

The Supreme Court of South Carolina

In the Matter of Tristan Michael Shaffer, Respondent.

Appellate Case No. 2015-001859

ORDER

On April 22, 2015, Tristan Michael Shaffer, Esquire, filed a notice of appeal in *Raymond E. Chestnut v. State* on behalf of Mr. Chestnut (petitioner). The case was assigned Appellate Court Case Number 2015-000891.

By letter dated April 30, 2015, the Clerk of Court requested Mr. Shaffer provide the explanations required by Rules 203(d)(1)(B)(iv) and 243, SCACR, or the response permitted by *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006), within twenty days. The letter also stated, "I am concerned that I have to write you every time a Rule 243(c) and/or Rule 203(d)(1)(B)(iv) explanation is required. I should not have to do so since these explanations are required to be filed when the notice of appeal is filed, and I have repeatedly advised you of these requirements. In the future, please ensure that these explanations are filed with the notice of appeal." (Emphasis in original).

On June 1, 2015, the Clerk's Office contacted Mr. Shaffer about his failure to respond to the Clerk's letter of April 30. Mr. Shaffer assured the Clerk's Office he would submit the response that day. On June 15, 2015, the Clerk's Office called Mr. Shaffer again about the requested explanations. Mr. Shaffer informed the Clerk's Office that he had mailed the explanations the previous Friday. The Clerk's Office requested that he forward them via email as well and he complied.

Because the explanations were not sufficient, the Clerk of Court wrote Mr. Shaffer a letter on June 18, 2015, stating the following:

As I read this response, except for the *White v. State* claims, you are unable to provide a good faith explanation. Therefore, in accordance with *Dennison v.*

State, you must provide this Court with a letter stating that as an officer of the Court you are unable to set forth any arguable basis for asserting the determination by the circuit court was improper as to any non-*White v. State* claims. The letter should also advise the petitioner that he has twenty (20) days from the date of the letter to file a pro se explanation as to why the petitioner believes that this determination by the circuit court was improper as to any claim not related to a belated direct appeal under *White v. State*. The letter filed with this Court should include a proof of service showing that a copy of the letter has been sent to the petitioner. This letter should also advise petitioner that a separate explanation will need to be filed for each guilty plea.

As to the *White v. State* claims, you have not, as I requested in my earlier letter, provided an "explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal." Rule 203(d)(1)(B)(iv), SCACR (explanation required when an appeal is taken from a guilty plea, Alford plea, or plea of nolo contendere).

Since the six guilty pleas are apparently completely separate and distinct, you will need to file a separate Rule 203(d)(1)(B)(iv), SCACR, explanation for each guilty plea. . . . The letter referenced above and the guilty plea explanations should be served and filed within twenty (20) days of the date of this letter.

Finally, your Rule 243(c) explanation appears to indicate a *White v. State* claim may not have been raised as to all of the guilty pleas. If that is the case, I ask that you advise this Court of the guilty pleas to which no *White v.*

State claim has been raised.

On July 9, 2015, the Clerk's Office spoke with Mr. Shaffer regarding his failure to respond to the Clerk's letter. Mr. Shaffer stated he would make the responses a priority and get them in the mail the following day, at the latest.

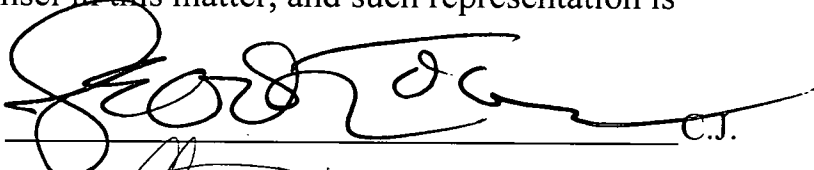
On July 10, 2015, petitioner submitted a request to relieve Mr. Shaffer as counsel and to have new counsel appointed based on Mr. Shaffer's failure to comply with this Court's requests. The request was denied by order dated July 31, 2015, stating the following:

We decline to appoint new counsel when petitioner is represented by counsel who refuses to comply with the South Carolina Appellate Court Rules and instructions of the Clerk of this Court.

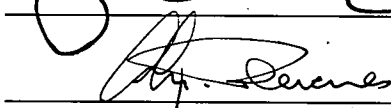
Shaffer shall, within five (5) days of the date of this order, serve and file the explanations required by Rule 203(a)(1)(B)(iv), SCACR, for each guilty plea of which petitioner claims he is entitled to belated appellate review. If Shaffer determines he does not have good faith explanations, he shall provide the Court with a letter stating that, as an officer of the Court, he is unable to set forth any arguable basis supporting an issue that can be reviewed on appeal for any of the guilty pleas. Shaffer shall also advise petitioner, by copy of the letter, that he should provide the Court, no later than twenty (20) days from the date of the letter, with an explanation showing why the post-conviction relief judge's determination that the action was barred by the statute of limitations was improper, pursuant to Rule 243(c), SCACR, and/or an explanation showing there is an issue which can be reviewed on appeal, pursuant to Rule 203(a)(1)(B)(iv), SCACR. In the event the explanations provided by Shaffer or petitioner are found to be sufficient to allow the appeals to proceed, Shaffer shall assist petitioner in obtaining representation by the Division of Appellate Defense. *See Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006).

On August 11, 2015, Mr. Shaffer filed a petition to file the amended Rule 243 explanation out of time. Therein, he explains he was on a family vacation from August 1 until August 8, and on August 10, he started a jury trial. Mr. Shaffer has never responded to the Clerk's requests or this Court's order. He states he has been working on the amended Rule 243 explanation in between working on the trial. The petition states: "Counsel is mailing the Amended Rule 243 Explanation today." As of today's date, nothing has been received.

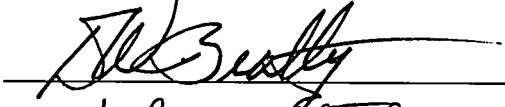
IT IS ORDERED that Tristan Shaffer shall personally appear before this Court in the Supreme Court Courtroom, in Columbia, South Carolina, at 2:30 p.m., or as soon thereafter as the matter can be heard, on Wednesday, September 23, 2015, to show cause why he should not be held in civil or criminal contempt for failing to comply with this Court's July 31, 2015, order. Mr. Shaffer shall also be prepared to discuss his failure to respond to similar requests from the Clerk in *Kevin D. Brown v. State*, Appellate Case No. 2015-001281; *Darnell Hunter v. State*, Appellate Case No. 2014-002268; and similar dilatory conduct in *William David Dove v. State*, Appellate Case No. 2013-002465; *Jerry McGriff v. State*, 2013-001886; *Joseph White v. State*, Appellate Case No. 2013-001220; and *Ashley Ray Hardin v. State*, Appellate Case No. 2012-212395. Because this matter potentially involves a finding of criminal contempt, petitioner is hereby informed that he has the right to be represented by counsel in this matter, and such representation is highly encouraged.



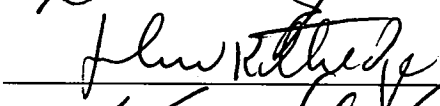
C.J.



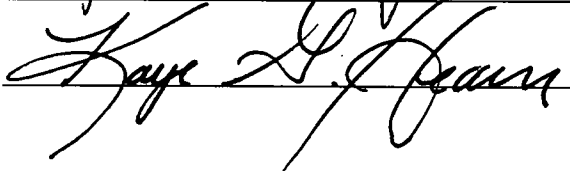
J.



J.



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Columbia, South Carolina
September 4, 2015

cc:
Tristan Michael Shaffer, Esquire
Joshua L. Thomas, Esquire
Raymond Edward Chestnut