

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Clarendon County

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

DEC - 8 2015

S.C. Supreme Court

BILLY LISENBY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000886

APPENDIX

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Appellate Defender

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ATTORNEYS FOR RESPONDENT

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INDICTMENT 136

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF CLARENDON)	2010-GS-14-00484
)	
)	
)	
State of South Carolina))
)	
vs.	)	TRANSCRIPT OF RECORD
)	
Billy Lisenby))
<u>DEFENDANT</u>	)	July 11, 2011
		Florence, South Carolina

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE.

A P P E A R A N C E S:

AMY LAND, ASSISTANT SOLICITOR
Attorney for the State

SCOTT ROBINSON, ASSISTANT ATTORNEY GENERAL
Attorney for the Defendant

KESHIA REED
Official Court Reporter

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(WHEREUPON, there were no witnesses called.)

1 MS. LAND: Your Honor, this is Bill Lisenby,
2 indictment 2010-GS-14-484. He is pleading guilty as he's
3 indicted and that is to assault on a correctional facility
4 employee. We are recommending six months.

5 THE COURT: Due to the changes in the law, what
6 does this carry, Mrs. Land?

7 MR. ROBINSON: I think it was six months to five
8 years, Your Honor.

9 THE CLERK: Raise your right hand. Do you swear
10 to tell the truth, the whole truth, and nothing but the
11 truth so help you God?

12 THE DEFENDANT: I do.

13 THE COURT: Mr. Robinson, you represent the
14 defendant?

15 MR. ROBINSON: I do, Your Honor.

16 THE COURT: You explain to him the charge
17 contained in this indictment, the possible punishment and
18 his Constitutional Rights including his right to a jury
19 trial?

20 MR. ROBINSON: I have.

21 THE COURT: Under the new law, Mrs. Land, you
22 think that the assault on a correctional officer has been
23 replaced with the assault and battery second?

24 MS. LAND: That's correct.

25 THE COURT: Which goes the former is six months

1 to five years. New law is up to ten years for assault and
2 battery second. No, up to three. Assault and battery
3 first is up to ten. Assault and battery second is up to
4 three.

5 All right. You are Billy Lisenby; is that
6 correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Before I can accept your
9 plea, Mr. Lisenby, I have to make sure that you understand
10 the charge against you and your Constitutional Rights.
11 I'm going to ask you some questions. If you don't
12 understand the questions, you tell me. I'll be glad to
13 explain them to you or you may talk with your lawyer. You
14 understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How old are you?

17 THE DEFENDANT: Thirty-five.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: I graduated.

20 THE COURT: What kind of work do you usually do
21 when you not in prison?

22 THE DEFENDANT: I'm disable.

23 THE COURT: Are you today under the influence of
24 any kind of drugs or alcohol?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you today aware of any physical,
2 emotional or nervous problem that would keep you from
3 understanding what you're doing here today?

4 THE DEFENDANT: No, sir.

5 THE COURT: You heard your attorney tell me that
6 he has explain to you the charges against you, the
7 possible punishment and your Constitutional Rights. And
8 that you understand these things; is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, the indictment in this case
11 which has been returned as a true bill by the grand jury
12 of Clarendon County charges that you did on or about
13 March 30th of 2009 knowingly and willfully assaulted,
14 wounded a correctional facility officers, specifically
15 Natasha Miller. And that charges originally assault on a
16 correctional facility employee, is still what the charge
17 is that has now been eliminated from our law and the
18 charge is now one of assault and battery in the second
19 degree. Assault on a correctional employee carries six
20 months to five years. Now, carries only up to three
21 years, but in view of the State's recommendation, it
22 really is not going to make any difference. You
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, Mr. Lisenby, is that the way

1 you pronounce it?

2 THE DEFENDANT: Lisenby.

3 THE COURT: Okay. When you plead guilty, you
4 give up certain important Constitutional Rights. You give
5 up your right to remain silent. You give up your right to
6 have a jury trial. And you give up your right to subpoena
7 witnesses and also to make witnesses against you come into
8 court. You understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Those are all Constitutional Rights
11 that you waive or give up when you plead guilty and there
12 be no jury trial. You understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand the nature of the
15 charge against you and the consequences of a guilty plea.
16 How do you wish to plead to the charge of assault on a
17 correctional facility employee guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: You understand that when you plead
20 guilty, you admitting the truth of the charge against you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Pleading guilty because you are
23 guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: The State is recommending that I

1 give you a six month sentence and has no objection as I
2 understand it to going back to the time that he would have
3 been released; is that correct?

4 MS. LAND: That's correct.

5 THE COURT: You understand that that is the
6 recommendation of the State?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Other than that recommendation, has
9 anyone promised you anything to get you to plead guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you pleading guilty freely and
12 voluntarily?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Represented in this case by
15 Mr. Robinson. Are you satisfied with the matter in which
16 Mr. Robinson has advised and represented you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you understand that you have
19 the right to appeal and you must do so within ten days?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, Mrs. Land.

22 MS. LAND: Your Honor, this occurred March 30th
23 of 2009 in the Turbeville Correctional facility. The
24 officer in this case is Natasha Miller, who is still
25 employed by that facility as a correctional facility

1 employee. She was working that day and instructed
2 Mr. Lisenby to do something. He struck her in the face.
3 He admits that he struck her in the face, but he did say
4 in his interview with the investigator that he did so
5 because she physically threatened him first. At any rate,
6 he struck her in the face and we think that's a fair
7 sentence.

8 THE COURT: All right. There is a substantial
9 factual basis for the plea. I find the defendant's
10 decision to plead guilty is freely, voluntarily and
11 knowingly and intelligently made. And he has had the
12 advice of counsel of an attorney with whom he says he's
13 satisfied. The Court will accept his plea.

14 Mr. Robinson.

15 THE DEFENDANT: Thank you, Your Honor.
16 Mr. Lisenby is 35 years of age, he's married. He has a
17 college education. And I think he told you earlier about
18 the type of work that he did. Basically, what Mrs. Land
19 told you is correct about the initial -- he feels like he
20 was provoked. I have talk to him and explain to him that
21 unfortunately when you're in a correctional facility
22 setting, the officers certainly have the right and the
23 authority to give you orders and directives even if you
24 think they're not justified. And that does not call into
25 play any type of self defense or right to strike out just

1 because of that.

2 It's not the same as it is on the street or in
3 other type of settings. He understands that now, Your
4 Honor. And standing before you today admitting his guilty
5 to these charges, pleading guilty. You know, it was not
6 an unprovoked attack or a situation where he was trying to
7 injure the correctional officer simply where he felt that
8 was -- his rights had been violated which in reality they
9 had not. He lashed out at her, is sorry for that and has
10 continued to be incarcerated even though but for these
11 charges he would have been released sometime ago.

12 THE COURT: Tell me about that we need to get
13 that on the record. He was convicted of something else
14 and it's on appeal and he had posted an appeal bond.

15 MR. ROBINSON: Yes, sir, Your Honor. June 16th
16 2010, actually the date the order was signed, there was a
17 hearing conducted on June 16th 2010, at the Darlington
18 County courthouse before the Honorable Paul Michael Burch.
19 He signed an order on August 10th 2010, releasing
20 Mr. Lisenby on a \$150,000 surety bond with the requirement
21 that the applicant have a curfew of 7:00 p.m. to 7:00 a.m.
22 And I will hand up a clocked copy of that. It's not a
23 certified copy, but it would have been August the 10th
24 2010 and it was clocked in in ---

25 THE COURT: What was he convicted of, Mr.

1 Robinson?

2 MS. LAND: Assault and battery high and
3 aggravated.

4 THE DEFENDANT: Assault with intent to kill and
5 failure to stop for a blue light.

6 THE COURT: Assault with intent to kill?

7 THE DEFENDANT: Yes.

8 MR. ROBINSON: High speed chase where there was
9 some driving, obviously, that rise to that.

10 THE COURT: He was first granted a ---

11 MR. ROBINSON: \$150,000 surety bond on appeal.

12 THE COURT: And the appeal is pending?

13 MR. ROBINSON: Yes, sir.

14 THE COURT: I mean, it has not been disposed of
15 being handled by the Office of Appellate Defense, I
16 assume?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. The sentence of the Court is
19 the defendant is committed to the department of
20 corrections for a term of six months, be given credit for
21 time served since posting of the appeal bond that was set
22 by Judge Burch.

23 MR. ROBINSON: Thank you, Your Honor, that
24 matter done. He just had a question there was another
25 warrant that he believe was the issue at the same time out

1 of this and just wants to make sure that's clear with the
2 department, but that's nothing this Court needs to...

3 END OF REQUESTED TRANSCRIPT
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FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)
)
Billy Lee Lisenby JR;)
)
Full name and prison number (if any) of Applicant.)

2012-CP-14-00132
IN THE COURT OF COMMON PLEAS

v.

State of South Carolina

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE APPLICATION FOR
DATE *3/14/2012* **POST-CONVICTION RELIEF**
Beulah M. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

BEULAH M. ROBERTS
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention *Keeshaw Corr. Inst.*
2. Name and location of Court which imposed sentence *Clarendon County Courthouse Manning S.C.*
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) *2010-65-14-484*
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *July 11, 2011 (6) months*
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. SC, Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Denied
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. Feb. 2012
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective Assistance of Counsel

- (a) Denial of Due Process
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____ See Attachments [1-4]
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Scott L. Robinson 8 South Brooks St. Manning, S.C. 29102
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
I ask that my case be overturned
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
)
County of *Clarendon*)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Billy Lee Lively

SWORN to and subscribed before me this _____
day of _____, 2____.

Notary Public (L.S.)

