

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2014-000591
Lower Court Case No. 2012-CP-19-0304

RECEIVED

FEB 12 2015

S.C. Supreme Court

FREDY DELEON, #304977,

RESPONDENT-PETITIONER,

v.

STATE OF SOUTH CAROLINA,

PETITIONER-RESPONDENT.

**SUPPLEMENTAL APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

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Attorney General

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PETITIONER.**

ATTORNEYS FOR PETITIONER-RESPONDENT.

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COLUMBIA, S.C.

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The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 4, 2007

Michael S. Waddington
601 North Belair Sq. Suite 16
Evans, GA 30809



Re: The State v. Deleon, Fredy

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 238(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Please be advised your Notice of Appeal is not in compliance with the South Carolina Appellate Court Rules. According to Rule 203 of the Appellate Court Rules you must provide this Court with an original proof of service showing the Notice of Appeal was timely served on opposing counsel and the original Notice of Appeal.

We also need an original amended Notice of Appeal with the date the motion was denied and proof of service. You will need to send an original motion to file the Notice of Appeal out of time and correct your proof of service. The Court requires an original and six (6) copies of motions.

Please provide the Court with the date you received the transcript so that timelines may be set.

Kindly provide the requested documents within five (5) days of the date of this letter.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within thirty(30) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,


Kenneth A. Richstad
CLERK

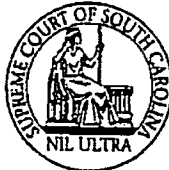
KAR/nb

cc: Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Salley W. Elliott

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11
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FILED
CLERK OF COURT
TIMOTHY A. NEWBY

2013 SEP -4 AM 9:54



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

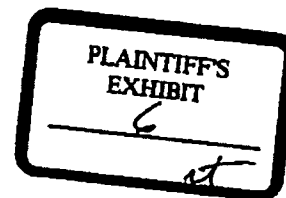
(803) 734-1080

FAX (803) 734-1499

February 15, 2008

Michael S. Waddington, Esquire
601 North Belair Sq. Suite 16
Evans, GA 30809

Re: Deleon, Fredy v. State



Dear Counsel:

This office has received your petition for a writ of certiorari in this matter. This petition, like the brief you have previously submitted,¹ argues that the trial judge committed error.

Where, as here, the PCR judge has found that a post-conviction relief applicant is entitled to a White v. State review, Rule 227(i)(1), SCACR, states, in part:

When the post-conviction relief judge has affirmatively found that the right to a direct appeal was not knowingly and intelligently waived, the petition [for a writ of certiorari] shall contain a

¹ You only submitted one copy of this brief and it is not bound.

question raising this issue along with all other post-conviction relief issues petitioner seeks to have reviewed. At the same time the petition is served, **petitioner shall serve and file a brief addressing the direct appeal issues.** This brief shall, to the extent possible, comply with the requirements of Rule 208(b). Respondent's return to the petition [for a writ of certiorari] shall address the post-conviction relief issues, including whether the direct appeal was knowingly and intelligently waived. At the same time the return is due, respondent shall also serve and file a brief addressing the direct appeal issues. (emphasis added).

Therefore, your petition for a writ of certiorari should contain a question arguing that petitioner did not knowingly and intelligently waive his right to a direct appeal and that he is therefore entitled to a belated direct appeal under White. The direct appeal issues should be argued in a separate brief.

I note the fourth full paragraph on page two of the current petition indicates that the petitioner had a direct appeal; I assume this is erroneous since the existence of such an appeal would most likely destroy his right to relief under White.

I ask that you please prepare an amended petition for a writ of certiorari that complies with the requirements of the rule. You must file an original and six copies of this petition with this Court and serve a copy on respondent's counsel. Rule 227(d), SCACR.

Additionally, you must file two copies of an appendix that complies with Rule 227(f) with this Court, and you must serve one copy of the appendix on the respondent. Rule 227(d), SCACR. The appendix should have a white cover and should be bound as required by Rule 238, SCACR.

