

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

J. ERNEST KINARD JR., CIRCUIT COURT JUDGE

2014-CP-40-0071

**RECEIVED**

MAR 11 2015

**S.C. Supreme Court**

Ray Simmons,.....Petitioner.

vs

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

**NOTICE OF APPEAL**

Ray Simmons appeals the Honorable J. Ernest Kinard, Jr.'s February 19, 2015, order denying post-conviction relief to the Petitioner, clocked on March 2, 2015. Undersigned counsel received notice of entry of the order on March 9, 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) 661-6758  
Fax: (803) 403-8752

Attorney for the Petitioner.

March 11, 2015.

J. Clayton Mitchell, Esquire  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211-1549

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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, J. Clayton Mitchell, 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 11th day of March 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

Dustin Ray Simmons, #243368,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

2014-CP-40-00071

ORDER OF DISMISSAL

RICHLAND COUNTY  
FILED  
2015 MAR -2 AM 11:18  
JEANETTE W. MORRIS  
C.C.P. & C.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 7, 2014. Respondent made its Return on March 28, 2014, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Richland County Clerk of Court. Applicant filed an Amended Application for PCR on April 24, 2014.

An evidentiary hearing was held on December 9, 2014, at the Richland County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's plea counsel, Courtney A. Gibbes, Esquire. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

#### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the March 2013 term of the Richland County Grand Jury for Kidnapping (2013-GS-40-1996), two counts of Resisting Arrest While Assaulting a Police Officer (2013-GS-40-2105, -2000),

Burglary in the First Degree (2013-GS-40-1999), and Assault and Battery in the First Degree (2013-GS-40-1997). Applicant was represented by Courtney Ann Gibbes, Esquire. On August 14, 2013, Applicant appeared before the Honorable Robert E. Hood and pleaded guilty as indicted to Kidnapping, Assault and Battery in the First Degree, one count of Resisting Arrest While Assaulting a Police Officer, and to the lesser included offense of Burglary in the Second Degree. Judge Hood sentenced Applicant to thirteen (13) years for kidnapping, and ten (10) years for each additional charge, all of which are being served concurrently.

Applicant filed a notice of appeal from his guilty plea. However, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The Remittitur was sent on November 21, 2013.

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

1. Unintelligent and involuntary plea in that counsel misadvised Applicant as to the sentence he would receive and that counsel failed to review discovery with Applicant prior to the plea.
2. Ineffective assistance of counsel in that counsel failed to file a motion for reconsideration on Applicant's behalf.

## **II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING**

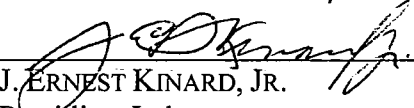
### **Applicant's Testimony**

Applicant testified Counsel was appointed to represent him after he was indicted on the charges he is currently challenging. Applicant testified he met with Counsel multiple times where, at first, they discussed the charges he was facing and the rights he was guaranteed. Applicant testified he was taking medication when he pled guilty. He also testified that he was evaluated and found competent to stand trial. Applicant could not recall whether Counsel

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

**AND IT IS SO ORDERED** this 19 day of February, 2015.

  
\_\_\_\_\_  
J. ERNEST KINARD, JR.  
Presiding Judge

Camden, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4000071

Ray #243368 Simmons

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 2 March 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Ray #243368 Simmons

Anna Rawl Good

Megan Harrigan Jameson

Ray #243368 Simmons

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