My Commission Expires: _____

Ineffective Assistance of Counsel

Petitioner's Attorney was ineffective in not pursuing the M'Naughten insanity defense. This defense is to be brought about when accused lacks capacity to distinguish moral or legal right from moral or legal wrong at time of crime is relieved of responsibility for his or her acts.

Petitioner suffers from intermediate explosive disorder and has been receiving treatment for this disorder since his near fatal accident in 2005. Petitioner is 100% percent disabled and receives disability benefits due to his disorder.

Petitioner sent his trial attorney several letters explaining that SCDC took him off his psychiatric meds. for over a year. [REDACTED] Petitioner asked his attorney about the insanity defense and he stated "you don't want to piss Amy off." Also he explained through letters that he wasn't even suppose to be at Turberville C.I

An accused who lacks the capacity to distinguish moral or legal right from moral or legal wrong at the time of the crime is relieved of responsibility for his acts. *Davenport v. State* Cite as 389 S.E.2d 649 (S.C. 1990); *State v. Law*, 270 S.C. 664, 244 S.E.2d 302 (1978); *State v. Cannon*, 260 S.C. 537, 197 S.E.2d 678 (1973). This is the M'Naughten insanity defense, codified as S.C. Code 17-24-10 (Cum. Supp. 1993).

Attorney's counsel did not ask that the M'Naughten test be given as required in § 17-24-30. Once Petitioner presented evidence showing he does have a past and present mental health history, why would SCDC place him on numerous meds after the assault, and re-diagnose him with intermediate explosive disorder.

Facts Part 1

In March of 2009 Petitioner was transferred to Turbeville Corr. Inst. Petitioner suffers from intermediate explosive disorder, and several other disorders. This disorder is the underline cause of Petitioner's arrest, and due to this disorder he is 100% percent disabled. In SCDC Petitioner is classified as Outpatient Mental Health. Know this SCDC sent Petitioner to Turbeville C.I. Policy OP-21.04, "Inmate Classification Policy states on page 17-18 "Inmates with Outpatient Mental Health medical classifications can be assigned to any institution, except Broad River/Stop Unit, Trenton, Stokeson, Wateree, and straight timers at Turbeville." Petitioner was sent to Turbeville where the officers/staff were not trained to handle Outpatient Mental Health inmates such as myself (Petitioner). The ending results to this, was petitioner assaulting a officer, receiving 720 Days Disciplinary Detention, and Criminal charges. He wasn't suppose to be there, and SCDC placed the officers in danger by sending him to Turbeville, and Petitioner. Also Petitioner was there (2) two months before he was seen by mental health. Once this was discovered Petitioner was Out Patient Mental Health, he was placed on medication and transferred less than a month later.

Petitioner filed a grievance in SCDC complaining about this issue on Nov. 19th 2010.
[SEE Exhibit 1, 2, 3, and 4.]

Exhibit three and 4 is Policy OP-21 04 Inmate Classification Plan which states
Out Patient Adults cannot be at Turbeville C.I.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Due: 12/27/10

INMATE NAME: Billy Lee Lisenby Jr.
SCDC NUMBER: #200273
INSTITUTION: Bridgeland Corr. Inst.
HOUSING UNIT: ASUHH 127
WORK ASSIGNMENT: N/A

RECEIVED
JAN 18 2011
INMATE GRIEVANCE

Office Use Only
Grievance No. RCI-110470
Code: General IP
Policy _____
Disc. Hear. _____
Class. _____
Date Received 1/6/11
IGC Initials ML
 16A - ABH 5-11-2011

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
Policy OP-21.04, "Inmate Classification Policy states on page 17-18 "Inmates with Outpatient Mental Health medical classifications can be assigned to any institution, except Broad River/ Stop Units, Trenton, Sturson, Wakeec, and straight times at Turbeville."
I was sent to Turbeville where the officers/staff was not trained to handle Outpatient Mental Health inmates such as myself.
Due to this I assaulted a officer and was given a judicial charge.

Billy Lisenby Dec. 24, 2010
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Your concern has been reviewed. Due to your actions you were criminally charged. Your action requested cannot be granted through the Inmate Grievance System.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

James S. [Signature] 5/20/11
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Billy Lisenby 6-8-11
Grievant Signature Date

M. E. [Signature] 6/8/11
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Exhibit #1

Facts Part 2

Petitioner suffers from intermittent explosive disorder. In society, he was prescribed to Xanax, and several other medications. When Petitioner got to R&E in 2008 he was taken off all mental health meds. On 10-23-08 Petitioner advised SCDC mental health as follows:

"Inmate voiced concerns about being prescribed psychotropic medication. Inmate mentions Brian Injury resulting from an automobile accident years ago. Inmate voiced concerns about meeting w/psy Doctor. Health concerns. I/M STS he is okay but vague in his explanation. A/Dx: Depression."

The Doctor stated "as follows:

"Inmate's Motor skills or Stance Appeared to be off balance. Head Injury could account to inmate's build. Inmate was appeared to be anxious during assessment."

On 12-01-08 the medical record states as follows:

██████████
 "I/M was observed in his SMU cell on 11-19-08. I/M was noted to be A/O X-3. I/M voiced concerns about his PSY medication which he STS was D/C's several months ago and expressed an interest in starting meds again."

SCDC ignored Petitioner's cry for help. Due to them not having him on his meds, my have caused him to explode. They refused to treat him for his disorder.

[See Exhibit #5 and #6]

#6 of The Exhibits shows the meds. he was on.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Billy Lee Lisenby JR.
SCDC NUMBER: #200273
INSTITUTION: Piedmont C.I.
HOUSING UNIT: A50724 BA-18
WORK ASSIGNMENT: N/A

APR 26 2011

Office Use Only
Grievance No. RCI-0393-11

Code: General

Policy
Date: 4/26/11
#106
4/29/11
M/T

Unprocessed

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) I have a pending Criminal Charge for assaulting a Correctional Officer. Please note I suffer from intermediate explosive disorder. In society, I was prescribed to Xanax, and several other medications. When I got to R&E in 2008 I was taken off all my mental health meds. On 10-23-08 I advised SCDC mental health as follows "Inmate voiced concerns about being prescribed psychotropic medication. Inmate mention Brain Injury resulting from an automobile accident years ago. Inmate voiced concerns about meeting w/psy Doctor. Health concerns. I/m STS he is okay but vague in his explanation. A/DO: Depression." The Doctor stated "Inmate Motor skills or stance appeared to be off balance. Head Injury could account to inmate's Gait. Inmate was appeared to be anxious during assessment."
On 12-07-08 states "I/m was observed in his smu cell on 11-19-08. I/m was noted to be A/o X-3. I/m voiced concerns about his PSY medication which he sts was D/C's several months ago and expressed an interest in starting meds again."
SCDC ignored my cry for help. Their neglect caused me and a officer to be severely beaten.

ACTION REQUESTED: Due to SCDC's neglect I ask that my criminal charges be dropped.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

The Warden didn't return my request.

Billy Lee Lisenby April 25, 2011
Grievant Signature Date

ACTION TAKEN BY IGC:

This grievance is being returned to you unprocessed because of having been processed on RCI-0917-09 and the time frame.

M. E. Montrose 5-4-11
IGC Signature Date

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

11/2

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Billy Lee Liscoby JR.
SCDC NUMBER: #200273
INSTITUTION: Ridgeland Corr. Inst. NOV 22 2010
HOUSING UNIT: ASUT27 124 J.O.
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. RCI-1104-10
Code: General IP
Policy _____
Disc. Hear. _____
Class. _____
Date Received 11/24/10
IGC Initials ML

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy indicate which policy) In March of 2009 I was transferred to Turbeville Correctional Institution. Please note I suffer from intractable explosive disorder, and several other disorders. This disorder is the underlying cause of my arrest, and due to this disorder I'm 100% percent disabled. Here in SCDC I'm classified as Outpatient Mental Health. Knowing this SCDC sent me to Turbeville, C.I. Policy OP-21.04, "Inmate Classification Policy states on page 17-18 "Inmates with Outpatient Mental Health medical classifications can be assigned to any institution, except Broad River/Step Unit, Trenton, Stevenson, Worksee, and straight times at Turbeville." I was sent to Turbeville when the officers/staff was not trained to handle Outpatient Mental Health inmates such as myself. The ending results to this, was me assaulting a officer, receiving 720 Disciplinary Detention, and Criminal Charges. I wasn't suppose to be there, and SCDC placed the officers in danger by sending me to Turbeville, and myself. Also I was there (2) two months before I was seen by mental health. Once this was discovered I was Out Patient Mental Health, I was placed on medication and transferred less than a month later. I can file this grievance after the 15 day time limit pursuant "CA-01.12 13.9 Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures!"

ACTION REQUESTED: I ask that my criminal charges be dismissed, due to the Departments neglect.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Billy Lee Liscoby JR. Nov. 19th 2010
Grievant Signature Date

ACTION TAKEN BY IGC:

Your grievance was investigated and found to have no merit. You were transferred to Turbeville for administrative reasons because you are held accountable for your actions. Therefore, your grievance is denied.

Exhibit #2

M.E. Montfort 12/30/10
IGC Signature Date

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

Billy Lee Liscoby JR. 12-10-10
Grievant Signature Date

SMY-124

WARDEN'S DECISION AND REASON:

LISENBY, BILLY - 200273 - RCI-1104-10

Your grievance was investigated and found to have no merit. You were transferred to Turbeville due to separation reasons. Based on this information, your grievance is denied.

If you disagree with my decision, see Step 5 below.

Beverly Cohen 12/20/10
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
 I do not accept the Warden's decision and wish to appeal.

Billy Lisenby 12-22-10
Grievant Signature Date

M. E. Monfort 12/22/10
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

necessary and required information, the SCC will approve/disapprove recommendation for Minimum Out/Minimum Restricted custody or security level 1B by completion of the automated custody review.