Further, you must serve and file a brief addressing the direct appeal issues and the format and number of copies to be served and filed should comply with Rules 211 and 238, SCACR, to include having a blue cover and being bound. I have enclosed a copy of Rules 227, 211 and 238.

Finally, you must provide a proof of service showing that the petition, brief and appendix have been served on respondent's counsel. I ask that the documents specified above and the proof of service be filed within thirty days of the date of this letter.

You have also filed a letter indicating that you will be on vacation in April 2008. This Court and the Court of Appeals do not grant blanket orders of protection. Instead, if you need an extension to perform some event before either this Court or the South Carolina Court of Appeals, you will need to make a motion for an extension in that case.

Very truly yours,

A handwritten signature in black ink, appearing to be "D.E. Grigg", with a long horizontal line extending to the right.

CLERK

Enclosures

cc: Assistant Attorney General Daniel E. Grigg

ATTACHMENT 4

MICHAEL STEWART WADDINGTON

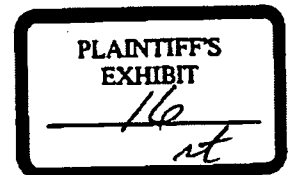
ATTORNEY AT LAW
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 MSW@WGMLAWFIRM.COM

114 PLEASANT HOME ROAD, SUITE B
 AUGUSTA, GA 30907

PHONE (706) 821-2222
 FAX (706) 210-6420

December 21, 2006

Fredy DeLeon
 SCDC ID 00304977
 Lee Correctional Institution
 990 Wisacky Highway
 Bishopville, SC 29010



Re: Post Conviction Relief

Dear Fredy,

I spoke with Sabrina Todd from the South Carolina Attorney General's Office. She informed me that your PCR Hearing is scheduled for 17 January 2007 at 9:30.

After reading both trial transcripts from your case, I have determined which issues have merit at a PCR Hearing. In my opinion, the only issue with merit to be raised in a PCR application is ineffective assistance of counsel against Jacque Hawk for failure to file a notice of appeal. It is likely that we will be granted the right to file an appeal. I am negotiating with the State in an attempt to have them grant you an appeal without having to go in front of the PCR Judge. If we go to a PCR hearing, then there is no guarantee that you will be granted the right to appeal.

While reading the transcript, I noted several other potential errors that can be appealed, if and when we win the right to appeal. The first issue for appeal concerns potential juror misconduct. The second issue concerns the "extended border doctrine" and the search and seizure at your store. Finally, the last issue for appeal is the lack of evidence presented at trial. The only issue raised by your co-defendants was the lack of evidence. Their appeals are still pending.

The issues of juror misconduct, illegal search and seizure, and lack of evidence are issues that are properly raised on appeal and not at a PCR hearing. Our main objective in asking for PCR is to win the right to appeal. At this point, you have forfeited your right to appeal.

When we met, we discussed possibly raising ineffective assistance of counsel against Mr. Hawk concerning his performance at trial and his pre-trial advice. After reading what transpired at trial and reviewing the evidence presented against you, it is my opinion that the lawyers in this case did a professional job. In addition, Mr. Hawk was correct when he assured you that there was not much direct evidence linking you to the drugs. Taking your case to trial was not a foolhardy idea. If I were in the shoes of Mr. Hawk, I would have likely advised you

to plead not guilty and taken the case to a jury.

If there are any issues that you would like me to raise in your PCR application, please write me immediately. I will see you soon.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael S. Waddington', with a stylized flourish at the end.

Michael S. Waddington

cc: Teresa Gonzalez

GONZALEZ & WADDINGTON, LLC
ATTORNEYS AT LAW

ALEXANDRA GONZALEZ-WADDINGTON
MICHAEL S. WADDINGTON

601 NORTH BELAIR SQUARE, SUITE 16
EVANS, GA 30809
PHONE (706) 821-2222
FAX (706) 447-6995

July 23, 2007

Fredy DeLeon
SCDC ID 00304977
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Case Update

