

# FALK LAW FIRM, LLC.

James K. Falk

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October 15, 2015

Clerk of Court  
Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29201

Dear Mr. Shearouse:

I have enclosed what I hope to be duplicate originals of a Notice of Appeal I mailed Tuesday of this week. Because I did not keep a copy of my earlier transmittal I submit the enclosed. If you have already received my prior filing please disregard this second filing. If not, please return a stamped copy of the Notice in the enclosed SASE.

Thank you for your assistance.

With best regards, I am,

James K Falk



Enclosures

cc:    J Rutledge Johnson, Esq.  
       Assistant Attorney General  
       P.O. Box 11549  
       Columbia, SC 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Honorable Larry B Hyman, Jr. Circuit Court Judge

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Case No.: 2014-CP-10-5221

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Daniel Hamrick #357851.....Petitioner

v.

State of South Carolina.....Respondent

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NOTICE OF APPEAL

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The Petitioner Daniel Hamrick appeals the Honorable Larry B Hyman, Jr's September 16, 2015 Order of Dismissal and Grant of Appeal Pursuant to White v State. Undersigned counsel received notice of entry of the order on September 22, 2015. A copy of the order on appeal is attached to this notice.

Respectfully submitted



James Falk  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402  
Attorney for Petitioner

October 15, 2015

*Other counsel of Record*  
J. Rutledge Johnson  
S.C. Attorney General's Office  
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
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Daniel Hamrick #357851.....Petitioner

v.

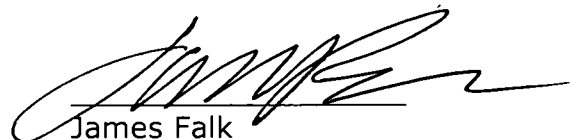
State of South Carolina.....Respondent

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PROOF OF SERVICE

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I, James K Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorney of record J. Rutledge Johnson S.C. Attorney General's Office PO Box 11549 Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this September 15, 2015.



James Falk  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402  
Attorney for Petitioner

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS )  
NINTH JUDICIAL CIRCUIT )

Daniel Hamrick, #357851, )

2014-CP-10-5221 )

Applicant, )

**ORDER OF DISMISSAL AND )  
GRANT OF APPEAL PURSUANT )  
TO WHITE V. STATE )**

v. )

State of South Carolina, )

Respondent. )  
\_\_\_\_\_ )

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2015 SEP 22 PM 12:23

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 26, 2014. The Respondent made its Return and Motion to Dismiss or about August 26, 2015.

The matter was added to the September, 2015 PCR term of Court in Charleston County. James K Falk, Esq. represented the Applicant. J. Rutledge Johnson, Esquire of the South Carolina Attorney's General Office represented the Respondent. Before the case was called, the parties advised the court that an agreement was reached to resolve the Applicant's PCR case through a consent order.

**I.**

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted by the February 2012 term of the Charleston County Grand Jury for felony driving under the influence resulting in great bodily injury (2012-GS-10-1033). J. Scott Bischoff, II and Donald McCune represented him, with Mr. Bischoff acting as lead counsel. On October 21, 2013, the Applicant proceeded to a jury trial, and on October 25, 2013 Applicant was found guilty of the indicted charge. The Honorable Debra Jefferson sentenced the Applicant to confinement for fifteen (15) year term for

felony driving under the influence resulting in great bodily injury. Applicant timely notified Mr. Bischoff that he wanted to appeal the decision. As computed in accordance with Rule 203 SCACR, the deadline for filing Notice of Appeal was November 4, 2013. Mr. Bischoff filed notice of appeal on November 7, 2013.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The judge violated my 4th amendment rights.
2. The judge improperly instructed the jury.
  - a. She referenced statutes not listed in the indictment.
3. The judge did not give me a fair trial.
  - a. She let the prosecutor do whatever he wanted to try to convict me.

Applicant's PCR counsel advised the Attorney's General Office that Applicant wished to amend his PCR application to include the allegation that trial counsel denied him of his right to file a direct appeal.

#### **SUMMARY OF COURT'S EXHIBITS**

Applicant's PCR counsel provided the court with the May 29, 2015 Affidavit of J. Scott Bischoff and the July 10, 2015 Affidavit of Applicant. The Court entered the two affidavits as courts exhibits 1 & 2.

In his affidavit Applicant stated:

1. After the verdict, Applicant instructed Mr. Bischoff to file an appeal.
2. That he waived his right to an evidentiary hearing on any issues he could raise through a PCR application other than his right to file a belated review of direct appeal issues pursuant to White v. State.
3. That he was aware that if there were other grounds supporting his PCR application, the PCR judge would have the authority to remand his case back for a new trial, but

by entering into the consent order he was forever waiving his right to have a PCR Judge grant this relief. That the only opportunity he would have for a new trial is through the direct appeal of his criminal conviction.

4. That he discussed the matter with his PCR counsel, who explained the significance of entering into the consent order, and that he fully understood his rights.

In his Affidavit Mr. Bischoff stated:

1. That he was retained to represent Mr. Hamrick on his charges and that he was lead counsel at his October 2013 jury trial.
2. That within 10 (ten) days of his conviction Mr. Hamrick asked him to file a Notice of Appeal pursuant to Rule 203 SCACR
3. That a Notice of Appeal was served on the prosecuting Assistant Solicitor and filed with Charleston County clerk of court on November 7, 2013. That the Notice of Appeal was not timely filed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court agrees that the allegation that the Applicant was denied a direct appeal is meritorious. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).<sup>1</sup>

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his

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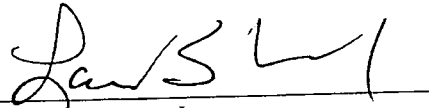
<sup>1</sup> "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his conviction(s). A petition for belated review pursuant to White v. State can remedy the Applicant's lack of a direct appeal.

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED!

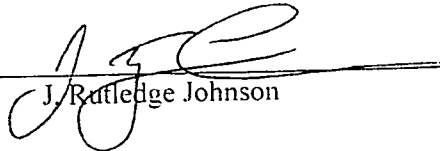


Larry B Hyman Jr.  
Presiding Circuit Court Judge  
Ninth Judicial Circuit

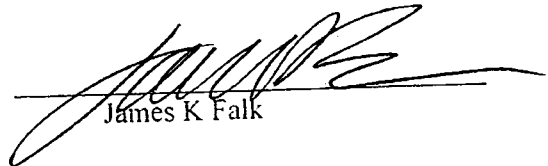
9-16, 2015

Cowsey, South Carolina.

I consent:



J. Rutledge Johnson



James K Falk