15. HEALTH INFORMATION FOR INSTITUTIONAL ASSIGNMENTS: If "No Restriction" is indicated, the inmate can be assigned to any institution from a medical perspective.

24-HOUR NURSING CARE

Males: Broad River Correctional Institution, Evans Correctional Institution, Lee Correctional Institution, Lieber Correctional Institution, McCormick Correctional Institution, Kirkland R&E Center, Ridgeland Correctional Institution, Turbeville Correctional Institution
Females: Leath Correctional Institution

AREA MENTAL HEALTH CENTER

Males: Lee Correctional Institution, Lieber Correctional Institution, Perry Correctional Institution, Turbeville Correctional Institution (young offenders only)
Females: Camille Graham Correctional Institution

DAILY NURSING COVERAGE

Males: Tyger River Correctional Institution, Kershaw Correctional Institution, MacDougall Correctional Institution, Manning Correctional Institution, Wateree River Correctional Institution, Trenton Correctional Institution, Perry Correctional Institution, *Allendale Correctional Institution*
Females: Leath Correctional Institution, *Camille Graham Correctional Institution*

HIV/AIDS

Males: Broad River Correctional Institution
Females: Camille Graham Correctional Institution

DIALYSIS ACCESSIBLE

Males: Broad River Correctional Institution
Females: Camille Graham Correctional Institution

INTERMEDIATE CARE UNIT

(Note: Prior approval by the Director of Mental Health Services/Designee is required.)

Males: Kirkland Correctional Institution
Females: Camille Graham Correctional Institution

HANDICAP UNIT

(Note: Prior approval by the Medical Director/designee is required.)

Males: Allendale Correctional Institution, Evans Correctional Institution, Lee Correctional Institution, Lieber Correctional Institution (deaf and blind)
Females: Camille Graham Correctional Institution

MENTAL RETARDATION PROGRAM

(Note: Prior approval by the Mental Health Director/designee is required.)

Males: Stevenson Correctional Institution
Females: Camille Graham Correctional Institution

OUTPATIENT MENTAL HEALTH

Exhibit #3

Inmates with Outpatient Mental Health medical classifications can be assigned to any institution, except Broad River/STOP Unit, Trenton, Stevenson, Wateree, and straight timers at Turbeville.

16. SPECIAL MANAGEMENT UNIT (SMU) SECURITY DETENTION: For more specific details, refer to SCDC Policy/Procedure OP-22.12, "Special Management Unit."

16.1 When reviewing inmates for release from security detention to a less restrictive custody, the reasons for initial placement in SD and overall behavior while in SMU will be taken under consideration. If this review indicates that the inmate was placed in SD for life threatening circumstances, serious injury/assault, or criminal charges as a result of the incident, the inmate will be placed in medium custody. Inmates may be placed in minimum custody if disciplinary convictions/incidents are of a less serious nature.

17. PROTECTIVE CUSTODY: For more specific details, refer to SCDC Policy/Procedure OP-22.23, "Statewide Protective Custody."

18. SEPARATIONS/CAUTIONS: To establish guidelines to flag the records of inmates for whom special caution must be taken for certain actions involving these inmates.

18.1 State Classification will be responsible for issuing the official caution to be placed in the inmate's records when conditions or circumstances exist that would potentially jeopardize the safety and security of the inmate, employee(s), or other persons. SCDC Form 19-141, "Separation/Caution Memorandum," will be submitted to the State Classification Committee (SCC).

18.2 The reasons an inmate may be identified with a Separation/Caution include:

- The inmate has testified against another inmate, and this is verified through court documentation, solicitor's office, or law enforcement.
- The victim, victim's family members, or known associates are incarcerated or employed at the inmate's assigned institution, and this is verified through court documentation, solicitor's office, law enforcement, victim/witness office, or employee.
- There are known strong hostilities between inmates, and this is verified by MINs and/or SCDC Form 19-29, "Incident Report."
- The inmate has physically assaulted and/or caused life threatening injuries to an SCDC employee who works at an institution, and this is verified by MINs and/or SCDC Form 19-29.
- A relative of an inmate is employed at the institution or with the SCDC.

18.3 When an employee determines that circumstances warrant the placement of a separation in an inmate's record, s/he will complete SCDC Form 19-141, "Separation/Caution Memorandum," verify the information, attach any documentation, and forward it to the Warden/Duty Warden for approval. The Warden/Duty Warden will sign the SCDC Form 19-141 and forward it to the SCC.

18.4 Upon receipt of SCDC Form 19-141, "Separation/Caution Memorandum," SCC will review for approval or disapproval. When a separation is approved, the information is entered into the automated system and SCDC Form 19-141 and documentation will be filed in SCC separation files. Temporary placement of SCDC Form 19-141 in Section 2 may be permitted only until the automated form is returned. An automated form (golden rod copy) will be printed and filed in the inmate's Central Record and Institutional Record. This copy will be placed in Section 2 of both records with nothing being filed on top of the Caution (golden rod). When SCC disapproves a Separation/Caution, a return memo will be forwarded to the institution with an explanation as to the reason for disapproval. This explanation should be written on the Staff Memorandum of the inmate's record and the memo filed in Section 3 of the Inmate Record.

18.5 All active cautions will be reviewed for accuracy and applicability once every two (2) years. The Division Director of Classification and Inmate Records will be responsible for establishing a review schedule and

Exhibit #4

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: <i>Nurse Davis</i>	TITLE:	DATE: <i>March 31st 2010</i>
INMATE'S NAME: <i>Billy Lisenby</i>		SCDC #: <i>200273</i>
INSTITUTION: <i>P.C.I</i>		LIVING QUARTERS: <i>ASU 128</i>

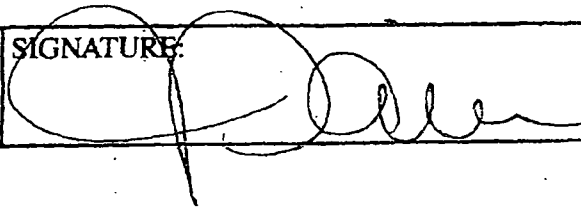
*I would like to know the name of the medicine the psychiatrist has me on.
Also I would like to ^{know} all my medical restrictions, and mental health grade.*

DISPOSITION BY STAFF MEMBER:

*You are on Celesta an Neurontin - your restrictions are: outpatient mental health daily nursing ground floor / bottom bunk no climbing no work at extreme heights.
If you have further questions you need to refer to mental health as well as your "mental Health grade"*

RECEIVED
DATE: APR 02 ANSU
By

SIGNATURE:



South Carolina Medical History

1. On 5-5-08, 5-6-08, and 5-12-08 Petitioner notified SCDC that he suffers from Depression, Intermediate Explosive Disorder, Narcolepsy, and Frontal Lobe Syndrome. He notified SCDC that he was seeking mental health treatment in society. He even gave the Doctor's contact info.
2. Reported he was seeing a Neurologist, on 7-1-08.
3. 7-23-08 explained to SCDC he was on provigil and Xanax for Narcolepsy and Xanax for intermediate explosive disorder. Also reviewed neurologist notes.
4. On 10-23-08 "Inmate voiced concerns about being prescribed psychotropic medication. Inmate voiced concerns about meeting w/psy Doctor. Health concerns. Inmate Motor skills or stance appeared to be off balance. Had Injury Could Account To Inmate's Gait."
5. On 12-01-08 "Inmate was observed in his SMU cell on 11-19-08. I/M was noted to be A/O X3. I/M voiced concerns about his PSY medication which He STS Was D/C's several months ago and expressed an interest in starting MEDS Again."
6. On 4-24-09 ask for Meds for intermediate explosive disorder again.
7. Placed on Psy med after numerous assaults on inmates and office in June 2009, a year after he had been in prison.

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
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 Billy Lisenby, #200273,)
)
)
 Applicant,)
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 v.)
)
 State of South Carolina,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

2012-CP-14-00132

RETURN
 (Appointment of Counsel Requested)

The Respondent, making its Return to the application for post-conviction relief, filed March 14, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court, as well as pursuant to orders of commitment of the Chesterfield Clerk of Court which are not subject to this application for post-conviction relief.¹ The Applicant was true bill indicted during the October 2010 term of the Clarendon County Grand Jury for Assault on a Correctional Facility (2010-GS-14-0484). Scott Robinson, Esquire, represented him. On July 19, 2010, the Applicant pled guilty. He was sentenced by the Honorable Howard P. King to six (6) months imprisonment.

¹ Applicant is currently serving a concurrent sentence for the following charges from Chesterfield County: Assault and Battery with Intent to Kill (2008-GS-13-0352), for which he received a sentence of ten years imprisonment, and Failure to Stop for a Blue Light (2008-GS-13-0351), for which he received a sentence of three years imprisonment.

A timely Notice of Appeal was filed. The appeal was dismissed in a written order dated and filed March 6, 2012 for failure to establish any preserved issues. The Remittitur was sent on March 22, 2012.

Attached herewith and incorporated herein are the records of the Clarendon County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections and appellate records. The guilty plea transcript has been ordered, and will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel; and
2. Due process violation.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 2, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)
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)
 BILLY LISEBY, 200273,)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2012-CP-14-0132

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Shaun Kent, Esquire
Coffey Chandler & Kent, PA
Post Office Box 1292
Manning SC 29102-1292

DATED this 2nd day of July, 2012.