Dear Fredy,

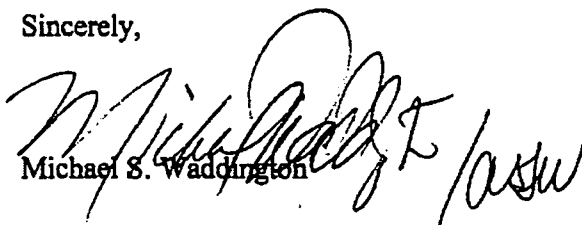
I am writing to update you of the status of your appeal. Over the past several months, we have reread your transcript looking for potential appellate issues and reviewed the case file from both trials. As we discussed in the past, the major issues to appeal are juror misconduct, illegal search and seizure, and lack of evidence.

These are the three errors that we will allege. If you would like us to raise any additional errors, please write me a letter describing the potential error.

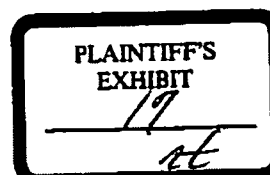
It is my intention to have a rough draft completed by the end of August 2007. I will send you a copy. In the meantime, write me with any questions.

This process takes a long time. Please have patience and hang in there.

Sincerely,


Michael S. Waddington

cc: Teresa Gonzalez



2013 SEP -1, AM 9:55
CLERK OF COURT
CHIEF CLERK

GONZALEZ & WADDINGTON, LLC.**ATTORNEYS AT LAW****601 NORTH BELAIR SQUARE, SUITE 16,
EVANS, GEORGIA 30809****PHONE (706) 821-2222 FAX (706) 447-6995**CLERK OF SUPERIOR COURT
ATTACHMENT 5
SHIRLEY E. NEWBY

2013 SEP -4 AM 9:56

ALEXANDRA GONZALEZ-WADDINGTON

MICHAEL STEWART WADDINGTON

December 13, 2007

Fredy DeLeon
SCDC ID 00304977
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Post Conviction Relief

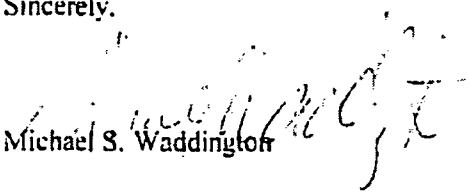
Dear Fredy,

I received your letter regarding the issues raised in the Brief filed with the Appeals Court. As you may recall, I explained in an earlier letter to you, there is no substantial basis to challenge the search and seizure issue, nor the lack of evidence issue. The chances of winning on either of these issues is practically nil, and for us to pursue them, could well jeopardize our efforts to appeal.

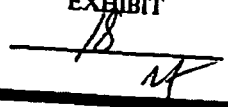
As you know the co-defendants in this matter raised these issues and lost, and their positions were much stronger than yours. I believe that by raising issues the Court may view as frivolous or a waste of time, will severely limit our chances of succeeding on any issue we may raise.

With that being said, if you still wish to proceed with these challenges, I will prepare a Supplemental Brief to include the search and seizure and the lack of evidence issues. Please let me know how you wish to proceed.

Sincerely,


Michael S. Waddington

cc: Teresa Gonzalez

**PLAINTIFF'S
EXHIBIT**


GONZALEZ & WADDINGTON, LLC.**ATTORNEYS AT LAW**

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EVANS, GEORGIA 30809

PHONE (706) 821-2222 FAX (706) 447-6995

2013 SEP -4 AM 9:56
CLERK OF COURT
JULIE E. NEWBY

ALEXANDRA GONZALEZ-WADDINGTON

MICHAEL STEWART WADDINGTON

March 25, 2008

Freddy Deleon - SCDC# 304977
Broad River Correctional Facility
4460 Broad River Rd.
Columbia, SC 29210

Re: State vs. Fredy Deleon



Dear Mr. DeLeon,

Attached please find the appeal with the issue of the search and seizure added. After reviewing the transcript I noticed that the judge did not find that exigent circumstances existed for the police to raid your store. The judge's decision was based on his findings that the police had the authority to raid your store without a warrant under the extended border doctrine. Therefore the only basis for us to challenge the search is to challenge the judge's decision that the border was extended all the way to Trenton, South Carolina.

