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RECEIVED

November 11, 2015

NOV 16 2015

Via US Mail

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. SUPREME COURT

**Re: Notice of Intent to Appeal from Eli Torrence v. The State of South Carolina
C.A. No.: 2014-CP-23-3924**

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Perry H. Gravely's Order of Dismissal to be challenged on appeal. I must inform the Supreme Court that as an officer of this Court, I am unable to identify any issue which can be reviewed on appeal. By copy of this letter, I am instructing Appellant that if he must notify this Court, in writing, no later than twenty (20) days from the date of this letter, of any arguable basis for an appeal from his guilty plea as required by Rules 203(d)(1)(B) of the South Carolina Appellate Court Rules. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

NOV 16 2015

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Case No. 2014-CP-23-3924

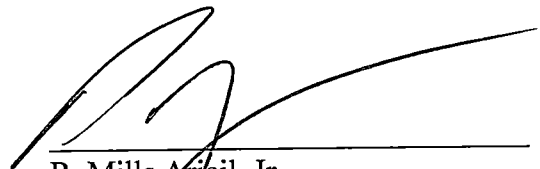
Eli Torrence,..... Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Perry H. Gravely's Order of Dismissal dismissing Appellant's application for post-conviction relief. On November 3, 2015, the Honorable Perry H. Gravely signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on November 10, 2015. A copy of the Honorable Perry H. Gravely's Order of Dismissal is attached.



R. Mills Arjail, Jr.
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Attorney for Eli Torrence

Greenville, South Carolina
November 11, 2015

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2303924

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 NOV 5 PM 4 42

Eli James Torrence vs. South Carolina State Of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____

- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court;
Dated at Greenville, South Carolina, this _____

Court Reporter:

PRESIDING JUDGE - Perry H Gravely

This judgment was entered on the _____, and a copy mailed first class this _____, to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
2014-CP-23-3924

COUNTY OF GREENVILLE)

Eli James Torrence,
S.C.D.C. No. 356338,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL H. WICKENSIMMER
2015 NOV 5 PM 4 42

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 17, 2014. The Respondent made its return and motion to dismiss dated November 22, 2014. A hearing was convened at the Greenville County Courthouse on October 21, 2015, at which time the Applicant was present and represented by R. Mills Ariail, Jr., Esquire. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General. At the hearing, the Respondent made a Motion to Dismiss, arguing the Applicant failed to state a cognizable claim for relief under the Uniform Post-Conviction Procedure Act.

I. PROCEDURAL BACKGROUND

The Applicant is confined in the South Carolina Department of Corrections.¹ On October 26, 2012, the Applicant was issued tickets for driving without a license (2012A2310200074), simple possession of marijuana (2012A2310200075), and reckless driving (2012A2310200077).

On August 15, 2013, these matters were disposed of in a bench trial. The Applicant

¹ The Applicant is currently serving a 15-year sentence after he pled guilty to several Pickens County charges.

proceeded pro se. The Honorable Dean E. Ford sentenced the Applicant to time-served for each of the three charges. The Applicant did not appeal.

II. ALLEGATIONS

In his post-conviction relief (PCR) application, the Applicant makes the following allegations:

1. "Involuntary guilty plea."
2. "Violation of my 6th United States Constitutional Amend."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Fairview/Austin Summary Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the pleadings and makes the following findings of fact and conclusions of law.

The Applicant argued he never pled guilty to any charges in magistrate court and never saw Judge Ford. Rather, the Applicant argued a different magistrate court judge (Judge Cagle) visited him in Lieber Correctional Institution and asked him whether he wanted an attorney on these charges. The Applicant argued his due process rights were violated. The Applicant stated the records from the Fairview/Austin Summary Court are incorrect.

This Court finds the Applicant has failed to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act), S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and

heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

This Court finds that, even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. While the Applicant alleges there was an involuntary guilty plea, the certified copies of the Fairview/Austin Summary Court records indicate there was a bench trial in this case. In addition, in post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel, yet the Applicant was not represented by counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). Further, while the Applicant alleges his Sixth Amendment rights were violated because he did not have counsel, this Court notes this is an issue that should have been handled on direct appeal. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974); see also S.C. Code Ann. § 17-27-20(b) (2003) (noting PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction").

The Applicant failed to produce any credible evidence or testimony to support his allegations. Accordingly, this Court finds the Applicant failed to meet his burden of proof, and

the PCR application must be dismissed. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (holding that, in a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”).

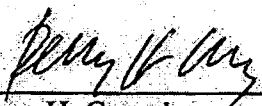
IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds the PCR application must be dismissed. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3rd day of November, 2015.



Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

Wenatchee, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.2014-CP-23-3924

Eli Torrence,..... Appellant,

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this November 11, 2015, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
Attorney for the State of South Carolina

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

Eli Torrence SCDC# 00356338
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472

SC Commission of Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211-1433

Denise Tanner LaBeck
Denise Tanner LaBeck

November 11, 2015