Lauren Meara

 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SUMTER) COURT OF COMMON PLEAS
No. 2012 CP 14 0132

3
4 BILLY LEE LISEBY, JR.)
5 Applicant)
6 versus) TRANSCRIPT OF RECORD
7)
8 STATE OF SOUTH CAROLINA)

9
10 Sumter, South Carolina
11 March 20, 2013

12
13 B E F O R E :
14 HONORABLE W. JEFFREY YOUNG, Judge

15
16 A P P E A R A N C E S :
17 For the Applicant: SHAUN C. KENT, Esq.
18 For the State: MEGAN E. HARRIGAN, Esq.
Office of the Attorney
19 General
20 Reporter Present: PAMELA CARTEE

21
22 HARRIET P. BENNETT
23 Reporter, S. C. Court Administration
46 Regency Oaks Drive
24 Summerville, S.C. 29485
25

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I N D E X

DIRECT-REDIRECT CROSS-RECROSS

BILLY LEE LISENBY, JR.

By Mr. Kent 5

By Ms. Harrigan 11

SCOTT L. ROBINSON

By Mr. Kent 15

By Ms. Harrigan 20

(Matter taken under advisement)

EXHIBITS

- 1
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NO EXHIBITS MARKED OR PROFFERED

1 (The within matter came before the Court for hearing
2 on March 20, 2013)

3 THE COURT: All right.

4 MS. HARRIGAN: Your Honor, this is Billy Lee Lisenby,
5 Junior, versus the State of South Carolina. Docket Number
6 2012 CP 14 0132.

7 The Applicant was indicted during the October 2010
8 Term of the Clarendon County Grand Jury for assault on a
9 corrections officer. The Applicant was represented by Scott
10 Robinson.

11 On July 18, 2010, the Applicant appeared before the
12 Honorable Howard P. King and pled guilty as indicted, and
13 Judge King sentenced the Applicant to six months imprison-
14 ment.

15 A timely notice of appeal was filed which was dismissed
16 by the South Carolina Court of Appeals for failure to show
17 (portion not audible).

18 The Applicant then filed an application for post con-
19 viction relief on March 14, 2012, alleging the ineffective
20 assistance of counsel and due process violations.

21 The Applicant is represented in this action by Shaun
22 Kent.

23 THE COURT: All right. Are you ready to proceed, Mr.
24 Kent?

25 MR. KENT: Yes, sir.

1 THE COURT: All right, you may call your first wit-
2 nes, Mr. Kent.

3 MR. KENT: I would call Billy Lisenby first, Judge.

4 THE COURT: All right. Come around and state your
5 name.

6 WITNESS: Billy Lisenby.

7 BILLY LISENBY, JR., being
8 duly sworn, testified as follows

9 Clerk: State your name and spell your last name for
10 the record.

11 WITNESS: Billy Lisenby. Last name, L I S E N B Y.

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. KENT:

15 Q. Mr. Lisenby, before I get into the matters that are
16 the crux of your PCR, there is a matter I would address.

17 MR. KENT: Judge, if it's okay, I would address another
18 matter.

19 Q. As a result of this case, you actually filed an action
20 against myself, saying that we had not had effective com-
21 munication.

22 A. Yes, sir.

23 Q. Before we go forward, I need to find out if you are
24 comfortable with me going forward and comfortable with the
25 conversations we have had.

APPLICANT ON DIRECT

1 Do you feel as though we have spent enough time discuss-
2 ing your case?

3 A. Yes. We have had multiple phone conversations.

4 Q. And multiple visits?

5 A. Yes, sir.

6 Q. And do you feel comfortable with me going forward with
7 the case in light of the action that you formerly filed
8 against me?

9 A. I do.

10 Q. And as a result you are also dismissing the action that
11 you filed?

12 A. Right.

13 MR. KENT: Judge, if it's okay, based on that, I would
14 like to go forward.

15 THE COURT: Yes, sir. That is on the record.

16 BY MR. KENT:

17 Q. Mr. Lisenby, you have heard the facts by the Attorney
18 General's Office. What do you want to say about your PCR
19 action?

20 A. . .

21 Q. Why did you file a PCR action against Mr. Robinson?

22 A. Because I had asked for him to file an appeal in my
23 behalf, and he didn't.

24 Q. Yes, sir.

25 A. He didn't file my appeal so I had to file it myself;

APPLICANT ON DIRECT

1 I had to get permission from the Court, and after I filed
2 that appeal I didn't know really know whether they appointed
3 the Appellate Defense and I did not file a petition because
4 I thought the defense counsel was the one who would file my
5 information.

6 Q. Yes, sir. So one of your complaints is that Scott
7 Robinson did not file your requested appeal?

8 A. Yes.

9 MS. HARRIGAN: Your Honor, I would like to note for the
10 record that that was not one of the allegations that he has
11 alleged.

12 THE COURT: Let's go into the allegations that have
13 been asserted.

14 MR. KENT: Yes, sir.

15 BY MR. KENT:

16 Q. Let me back up a little bit, Mr. Lisenby. We'll get
17 to that.

18 I want to focus specifically about the case that you
19 pled guilty in when you were represented by Mr. Robinson
20 and what you think he did wrong?

21 A. Well, he didn't inform me of anything at all and I had
22 no communication with him about my case. I asked him to get
23 my medical records.

24 In 2005 I was in a car accident, and I asked for help
25 in getting my medications. Okay, and then -- well, I was

APPLICANT ON DIRECT

1 supposed to be on medication, you know, and at the time
2 he didn't get my medical records, my mental health records
3 that showed my medications and everything.

4 I was in psychiatric help and getting medication, and
5 he didn't help with that. I had no medication the entire time.

6 (Portion not audible on record)

7 Q. And do you believe that Mr. Robinson did not get the
8 medical records that were necessary to your case?

9 A. That's right.

10 Q. And do you believe that if Mr. Robinson had gotten the
11 medical records that you needed him to get to assist you in
12 your case that you would not have had a guilty plea that
13 day?

14 A. There would not have been a guilty plea.

15 Q. Was there a question in your mind at that time about
16 what Mr. Robinson told you?

17 A. Yes. In the beginning I thought the charge was a mis-
18 demeanor. I didn't know that I was pleading to a serious
19 felony charge.

20 Q. So you did not understand that what you were pleading
21 to was not a misdemeanor?

22 A. No, I didn't understand, and if there had been an
23 appeal after that it could have been overturned is what I'm
24 saying.

25 I thought it was a misdemeanor and I could pay a fine

APPLICANT ON DIRECT

1 and go home. Then I found out what it really was.

2 Q. When you say you could have gone home, you were already

3 . . .

4 A. I thought I could get a bond and go home.

5 Q. You think you could have gone home on an appeal bond
6 or something of that sort?

7 A. Yes.

8 Q. You are saying that had Mr. Robinson made it clear that
9 this was a felony and not a misdemeanor, you would not have
10 pled but would have gone to trial?

11 A. Yes.

12 Q. So you are saying he did not adequately inform you
13 concerning the charge against you?

14 A. Yes.

15 MS. HARRIGAN: Your Honor, I would have to object at
16 this point. This was not (Portion inaudible on record)

17 THE COURT: I understand. I'll note your objection.

18 You may proceed.

19 BY MR. KENT:

20 Q. What else do you want to tell us?

21 A. Well, I . . .

22 Q. Just focus on what I'm asking, the procedural things
23 we have to do in this case.

24 A. Well, the way he treated me it was absolutely wrong,
25 and the officer . . .

APPLICANT ON DIRECT

1 Q. This was something you discussed with Mr. Robinson as
2 well as getting your medical records?

3 A. Yes, sir.

4 Q. And he never got your medical records?

5 A. No.

6 Q. When you entered into your guilty plea that day, the
7 Judge talked to you and asked you if you were okay to enter
8 your guilty plea on that day.

9 Did you feel you were okay to enter your guilty plea
10 on that day?

11 A. Yes, sir. I thought it was a misdemeanor.

12 Q. I didn't ask that correctly. When the Judge asked you
13 are you suffering from any mental illness or any condition
14 that affected your ability to enter that guilty plea, did
15 you feel as though you were suffering from something that
16 affected your ability to do that that day?

17 A. I was suffering from a condition and I had been on dif-
18 ferent medications.

19 Q. Did you inform the Court that you were on medication?

20 A. No, I don't think I did.

21 Q. Did the Judge ask you that question, are you on medi-
22 cation?

23 A. When I went to Court that day I didn't take my medi-
24 cine. (Portion inaudible)

25 Q. You also stated a claim that Mr. Robinson did not

APPLICANT ON DIRECT

1 pursue a mental illness claim on your behalf?

2 A. Yes.

3 Q. And had he pursued one, you would not have been in the
4 position of entering a guilty plea that day?

5 A. Right.

6 Q. Is there anything else you want to add to the allega-
7 tions we have gone over? This is your day to explain your
8 allegations, and this is your opportunity to say what you
9 want to say.

10 A. No, I think we have gone over everything.

11 Q. Thank you so much. If you would answer any questions
12 Ms. Harrigan has for you.

13 THE COURT: You may question the witness.

14 MS. HARRIGAN: Thank you, Judge.

15 CROSS EXAMINATION

16 BY MS. HARRIGAN:

17 Q. So at the time you entered your plea you did not know
18 you were pleading to a felony?

19 A. No.

20 Q. How many times did you talk about your case with Mr.
21 Robinson?

22 A. I saw very little of him.

23 Q. Do you know the exact number of times you spoke with
24 him?

25 A. No. (Portion inaudible)

APPLICANT ON CROSS

1 Q. Did you inform Mr. Robinson that you had medical prob-
2 lems and were on medication?

3 A. Yes, I told him and asked him to get my medical in-
4 formation. I asked him to help me to help to get my medi-
5 cations that I needed.

6 Q. What records did you ask him to get for you?

7 A. Records showing that I was getting mental health help
8 and medication.

9 Q. Do you mean you wanted him to get medical records from
10 your doctor?

11 A. I asked him to get a copy of my medical records.

12 Q. Why did you need those for your guilty plea?

13 A. Because they would show that I was under treatment
14 prior to what happened and I don't believe the Department
15 of Corrections was ever given that information.