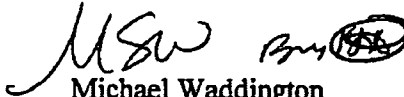
When determining whether or not there was an extended border the judge must make specific findings that the police executed the raid based on a reasonable suspicion that you were involved in illegal activities. Aside from the fact that the truck contained marijuana the police had no additional information that you or your store was involved in the trafficking of any drugs or any other illegal activities. This argument will be difficult to win. The government will argue that they had to believe that you were involved in illegal activities when they found a truck crossing across the border bound for your store and that truck was filled with over 900 pounds of marijuana.

In addition, the prosecution stated on the record before the trial began that they would offer you and your codefendants plea bargains for time served so long as all of you pled guilty. The judge, in the record of trial noted that none of the defendants wanted to accept that offer to plead guilty in exchange for time served. As such, I cannot raise the argument that you did not know about an offer to plead guilty.

As I explained to you before, the illegal search and seizure argument is not that strong. However based on our meeting last month and our conversations up to that point it was my impression that you wanted the search and seizure argument added to your brief.

Please read through the brief and let me know if you would like anything additional added. I will keep you updated if I hear anything new.

Sincerely,


Michael Waddington

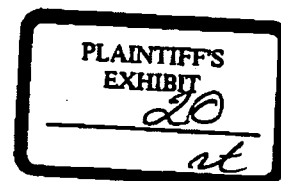
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EVANS, GEORGIA 30809

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2013 SEP -6 AM 9:56



April 15, 2011

Fredy,

You appeal is still pending before the Court of Appeals. They have had your case for a while now and they have not made any decision yet.

The Court recently remanded your case to the trial court so that the trial court could reconstruct what happened during the juror misconduct hearings. There is no record or transcript from the juror misconduct hearings. We checked with the court, the lawyers involved in the case, the appellate lawyers for your codefendants and the South Carolina Attorney General's Office to try and locate the transcripts from the hearing in question. The bottom line is that nobody has any transcripts from that hearing, and it does not appear that there were any transcripts. In addition, no one is certain if and when the hearing was conducted.

The Court of Appeals will not make a decision until they find out what happened at the hearing. They have now ordered the trial court to reconstruct the hearing to determine what happened during the alleged juror misconduct hearings.

As you know, the main issue on appeal in your case is whether the Judge denied you your due process rights during the juror misconduct hearing when the burden to show prejudice was on you, but the judge did not allow you or your lawyers to question the jurors in order to meet that burden. In other words, you had the responsibility of proving that the juror misconduct prejudiced you, but were not given the opportunity to do so.

We are working with the Trial Judge and the Attorney General's Office in order to set a hearing. I do not have a date yet.

On another note, I am closing my law practice and moving to Puerto Rico in June 2011. I know you asked the Court to release me as your lawyer and you filed a Bar Complaint against me. In addition, I understand that you do not want me as your lawyer and that you are not confident in my representation.

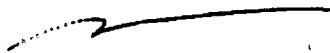
I also asked the Court to remove me from your case after I received the letter from you asking me to withdraw as your counsel. However, the Court will not remove me

as your lawyer unless you have another lawyer in place to represent you. The primary work in this case, the PCR and writing of the appeal, has been completed for over two years now. There really is no other work to do, other than the reconstruction of the hearing.

In your last letter, you asked why I did not raise additional issues in your appeal. You and I have discussed this in person and through letters before I filed the appeal over two years ago. Before I filed the appeal, you made modifications and, at your request, I included them in the appeal. At this point, the appeal is pending. I am not sure why you are bringing up "new" issues now, when you already know that the appeal has been filed and is pending before the Court.

Finally, given your stated concerns about my representation, I strongly advise you to retain another lawyer while this case is pending before the Court of Appeals. In the meantime, I will continue to work with the trial court to set a date for the hearing and continue to do my best in representing your interests until such time as you either hire someone else, or the Court agrees to release me.

Sincerely,



Michael S. Waddington
Attorney at Law