

The Supreme Court of South Carolina

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September 29, 2015

Tristan Michael Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach SC 29577

Re: Kevin D. Brown v. State
Appellate Case No. 2015-001281

Dear Counsel:

In light of the fact that you indicate that you received written notice of entry of the order on appeal on May 29, 2015, and the fact that the State admits that it actually received a copy of the *pro se* notice of appeal on June 15, 2015, the *pro se* notice of appeal appears to have been timely served. Therefore, your amended notice of appeal and petition to file the amended notice of appeal out of time are unnecessary, and this matter will proceed based on the *pro se* notice of appeal.

Except for the claim seeking a belated direct appeal under *White v. State*,¹ the PCR judge determined all other claims are barred by the statute of limitations. If this ruling on the statute of limitations is to be challenged on appeal, then Rule 243(c) of the South Carolina Appellate Court Rules requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper.

In the event you determine that you do not have a good faith explanation to provide pursuant to Rule 243(c), you must provide this Court with a letter stating that as an


¹ 263 S.C. 110, 208 S.E.2d 35 (1974).

officer of the Court you are unable to set forth any arguable basis for asserting the determination by the PCR judge was improper. 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. *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006). The letter filed with this Court should include proof of service showing that a copy of the letter has been sent to the petitioner.

As to the *White v. State* claim, the PCR judge determined that petitioner was not entitled to any relief on this claim due to laches. However, even if petitioner were ultimately to prevail on this issue, the most he would receive would be a belated appeal from his guilty plea and in that appeal petitioner would have to "provide a written 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), SCACR (explanation required when an appeal is taken from a guilty plea, *Alford* plea, or plea of *nolo contendere*). Therefore, I ask that you please provide the explanation required for a guilty plea appeal.²

The explanations or responses requested above should be served and filed within fifteen (15) days of the date of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to be a stylized name or initials, written over a horizontal line.

CLERK

cc: James Rutledge Johnson, Esquire
Mr. Kevin D. Brown, #156201

² In the event you determine that you do not have a good faith explanation to provide, I would recommend that you follow a procedure similar to that provided for in *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006), for the explanation required by Rule 243(c), SCACR. This will give the petitioner an opportunity to provide a *pro se* explanation for allowing an appeal from the guilty plea.