16 Q. But you pled guilty in 2010 and you were given a six
17 month sentence, is that correct?

18 A. Yes.

19 Q. You pled guilty to what you were charged with?

20 A. I thought it was a misdemeanor.

21 Q. Did Mr. Robinson ever discuss the possible sentence
22 you could get?

23 A. We didn't discuss that. (Portion inaudible)

24 I know I asked him if it was a misdemeanor and he said
25 yes.

APPLICANT ON CROSS

1 Q. You are saying he told you it was a misdemeanor?

2 A. That's what he said.

3 Q. Did you tell the Judge during your guilty plea that
4 you were satisfied with Mr. Robinson's services?

5 A. . . .

6 Q. Is that correct?

7 A. Right.

8 Q. But you weren't satisfied with his representation, is
9 that correct?

10 A. Right.

11 Q. Why would you tell the Judge that you were satisfied
12 with Mr. Robinson?

13 A. Because I thought I was getting a plea to a misdemeanor.

14 Q. Okay.

15 A. I didn't really understand what was going on.

16 Q. Why did you tell the Judge during your guilty plea that you
17 understood what you were doing?

18 A. I thought the plea was to a misdemeanor like I said.
19 I would not have pled otherwise.

20 I had been on medication before and when the Judge
21 asked my attorney and the solicitor what had happened, I
22 didn't understand that.

23 Q. Do you understand what you are doing and what is going
24 on today?

25 A. Today I am on my medication. That day I didn't have

APPLICANT ON CROSS

1 my medication.

2 Q. But on the day of the guilty plea you didn't understand,
3 so do you recall any of it?

4 A. I recall some of it. I do recall vaguely.

5 Q. But you do recall some of it? Did you want a trial?

6 A. Yes. (Portion not audible on record).

7 Before I came to Court nobody told me what would hap-
8 pen. I hadn't talked to my attorney or anybody about that.

9 Q. But Mr. Robinson was your attorney and you did talk to
10 Mr. Robinson?

11 A. I talked to him the first time and we came to Court,
12 but I didn't hear from you. That's what I'm telling you.
13 We never had phone conversations, he never wrote me, never
14 saw me but that one time. I called him to get my medi-
15 cal information and to help with my medication.

16 Q. Did you speak with him on the day you went to Court
17 for your guilty plea?

18 A. Yes, and afterward I asked him to file my appeal.

19 Q. And during your guilty plea he failed to mention your
20 medical condition, is that correct?

21 A. Yes, and he was my appointed counsel so I thought he
22 would help me.

23 Q. All right. May I have a moment?

24 (Brief pause in proceeding)

25 MR. HARRIGAN: I have nothing further, Judge.

1 THE COURT: Do you have anything else?

2 MR. KENT: Nothing further, Judge.

3 THE COURT: You may step down.

4 WITNESS: Thank you, sir.

5 (Witness excused from stand)

6 MR. KENT: We would call Mr. Robinson at this time,
7 Your Honor.

8 SCOTT ROBINSON, being duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. KENT:

12 Q. You have heard the allegations by Mr. Lisenby, and I
13 will give you an opportunity to respond to them as thor-
14 oughly as you want to.

15 A. I did meet with Mr. Lisenby on several occasions. I
16 remember when we talked the first time when he was at SCDC.
17 He was offered a deal and we talked about it.

18 I don't recall talking about an insanity defense. I
19 recall discussing an allegation of self defense and things
20 of that nature.

21 I think the next time . . .

22 Q. The first time you met with him he did not want to
23 plead?

24 A. He didn't want to plead. We talked about a defense,
25 different things, and so I said, fine. If you don't want

MR. ROBINSON ON DIRECT

1 to plead you certainly don't have to. I recall we dis-
2 cussed it extensively. Then he went back to the institu-
3 tion. I had told him if he didn't want to plead nobody
4 would force him to plead.

5 Then they brought him back the next term of Court and
6 again he was on the trial docket and . .

7 Q. I'm sorry. I didn't understand that. You said that he
8 was on the trial docket?

9 A. Yes, and they brought him back the next term of Court.
10 Again we discussed his case. I remember we talked about a
11 defense but I don't remember anything about an insanity de-
12 fense.

13 It seemed to me that he was raising some sort of thing,
14 something about shoving but it didn't rise to self-defense.
15 As to the insanity defense, that may have happened but I do
16 not remember it.

17 He may have come in and said something about taking a
18 deal or not taking a deal -- something of that nature.

19 Q. Let me stop you there and change directions.

20 Did the prosecutor or solicitor at that time -- had
21 they made an offer of a guilty plea?

22 A. Yes.

23 Q. Okay.

24 A. I don't remember a discussion about it being a felony
25 or a misdemeanor. I mean, in Court I do remember him

MR. ROBINSON ON DIRECT

1 talking to me and we talked about time and how much time he
2 would likely get.

3 We talked about what could happen if the case went to
4 trial. I don't remember any specific things.

5 I don't remember him talking about being on medica-
6 tion, you know.

7 Q. What about -- you heard him mention that he sent you
8 several letters requesting you to get medical files and that
9 sort of thing or things of that nature?

10 A. I remember when I talked to him the third time, I be-
11 lieve the time of the plea. I remember getting a letter
12 about some things but I don't remember it being medical re-
13 cords.

14 That is something I would have followed up on and to my
15 recollection there was nothing about that.

16 I know he got an appeal bond, and I just don't remem-
17 ber him telling me that, or that we had any discussions
18 about that. I know we talked about basically the facts of
19 the case and in that discussion we talked about the time
20 he could get or what the sentence could be if he went to
21 trial.

22 Q. Was there any concern when you met with him about his
23 mental ability? His mental acumen?

24 Did you feel as though he was . . .

25 A. No. He appeared to understand the situation he was in.

MR. ROBINSON ON DIRECT

1 Q. Was this a -- in a better way, was this where you were
2 trying to make out a plea deal that seemed to make sense?

3 A. Yes, I was trying to figure out this six month sentence.
4 It was . . .

5 Q. Did -- I'm sorry. Go ahead.

6 A. It seemed to turn on that and he didn't want to take
7 that. I said, that's fine. As I do with all my clients, I
8 told him I was there to assist him in the way he wanted to
9 go. He could enter a plea or go to trial -- whatever he
10 wanted to do was fine with me. It was up to him, and that
11 is when he came back and told me he would plead guilty.

12 Q. Did he come to Court at some point for a bond reduction?

13 A. Not that I remember.

14 Q. You don't remember him coming in and asking for a bond
15 reduction?

16 A. I don't, no. I see that he got a bond reduction.

17 Q. But you have no independent recollection of that?

18 A. No.

19 Q. Did you receive discovery responses prior to the entry
20 of the guilty plea?

21 A. Yes.

22 Q. In the discovery, did he show anything about mental
23 health or mental issues?

24 A. My recollection is that between two of the meetings
25 that we had that was one of the reasons he didn't want to

MR. ROBINSON ON DIRECT

1 plead.

2 My recollection is that my response was that I had to
3 go to the Solicitor's Office and get another copy. I know
4 I gave him his discovery the day he pled.

5 That's my recollection that I gave it to him that day,
6 and I had to go to the Solicitor's Office to get a copy. I
7 copied the Solicitor's files.

8 Q. Did you ever remember discussing a trial; that he had
9 wanted to go to trial and he was prevented from going to
10 trial?

11 A. We discussed -- you know, we discussed the option of
12 going to trial but then he decided to plead guilty and not
13 go to trial. We talked about the possible sentence he was
14 facing if he went to trial. We discussed any possible de-
15 fense, and the way he explained what happened to me I had
16 told him that was not self-defense; that I really didn't
17 think that was the smart thing to do because he was looking
18 at five years.

19 He had been offered six months, and that was better
20 for him, but I told him he was the one who would have to do
21 the time; that he had to make that call, and he entered his
22 plea.

23 Q. And do you have any recollection as to whether the
24 discovery showed anything about a mental health issue or
25 anything like that?

1 A. No, I don't.

2 Q. Thank you, Scott. That's all the questions I have.

3 THE COURT: Ms. Harrigan.

4 MS. HARRIGAN: Thank you, Your Honor. Very briefly.

5 CROSS EXAMINATION

6 BY MS. HARRIGAN:

7 Q. Do you recall Mr. Lisenby asking you to file an appeal
8 for him?

9 A. I do not. I'm not saying I didn't but after the fact
10 he had, you know, sent me correspondence that indicated he
11 filed one.

12 Q. Do you recall discussing with him at any time things
13 that were necessary in filing an appeal?

14 A. I mean, I usually explain to them the process and the
15 steps that are necessary. I'm sure the Judge told him he
16 had the right to appeal at the end of the guilty plea.

17 (Portion inaudible)

18 Q. That's all the questions I would have.

19 THE COURT: Any further questions?

20 MR. KENT: Nothing further.

21 THE COURT: Thank you. You can step down.

22 (Witness excused from stand)

23 THE COURT: Any other witnesses?

24 MR. KENT: I have nothing further.

25 MS. HARRIGAN: I have nothing further.

1 THE COURT: All right, I will read the transcript of
2 the plea and let you know my ruling.

3 MS. HARRIGAN: Thank you, Your Honor.

4 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

1
2 I, HARRIET P. BENNETT, Court Reporter for South Carolina
3 Court Administration, hereby certify that the foregoing
4 Transcript was prepared from the records of Pamela Cartee
5 TO THE BEST OF MY ABILITY, having been heard in the Court
6 of Common Pleas for Sumter County on March 20, 2013.

7 FURTHER, I certify that I am neither of kin nor counsel
8 to any party to this proceeding, nor do I have any interest
9 in the matter.

