

Lowcountry Law Office

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: Davis@LowcountryLawOffice.com

October 16, 2015

RECEIVED

OCT 20 2015

S.C. SUPREME COURT

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

326584

RE: Quentin Jenkins v. State of South Carolina, Case No: 2012-CP-10-7980

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis

South Carolina Bar #: 12396

4000 Faber Place Drive, Suite 300

Charleston, SC 29405

(843) 323-4353

Davis@LowcountryLawOffice.com

Enclosure(s). As stated above.

RDD/mmt

cc: J. Rutledge Johnson, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No.: 2012-CP-10-7980

RECEIVED

OCT 20 2015

S.C. SUPREME COURT

Quentin Jenkins,

Appellant,

v.


State of South Carolina,

Respondent.

NOTICE OF APPEAL

Quentin Jenkins appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Roger E. Henderson on August 20, 2015.

October 16, 2015


Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson
Assistant Attorney General
Office of the Attorney General, State of South Carolina
PO Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No.: 2012-CP-10-7980

RECEIVED

OCT 20 2015

S.C. SUPREME COURT

Quentin Jenkins,

Appellant,

v.

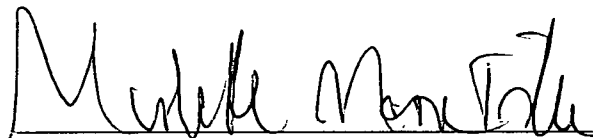
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, J. Rutledge Johnson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on October 16, 2015.

October 16, 2015



Michelle Moore Trimble
Paralegal to Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No.: 2012-CP-10-7980

Quentin Jenkins,

Appellant,

v.

State of South Carolina,


Respondent.

FILED
2015 OCT 16 PM 3:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

NOTICE OF APPEAL

Quentin Jenkins appeals the denial of his Post Conviction Relief application in this case. The Application for relief was denied, following an evidentiary hearing before the Honorable Roger E. Henderson on August 20, 2015.

October 16, 2015



Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson
Assistant Attorney General
Office of the Attorney General, State of South Carolina
PO Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No.: 2012-CP-10-7980

Quentin Jenkins,

Appellant,

v.

State of South Carolina,

Respondent.

BY

JULIE J. ARMSTRONG
CLERK OF COURT

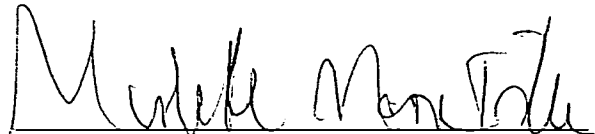
2015 OCT 16 PM 3:10

FILED

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, J. Rutledge Johnson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on October 16, 2015.

October 16, 2015



Michelle Moore Trimble
Paralegal to Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

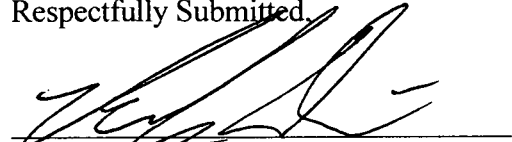
STATE OF SOUTH CAROLINA)	IN THE SUPREME COURT OF SOUTH CAROLINA
)	
COUNTY OF CHARLESTON)	Case No: 2012-CP-10-7980
)	
Quentin Jenkins,)	
)	
Applicant.)	
)	
-versus-)	REQUEST FOR REPRESENTATION ON APPEAL
)	
STATE OF SOUTH CAROLINA,)	
)	
<u>Respondent.</u>)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,



Rodney D. Davis
 South Carolina Bar #: 12396

October 16, 2015
 Charleston, South Carolina.

cc
AG
AT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Quentin Jenkins, 326584)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

FILED
2015 SEP 10 AM 9:57
JULIE J. ANDERSON
CLERK OF COURT

ORDER
Case No.: 2012-CP-10-7980

Date of Hearing: July 20, 2015
Presiding Judge: The Honorable Roger Henderson
Applicant's Attorney: Rodney D. Davis
Respondent's Attorney: J. Rutledge Johnson
Court Reporter: Phyllis Norton

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed December 7, 2012. The Respondent made its Return and Partial Motion to Dismiss on or about February 4, 2015. An evidentiary hearing into the matter was convened on July 20, 2015, at the Charleston County Courthouse. Applicant was present along with Applicant's PCR attorney, Mark Peper ("PCR counsel"). In addition, the Court had before it the records of the Charleston County Clerk of Court, the Supreme Court of South Carolina and the transcript of the proceedings against the Applicant.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections. In April 2007, the Applicant was indicted by a Charleston County Grand Jury for two counts of Murder and two counts of Possession of a Weapon during a Violent Crime. A trial was commenced and the Applicant was convicted of the charges. The Honorable Deadre Jefferson

sentenced the Applicant to concurrent terms of imprisonment for forty (40) years on each count of Murder and five (5) years for each weapon charge. Applicant appealed his conviction and the South Carolina Court of Appeals dismissed.

Applicant filed a PCR claim on October 27, 2010. Respondent filed a Return on February 10, 2011. An evidentiary hearing occurred on November 18, 2011, before the Honorable Kristi L. Harrington. The Applicant was represented by Mark Peper of the Charleston County Bar. Following the hearing, Applicant's PCR was dismissed with prejudice on December 20, 2011. Applicant filed a pro se Motion for a Belated Writ of Certiorari on October 12, 2012. PCR Counsel filed a Notice of Appeal on October 23, 2012. The South Carolina Supreme Court dismissed the matter on November 5, 2012, and issued the remittitur on November 26, 2012. Applicant filed the current PCR application on December 12, 2012 and amended the application on June 6, 2013.

At the evidentiary hearing, Applicant sought relief as to a belated appeal only. Based on the documents in the record and the waiver of any other potential PCR claims, the State conceded the Applicant's request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety. In a PCR action the Applicant bears the burden of proving each of the allegations raised by the application in order to receive any relief. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

This Court finds the Applicant is entitled to a direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel

[Handwritten signature]
#1

that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When a criminal defendant requests an appeal, but counsel fails to file an appeal, counsel is deemed deficient. Flemming v. State, 309 S.C 380, 381, 731 S.E.2d 889 (2012). In such a case, the defendant is entitled to a belated appeal without showing the appeal would likely have had merit. Id.

In White v. State, the South Carolina Supreme Court held that even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Based off of the forgoing, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal. This Court concludes the Applicant is entitled to a belated review of his plea pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has withdrawn all complaints against PCR counsel with the exception of the request for a belated appeal. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

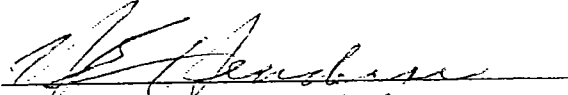
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate

review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Applicant is granted an appeal pursuant to White v. State. Within thirty (30) days of receipt of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions;
2. All other claims raised in the application for Post-Conviction Relief must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to the custody of the Respondent.

IT IS SO ORDERED.


The Honorable Roger E. Henderson
Circuit Court Judge

August 20, 2015

#4

Lowcountry Law Office
Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

F



U.S. POSTAGE
\$3.40
FCM LG ENV
29485
Date of sale
10/16/15
06 2500 85
083092224

USPS® FIRST-CLASS MAIL®