for the PCR applicant, Kandia Crate, in this action. Also enclosed are the following:

- 1) Proof of service of the notice of appeal on the respondent.
- 2) A copy of the order which is to be challenged on appeal.

Insofar as this is an appeal from a Post-Conviction Relief case, I am not enclosing a filing fee, as I believe such fees are waived in these cases.

Best Regards,



John R. Holland, Esq.
Campbell & Shabel, LLC
P.O. Box 1793
Spartanburg, S.C. 29304
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Appellant

RECEIVED

DEC 10 2010

S.C. SUPREME COURT

cc: client
Ms. Suzanne H. White, Assistant Attorney General

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2009-CP-42-6225

Kandia Crate, # 227541,

Plaintiff/Applicant

vs.


State of South Carolina,

Respondent

NOTICE OF APPEAL

Kandia Crate, South Carolina Department of Corrections Number 227541, hereby appeals the order of the Honorable Roger L. Couch dated November 24, 2010 in Case Number 2009-CP-42-6225.

December 9, 2010


John R. Holland, Esq.
Campbell & Shabel, LLC
104 N. Daniel Morgan Ave, Suite 201
Spartanburg, S.C. 29306
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Applicant

Other Counsel of Record:

Suzanne H. White, Esq.
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
Tel: (803) 734-3970
Fax: (803) 253-6283
Attorney for Respondent

RECEIVED

DEC 10 2010

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2009-CP-42-6225

Kandia Crate, # 227541,

Plaintiff/Applicant

vs.


State of South Carolina,

Respondent

PROOF OF SERVICE

I certified that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on the State of South Carolina, addressed to its attorney of Record, Suzanne H. White, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549

December  , 2010


John R. Holland, Esq.
Campbell & Shabel, LLC
104 N. Daniel Morgan Ave, Suite 201
Spartanburg, S.C. 29306
Telephone: 864-583-0001
FAX: 864-583-1199
Attorney for Applicant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Kandia Crate, #227541,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2009-CP-42-6225

ORDER OF DISMISSAL

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 NOV 24 AM 11:54
 M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 13, 2009. The Respondent made its Return and Motion to Dismiss on or about February 4, 2010. Following Applicant's response to Respondent's Return and Motion to Dismiss, an evidentiary hearing was set. An evidentiary hearing into the matter was convened on September 13, 2010, at the Spartanburg County Courthouse. The Applicant was present and represented by John R. Holland, Esquire, at the hearing. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Ms. Sonya Nash also testified on Applicant's behalf. Richard H. Warder, Esquire, testified on behalf of the State. This Court also had before it a copy of the guilty plea transcript, the records of the Spartanburg County Clerk of Court, Applicant's Appellate records and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was

indicted at the August 2005 term of the Spartanburg County Grand Jury for one (1) count of unlawful conduct toward a child (05-GS-42-3870), one (1) count of failure to stop motor vehicle when signaled by officer (05-GS-42-3871), and one (1) count of trafficking in cocaine greater than twenty-eight (28) grams – 3rd offense (05-GS-42-3872). Applicant was then indicted at the October 2005 term of the Spartanburg County Grand Jury for trafficking in cocaine base and/or crack cocaine greater than ten (10) grams – 3rd offense (05-GS-42-4572). He was represented at the time of his plea by Richard Warder, Esquire.

On April 6, 2006, the Applicant pled guilty to the two trafficking charges as indicted. Applicant then pled guilty pursuant to N.C. v. Alford on the charges of unlawful conduct toward a child and failure to stop. He was sentenced by the Honorable John C. Few to confinement for a period of twenty five (25) years each for trafficking in cocaine greater than twenty-eight (28) grams – 3rd offense (05-GS-42-3872) and for trafficking in cocaine base and/or crack cocaine greater than ten (10) grams – 3rd offense (05-GS-42-4572), ten (10) years for unlawful conduct toward a child (05-GS-42-3870), and three (3) years for failure to stop motor vehicle when signaled by officer (05-GS-42-3871), to be served concurrently. The Applicant did not appeal his conviction or sentence.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel;
 - a. Counsel failed to file an appeal; and
2. Involuntary Guilty Plea

SUMMARY OF TESTIMONY

Applicant testified that he pled guilty in April 2006 to trafficking charges and pled guilty pursuant to N.C. v. Alford on the other two charges. Applicant testified that he asked Mr. Warder

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(Counsel) to file an appeal on his behalf and was under the impression that an appeal had been filed. Applicant testified that Ms. Nash contacted Counsel several times to discuss an appeal and Applicant's sister attempted to contact Counsel by visiting Counsel's office. Applicant testified that he only learned in 2009 that no appeal had been filed. Applicant also testified that he would have wanted to appeal his guilty plea because he thought he got too much time, did not think his offenses should have been considered third offenses, and the judge should have not denied his Motion to relieve Counsel.

Ms. Sonya Nash testified that she attempted to contact Counsel regarding an appeal, but was only able to talk with someone from Counsel's office named Tina. Nash also testified that she called Counsel more than fifty times over a period of a couple of years.

Counsel testified he was retained in the case. Counsel testified that Applicant never asked Counsel to appeal the decision after the guilty plea. Counsel also testified that he never received any communication from Applicant, Ms. Nash, or any family members of Applicant's regarding an appeal. Counsel testified that he has a procedure that he uses to file an appeal for clients who are indigent and also makes notes on each file if an appeal was requested. Counsel also testified that as a regular practice, he has the conversation with his clients about the ability to appeal and appeal deadlines early on in his representation. Counsel further testified that he does not believe that there was a logical reason to file an appeal in this case.

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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).

The State made a Motion to summarily dismiss Applicant's claims unrelated to his claim of belated direct appeal as filed outside of the statute of limitations. Applicant pled guilty on April 6, 2006, and filed his application more than three years later. This Court finds that the State's Motion should be granted and summarily dismisses all of Applicant's allegations, other than Applicant's allegation of ineffective assistance of counsel for failure to file a direct appeal.

Appeal

Counsel has a constitutionally imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. See Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)¹.

This Court finds Counsel's testimony to be far more credible than either the Applicant or Ms. Nash's testimonies. This Court finds that Counsel was not informed by the Applicant of a desire to appeal the case within the 10 days required by the rule. This Court further finds that it was not demonstrated that the facts of the plea would have lead Counsel to believe that an appeal would be

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

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necessary or that Applicant was interested in an appeal. Therefore, this allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 advises 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), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243² 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.

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² Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.



AND IT IS SO ORDERED this 24th day of November, 2010.



Roger L. Couch
Presiding Circuit Court Judge


_____, South Carolina

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The Honorable Daniel Shearouse
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