10 June 19, 2015

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Billy Lisenby, # 200273,)

Case No. 2012-CP-14-0132

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE: 1/8/2014

ORDER OF DISMISSAL

v.

Brenda H. Roberts
CLERK OF COURT

CLARENDON COUNTY, SC

State of South Carolina,
Respondent.

RECEIVED
CLERK OF COURT
CLARENDON COUNTY, SC
JAN 11 2014 11:00

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed March 14, 2012. The Respondent made its Return on July 2, 2012. An evidentiary hearing into the matter was convened on March 20, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Shaun C. Kent, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court, as well as pursuant to orders of commitment of the Chesterfield Clerk of Court which are not subject to this application for post-conviction relief.¹ The Applicant was indicted during the October 2010 term of the Clarendon County Grand Jury for Assault on a Correctional Facility (20010-GS-14-0484). Scott L. Robinson, Esquire, represented him. On July 11, 2011, the Applicant appeared before the Honorable Howard P. King, where he pled guilty. Judge King sentenced Applicant to six months imprisonment.

¹ Applicant is currently serving a concurrent sentence for the following charges from Chesterfield County: Assault and Battery with Intent to Kill (2008-GS-13-0352), for which he received a sentence of ten years imprisonment; and Failure to Stop for a Blue Light (2008-GS-13-0351), for which he received a sentence of three years imprisonment.

WFB

ATTORNEY GENERAL'S OFFICE

A timely Notice of Appeal was filed challenging Applicant's guilty plea. The appeal was dismissed by the South Carolina Court of Appeals for failure to show any issue preserved for review from Applicant's guilty plea. The Remittitur was sent on March 22, 2012.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for failure to pursue an insanity defense; and
2. Due process violations.

At the evidentiary hearing, Applicant moved to orally amend his application to include allegations that counsel was ineffective for: failing to file a direct appeal on Applicant's behalf and misinforming Applicant that he was pleading to a misdemeanor rather than a felony. Respondent objected to Applicant's motion to orally amend his application, citing a lack of notice provided to the State that Applicant intended to allege these additional claims of ineffective assistance of counsel. This Court allowed Applicant to proceed forward on his claim that counsel was ineffective for failing to file a direct appeal, but decline to allow Applicant to proceed on his claim on misadvice regarding his charge classification.

Additionally, Applicant presented no evidence at the evidentiary hearing regarding his allegation of "due process violations." As Applicant presented no testimony or evidence to support this allegation, it is deemed waived and this Court finds this allegation must be denied and dismissed with prejudice.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel, Scott L. Robinson, Esquire (herein "Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Clarendon County Clerk of

Court, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he met with Counsel twice prior to his guilty plea, as well as corresponded with Applicant through letters. Applicant testified that he informed Counsel and the prosecuting Assistant Solicitor that he had a mental health condition. Applicant elaborated that he was in a car accident in 2005 which left him 100% disabled and required him to take medication. Applicant testified that he was incarcerated within the South Carolina Department of Corrections (SCDC) prior to his guilty plea and that SCDC had taken him off his medications at the time of the assault. Applicant testified that since this assault he has resumed his medications. Applicant testified that Counsel should have provided the court with his medical records and that he would not have pled guilty if Counsel had done so. Applicant testified that he provided Counsel with copies of his handwritten grievance requests as well as his handwritten list of medications to show that he suffered from a medical condition. Applicant acknowledged that did not provide Counsel with any medical records documenting his mental health or medical condition, but requested that Counsel subpoena the records on his behalf.

Applicant testified that he was on three different medications during his guilty plea and can only recall certain aspects of his guilty plea. Applicant testified that he was not aware he would be going to court on the day of his plea. He could not recall informing the Court that he was satisfied with Counsel representation, that he was freely and voluntarily entering a guilty plea, or admitting his guilty. Applicant also could not recollect informing the plea court that he did not have any conditions that would keep him from understanding his guilty plea proceedings or his decision to enter a guilty plea. However, Applicant did recall that immediately after his



guilty plea, he requested Counsel file an appeal on his behalf and followed up with a written request to Counsel. Applicant testified that he filed a *pro se* notice of appeal and acknowledged this appeal was dismissed by the South Carolina Court of Appeals for failure to identify any issues preserved from his guilty plea.

Following Applicant's testimony, Applicant called Counsel to testify. Counsel testified that he has been practicing law for approximately seventeen years and was a public defender for the Third Judicial Circuit during his representation of Applicant. Counsel testified that he met with Applicant multiple times prior to his guilty plea and that Applicant was incarcerated within SCDC at the time of the offense. Counsel testified that he discussed the charge, potential sentence, and Applicant's version of the facts giving rise to this charge with Applicant during these meetings. Counsel testified that he provided Applicant with discovery, as well as provided him twice with entire copies of his file.

Counsel testified that Applicant never informed him that he wanted to pursue an insanity defense. Counsel testified that Applicant did inform him that he wanted to pursue a self-defense theory at trial, but that when the State offered to recommend the minimum sentence of six months imprisonment with credit for time served, Applicant abandoned his desire for a trial and wanted to plead guilty. Counsel testified that he explained to Applicant several times that a self-defense theory would not be successful in this case, as he had struck a SCDC Correctional Guard in the face while imprisoned. Counsel testified that this case was never placed upon a trial docket or called for trial. Counsel testified that Applicant was "experienced" within the criminal justice system and "knew exactly what he was doing" before, during, and following his guilty plea.



Counsel testified that he advised Applicant of his appellate rights several times and that the plea court also informed Applicant that he had ten days to appeal his guilty plea. Counsel testified that his standard practice is to always file an appeal when one is requested by his clients, even following a guilty plea. Counsel testified that Applicant did not request he file an appeal on his behalf after the guilty plea, either verbally or in writing. Further, Counsel testified he did not believe Applicant had any meritorious appellate issues resulting from his guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel



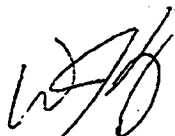
rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for failing to file a direct appeal

Applicant alleges that Counsel was ineffective for failing to file a direct appeal on his behalf and that he is therefore entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant



would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). “Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights.” Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Counsel testified that he never received any requests from Applicant to file an appeal on his behalf and had no reason to believe that Applicant wished to file an appeal. Counsel testified that he reviewed Applicant’s right to appeal with him prior to his guilty plea and that the plea court also reviewed these rights during the guilty plea. Additionally, Counsel testified no meritorious appellate issues arose from Applicant’s guilty plea. Furthermore, Applicant filed a *pro se* notice of appeal, which was dismissed for failure to identify any issues preserved for appellate review. This Court finds that Counsel’s performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed.



Counsel was ineffective for failing to pursue an insanity defense

Applicant alleges that Counsel was ineffective for failing to pursue an insanity defense for Applicant. This Court finds that Applicant has failed to meet his burden in regards to this allegation. Counsel's credible testimony reveals that Applicant never indicated to him that he wished to pursue an insanity defense, but rather, that he wanted to present a theory of self-defense at trial. Counsel testified that Applicant did not present him with any medical records or other documentation to support an insanity defense. Counsel testified that Applicant originally wanted to proceed to trial and present a theory of self-defense, but once the State offered a recommendation of the mandatory minimum of six months imprisonment with credit for times served, Applicant elected to forego a trial to plead guilty. Counsel testified that he advised Applicant of the charges he was facing, as well as potential sentences and that Applicant made a free and voluntary choice to plead guilty. This Court finds that Counsel's performance was reasonable and effective.

Furthermore, Applicant has failed to meet his burden of establishing prejudice from Counsel's alleged deficiency. Applicant failed to present any medical testimony or supporting documentation to show that he suffers from any mental illness. Therefore, this Court finds this allegation must be denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

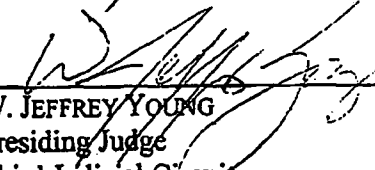



This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, 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. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 11 day of April, 2013.


 W. JEFFREY YOUNG
 Presiding Judge
 Third Judicial Circuit


 Sumter, South Carolina

FORM 5

STATE OF SOUTH CAROLINA)

2013-CP-14-444
IN THE COURT OF COMMON PLEAS

COUNTY OF Clarendon)

Billy Lee Lisenby JR.)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2013 OCT 25 AM 9:43
BEULAH J. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kee County CORR. Inst.
2. Name and location of Court which imposed sentence Clarendon County Courthouse Manning SC.
3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2010-65-14-484
- (b) _____
- (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) July 11, 2011 (6) months

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OF ORIGINAL FILED IN THIS OFFICE
DATE 10/25/2013
Beulah J. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S. C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Denied

ii. _____

iii. _____

(c) the date of each such result:

i. Feb. 2012

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Denial of Due Process
- (c) Conflict of Interest

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Attachment
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Scott L. Robinson 7 South Brooks St Manning, S.C. 29102
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

I ask that my case be overturned or my right to appeal ^{the} denial of my P.C.R. be re-instated in the form of a belated Appeal, and I be allowed to file a Rule 59(e)

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
)
County of Clarendon)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Billy Lee Taylor Jr.

SWORN to and subscribed before me this 22nd
day of October, 2013.

Michelle Michal (L.S.)
Notary Public

My Commission Expires: 9-3-2014

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Billy Lee Lay Jr.
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of October, 2013.

Muscha Michel
Notary Public

My Commission Expires: 9-3-2014

Applicant was provided a P.C.R hearing on March 20, 2013. Prior to the hearing Applicant explained to his attorney that he wanted to Review the Judges order prior to filing a Notice of Appeal because there [redacted] maybe a need to file a Rule 59(e) as stated in *Marlar v. South Carolina* (2007) and *Bostick v. Stevenson* (2009).

