

The Supreme Court of South Carolina

State of South Carolina, Movants-Respondents,

v.

Favian A. Hayes, Defendant.

In Re: Favian A. Hayes, Petitioner,

v.

Warden, Lee Correctional Institution, Respondent.

Appellate Case No. 2015-001471


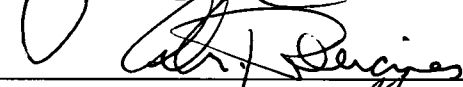


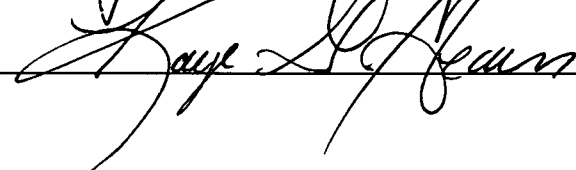
ORDER

In 2009, petitioner pled guilty to armed robbery, criminal conspiracy and possession of cocaine base, second offense. Plea counsel filed a notice of appeal but failed to submit the explanation required by Rule 203(d)(1)(B)(iv), SCACR, even after requests by the Court of Appeals. Accordingly, the appeal was dismissed.

In July, the federal district court issued an order granting petitioner's petition for a writ of habeas corpus and "**DIRECTING** the restoration of Petitioner's direct appeal rights and appointment of counsel." The State now requests this Court advise the parties of the manner in which compliance with the federal court order should be achieved.

We hereby direct the Court of Appeals to recall the remittitur in petitioner's direct Appeal, Appellate Case No. 2009-129706, and reinstate the matter. Because petitioner's "appeal rights" at this point consist of the submission of an explanation by counsel, or a letter from counsel stating no good faith explanation can be offered, with the opportunity for submission of a *pro se* response, we hereby appoint the Commission on Indigent Defense, Division of Appellate Defense, to

represent petitioner, and direct them to file an explanation with the Court of Appeals pursuant to Rule 203(d)(1)(B)(iv), SCACR, or if no good faith explanation can be offered, to provide that court with a letter similar to that described in *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006) stating as much and informing petitioner that he may, within twenty days, submit a *pro se* explanation. Thereafter, the Court of Appeals shall, in accordance with Rule 203(d)(1)(B)(iv), SCACR, determine whether a sufficient explanation has been submitted to allow the appeal to proceed or whether it should be dismissed.

 C.J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

September 3, 2015

cc:

Robert Michael Dudek, Esquire

Alan McCrory Wilson, Esquire

John W. McIntosh, Esquire

Donald J. Zelenka, Esquire

J. Anthony Mabry, Esquire

The Honorable Jenny Abbott Kitchings