As of today Applicant nor the Attorney General, or Clerk of Court advised him of the Judges Ruling. In Aug. 2013 Applicant tried to contact his court appointed counsel Shawn Kent to ask him why his case was taking so long to be ruled on. SCDC officials denied him the right to call his attorney. On 8-21-13 The General Counsel Christopher Florian stated: (See Exhibit #1)

"The case you are referencing was dismissed 4-17-13 and Shawn Kent is not listed as an attorney for your attorney/client phone calls."

On Aug. 6th 2013 Applicant wrote the A.G.'s office, his attorney Shawn Kent, and the Clerk of Court asking has the Judge made a ruling in his P.C.R # 2012-CP-14-00132. The Clerk is the only person to respond by stating:

"Note yes there has been a ruling please remitt the amount of \$2.00 for copies or contact your PCR Attorney."

[See Exhibits # 2, 3, 4]

On Sept. 6th 2013 Applicant wrote the Clerk asking:

"What was the result of the ruling in my P.C.R case # 2012-CP-14-00132?
You, my, lawyer or the A.G. never sent me anything advising me of a Ruling.
Why do I have to pay to obtain a copy of the Ruling? This is a Right.
Please send me the Judges address that made the Ruling, and a copy of the order!"

Attachment #1

The Clerk Responded by stating:

" Note:

Your PCR was dismissed. You are requested for payment of copies because the Clarendon County Council as well as the courts give us the right to charge for copies. You maybe able to get a free one from your attorney, you can contact him."

[See Exhibit #5]

Applicant has never received a copy of the signed order by the Judge. Evermore his attorney never filed an appeal from the denial of his PCR.

There are some exceptions to the general bar against successive petitions. One being where the applicant was denied his right to appeal the denial of his PCR application. In *Aice v. State* the court explained that every PCR applicant is entitled to a full adjudication on the merits of the PCR application OR "one bite at the apple" which includes the right appeal the denial of a PCR application OR "one bite at the apple" which includes the right to appeal the denial of a PCR application and the right to assistance of counsel in that appeal.

Applicant's attorney sent him a copy of his entire file after he requested a copy, on June 23, 2013 [See Exhibit #6] and he received it on June 27, 2013 [See Exhibit #7]. His attorney only wrote him (2) more times that was on March 13, 2013 and Feb. 24, 2013, [See Exhibits #8 and #9]. By the time Applicant found out his case was dismissed it was too late to file a Notice of Appeal, or to file for a rule 59(e).

See the unsigned order listed as [exhibit #10]

Attachment #2

LEGAL MAIL ONLY

A conflict of interest has occurred. His trial attorney Scott L. Robinson, and Shaun Kent his P.C.R. ^{counsel} were law partners at the time of his trial. Scott L. Robinson and MR. Kent are close friends and MR. Robinson was a major part of MR. Kent's bid for Senate. MR. Kent never told applicant this.

Applicant never received a copy of the states return even though he asked MR. Kent several times via letter and phone calls. See Exhibit #11 and #12 #13# and #14.

See Exhibit #9 where he asked for him to have the medical ^{records} evidence at the P.C.R. and MR. Kent refused. Also Applicant filed a complaint on MR. Kent at the grievance board for not responding to his letters. See P.C.R. transcript.

Conflict was a issue because he prejudice Applicant by not filing a Rule 59(e) or a notice of appeal.

Under a new Supreme Court ruling (United States) Martinez v. Ryan Cir As 132, Oct. 1309/201 a person has a right to effective assistance counsel in a P.C.R. proceeding.

Attachment #3

LEGAL MAIL ONLY

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL
RESPONSE TO INMATE CORRESPONDENCE**

TO: Inmate Billy Lisenby
SCDC #: 200273
INSTITUTION: Tyger River
FROM: Christopher Florian
DATE: 8/21/13
RE: Attorney Telephone Call

The case you are referencing was dismissed 4/17/13 and Shaun Kent is not listed as an attorney for your attorney/client phone calls.

S/ 

Christopher Florian

Exhibit #1

Billy Lee Lisenby JR, #200273

200 Prison Rd Smu #48

Tyger River C. I

Enoree S.C. 29335

Clarendon County Clerk of Court

Aug. 6th 2013

P.O. Box 136

Manning, S.C. 29102

Dear Clerk,

Has the Judge made a ruling in my P.C.R # 2012-CP-14-00132?
If so please send me a copy of the ruling.

Thanking you in advance!

Bill L.

Note:

Yes there has been a ruling please remitt
the amount of \$2.00 for copies or contact your PCR
attorney.

Clerk of Court Office
Clarendon County

LEGAL MAIL

Billy Lee Lisenby JR # 200273
200 Prison Rd smu #48
Tygee River C-I
Enoree S.C. 29335

Aug 6th 2013

Office of The Attorney General
P.O. Box 11549
Columbia, SC. 29211

Dear A.G., Has the Judge made a ruling in my P.C.R # 2012-CP-1400132?
If so please send me a copy of the ruling.

Thanking you in advance!
Billy L.


Billy Lee Lisenby JR; #200273
200 Prison Rd smu #48
Tyger River C. I
Enoree S.C. 29335

Aug 6th 2013

Kent Law Firm
19 South Mill St.
P.O. Box 117
Manning, S.C. 29102

Dear MR. Kent,

Has the Judge made a Ruling in my P.C.R #2012-CP-14 00132?

If so  remember I want to go over the order before you file my Notice of Appeal. There may be a need to file a Rule 59(e). Please set up a conference call, when the Judge makes a ruling.

Thanking you in advance!

Bob/.

Billy Lee Lisenby JR, #200273
 990 Wisacky Hwy Che. 1152 N.
 Lee County Cour. Inst.
 Bishopville S.C. 29010

Clarendon County Clerk of Court Sept. 6th 2013
 P.O. Box 136
 Manning, S.C. 29102

Dear Clerk,

What was the result of the ruling in my P.C.R. case #2012-CP14-00132?

You, my lawyer or the A.G. never sent me anything advising me of a ruling.

Why do I have to pay to obtain a copy of the ruling? This is
 a right. Please send me the Judges address that made the ruling, and a copy
 of the video.

Thanking you in advance!

Bill L.

Note:

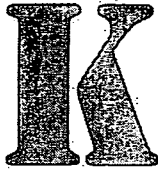
[See Exhibit #5]

Your PCR was dismissed. You are requested for payment
 of copies because the Clarendon County Council as well as
 the courts give us the right to charge for copies. You
 maybe able to get a free one from your attorney, you can
 contact him.

Clerk of Court Office
 Clarendon County

LEGAL MAIL

KENT LAW FIRM



June 23, 2013

Mr. Billy Lisenby, Jr. # 200273
200 Prison Road SMU #48
Tyger River Correctional Institution
Enoree, SC 29335

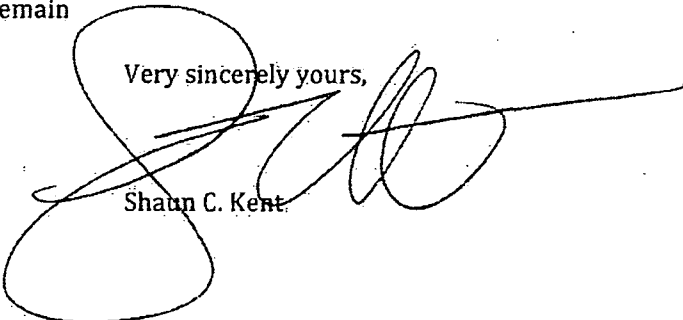
Re: Billy Lisenby - PCR

Dear Mr. Lisenby:

Enclosed please find a copy of your file. Should you have any questions, please do not hesitate to contact me.

With warmest personal regards, I remain

Very sincerely yours,



Shaun C. Kent

SCK/twm

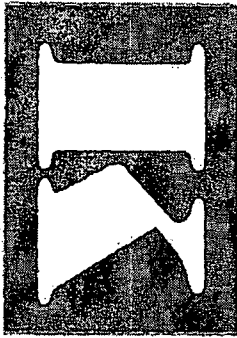
Exhibit #6

SHAUN@SHAUNKENTLAW.COM

19 South Mill Street PO Box 117 Manning, SC 29102
Phone 803 433 KENT Fax 803 433 5297

Exhibit #7

PO Box 117 • Manning SC • 29102

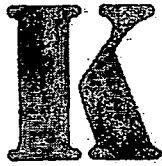


RECEIVED

JUN 27 2013

TYRCI
Mailroom

Mr. Billy Lisenby, Jr. #200273
200 Prison Road SMLU #48
Tyger River Correctional Institution
Enoree, SC 29335



KENT LAW FIRM

March 13, 2013

RE: Billy Lee Lisenby, Jr., 200273 v. State of South Carolina
2012 -CP-14-0132

REQUEST FOR VISIT/PHONE CALL

ATTN: MRS BRYSON

PLEASE BE INFORMED THAT I HAVE BEEN APPOINTED TO REPRESENT MR. LISEBY IN HIS FILED PCR ACTION. IN AN EEFORT TO PROPERLY REPRESENT HIM. I WOULD LIKE TO SCHEDULE BOTH A PHONE CALL AND OFFICIAL VISIT. IF POSSIBLE, I WOULD LIKE TO DO THE FOLLOWING:

PHONE CONVERSATION: March 15, 2013
~~9:30 AM~~
10:00 am.

MY BAR NUMBER IS : 68565
MR. LISEBY'S INMATE NUMBER IS : #200273
CONTACT #: 8034606242

PLEASE ADVISE.

With warmest personal regards, I remain,

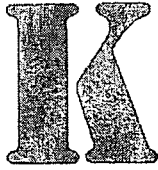
Very sincerely yours,

Shaun C. Kent

SCK/my

Phone call
OK for 10:00
a.m 3/15/13
per Capt.
Tucker
3-13-13 KL.
11:35 am.
OK with
Shaun Kent
also

Exhibit #8



KENT LAW FIRM

February 24, 2013

Billy Lisenby #200273
Tyger River C.I. SMU #48
200 Prison Road
Enoree, SC 29335

Re: Billy Lisenby - PCR

Dear Billy:

I hope this letter finds you doing well. It was an absolute pleasure speaking to you this past week. I am glad we were able to resolve all of our differences. Enclosed herein you will find a copy of the schedule for your upcoming PCR hearing. It appears as though your PCR is scheduled for March 20th at 9:30 a.m. As we mentioned, during this hearing you will be given opportunity to specifically lay out all complaints you have against your former attorney, Scott Robinson. As further mentioned, I have taken opportunity to speak to Mr. Robinson and ask him his side of the case. He has made it clear that he did not speak to you for a long enough period of time, if that is your complaint. This week I will ask him about your new chief complaint, that he did not inform you that entering a guilty plea would result in a felony conviction on your record.

I also know you had concerns about certain medical records that Mr. Robinson did not have at his disposal during your guilty plea. Since he will acknowledge not requesting these records, I do not see the point in requesting them myself. If you would like me to set up another phone call or visit before your March 20th hearing please send me a letter or contact me. Either way, I look forward to seeing you March 20th.

With warmest personal regards, I remain

Very sincerely yours,

Shaun C. Kent

SCK/twm

Exhibit #9

SHAUN@SHAUNKENTLAW.COM

19 South Mill Street PO Box 117 Manning, SC 29102
Phone 803 433 KENT Fax 803 433 5297

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
 Billy Lisenby, # 200273,	)	Case No. 2012-CP-14-0132
)	
Applicant,)	
)	
v.	)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed March 14, 2012. The Respondent made its Return on July 2, 2012. An evidentiary hearing into the matter was convened on March 20, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Shaun C. Kent, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court, as well as pursuant to orders of commitment of the Chesterfield Clerk of Court which are not subject to this application for post-conviction relief.¹ The Applicant was indicted during the October 2010 term of the Clarendon County Grand Jury for Assault on a Correctional Facility (20010-GS-14-0484). Scott L. Robinson, Esquire, represented him. On July 11, 2011, the Applicant appeared before the Honorable Howard P. King, where he pled guilty. Judge King sentenced Applicant to six months imprisonment.

¹ Applicant is currently serving a concurrent sentence for the following charges from Chesterfield County: Assault and Battery with Intent to Kill (2008-GS-13-0352), for which he received a sentence of ten years imprisonment, and Failure to Stop for a Blue Light (2008-GS-13-0351), for which he received a sentence of three years imprisonment.

Exhibit #10

A timely Notice of Appeal was filed challenging Applicant's guilty plea. The appeal was dismissed by the South Carolina Court of Appeals for failure to show any issue preserved for review from Applicant's guilty plea. The Remittitur was sent on March 22, 2012.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for failure to pursue an insanity defense; and
2. Due process violations.

At the evidentiary hearing, Applicant moved to orally amend his application to include allegations that counsel was ineffective for: failing to file a direct appeal on Applicant's behalf and misinforming Applicant that he was pleading to a misdemeanor rather than a felony. Respondent objected to Applicant's motion to orally amend his application, citing a lack of notice provided to the State that Applicant intended to allege these additional claims of ineffective assistance of counsel. This Court allowed Applicant to proceed forward on his claim that counsel was ineffective for failing to file a direct appeal, but decline to allow Applicant to proceed on his claim on misadvice regarding his charge classification.

Additionally, Applicant presented no evidence at the evidentiary hearing regarding his allegation of "due process violations." As Applicant presented no testimony or evidence to support this allegation, it is deemed waived and this Court finds this allegation must be denied and dismissed with prejudice.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel, Scott L. Robinson, Esquire (herein "Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Clarendon County Clerk of

Court, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he met with Counsel twice prior to his guilty plea, as well as corresponded with Applicant through letters. Applicant testified that he informed Counsel and the prosecuting Assistant Solicitor that he had a mental health condition. Applicant elaborated that he was in a car accident in 2005 which left him 100% disabled and required him to take medication. Applicant testified that he was incarcerated within the South Carolina Department of Corrections (SCDC) prior to his guilty plea and that SCDC had taken him off his medications at the time of the assault. Applicant testified that since this assault he has resumed his medications. Applicant testified that Counsel should have provided the court with his medical records and that he would not have pled guilty if Counsel had done so. Applicant testified that he provided Counsel with copies of his handwritten grievance requests as well as his handwritten list of medications to show that he suffered from a medical condition. Applicant acknowledged that did not provide Counsel with any medical records documenting his mental health or medical condition, but requested that Counsel subpoena the records on his behalf.

Applicant testified that he was on three different medications during his guilty plea and can only recall certain aspects of his guilty plea. Applicant testified that he was not aware he would be going to court on the day of his plea. He could not recall informing the Court that he was satisfied with Counsel representation, that he was freely and voluntarily entering a guilty plea, or admitting his guilty. Applicant also could not recollect informing the plea court that he did not have any conditions that would keep him from understanding his guilty plea proceedings or his decision to enter a guilty plea. However, Applicant did recall that immediately after his

guilty plea, he requested Counsel file an appeal on his behalf and followed up with a written request to Counsel. Applicant testified that he filed a *pro se* notice of appeal and acknowledged this appeal was dismissed by the South Carolina Court of Appeals for failure to identify any issues preserved from his guilty plea.

Following Applicant's testimony, Applicant called Counsel to testify. Counsel testified that he has been practicing law for approximately seventeen years and was a public defender for the Third Judicial Circuit during his representation of Applicant. Counsel testified that he met with Applicant multiple times prior to his guilty plea and that Applicant was incarcerated within SCDC at the time of the offense. Counsel testified that he discussed the charge, potential sentence, and Applicant's version of the facts giving rise to this charge with Applicant during these meetings. Counsel testified that he provided Applicant with discovery, as well as provided him twice with entire copies of his file.

Counsel testified that Applicant never informed him that he wanted to pursue an insanity defense. Counsel testified that Applicant did inform him that he wanted to pursue a self-defense theory at trial, but that when the State offered to recommend the minimum sentence of six months imprisonment with credit for time served, Applicant abandoned his desire for a trial and wanted to plead guilty. Counsel testified that he explained to Applicant several times that a self-defense theory would not be successful in this case, as he had struck a SCDC Correctional Guard in the face while imprisoned. Counsel testified that this case was never placed upon a trial docket or called for trial. Counsel testified that Applicant was "experienced" within the criminal justice system and "knew exactly what he was doing" before, during, and following his guilty plea.

Counsel testified that he advised Applicant of his appellate rights several times and that the plea court also informed Applicant that he had ten days to appeal his guilty plea. Counsel testified that his standard practice is to always file an appeal when one is requested by his clients, even following a guilty plea. Counsel testified that Applicant did not request he file an appeal on his behalf after the guilty plea, either verbally or in writing. Further, Counsel testified he did not believe Applicant had any meritorious appellate issues resulting from his guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for failing to file a direct appeal

Applicant alleges that Counsel was ineffective for failing to file a direct appeal on his behalf and that he is therefore entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant

would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). “Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights.” Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Counsel testified that he never received any requests from Applicant to file an appeal on his behalf and had no reason to believe that Applicant wished to file an appeal. Counsel testified that he reviewed Applicant’s right to appeal with him prior to his guilty plea and that the plea court also reviewed these rights during the guilty plea. Additionally, Counsel testified no meritorious appellate issues arose from Applicant’s guilty plea. Furthermore, Applicant filed a *pro se* notice of appeal, which was dismissed for failure to identify any issues preserved for appellate review. This Court finds that Counsel’s performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed.

Counsel was ineffective for failing to pursue an insanity defense

Applicant alleges that Counsel was ineffective for failing to pursue an insanity defense for Applicant. This Court finds that Applicant has failed to meet his burden in regards to this allegation. Counsel's credible testimony reveals that Applicant never indicated to him that he wished to pursue an insanity defense, but rather, that he wanted to present a theory of self-defense at trial. Counsel testified that Applicant did not present him with any medical records or other documentation to support an insanity defense. Counsel testified that Applicant originally wanted to proceed to trial and present a theory of self-defense, but once the State offered a recommendation of the mandatory minimum of six months imprisonment with credit for times served, Applicant elected to forego a trial to plead guilty. Counsel testified that he advised Applicant of the charges he was facing, as well as potential sentences and that Applicant made a free and voluntary choice to plead guilty. This Court finds that Counsel's performance was reasonable and effective.

Furthermore, Applicant has failed to meet his burden of establishing prejudice from Counsel's alleged deficiency. Applicant failed to present any medical testimony or supporting documentation to show that he suffers from any mental illness. Therefore, this Court finds this allegation must be denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that 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), SCRCR, 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.

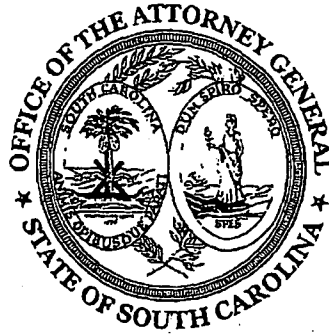
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this ____ day of _____, 2013.

W. JEFFREY YOUNG
 Presiding Judge
 Third Judicial Circuit

_____, South Carolina



ALAN WILSON
ATTORNEY GENERAL

August 13, 2012

Shauri Kent, Esquire
Coffey Chandler & Kent, PA
Post Office Box 1292
Manning SC 29102-1292

Re: Billy Lee Lisenby, Jr., 200273 v. State of South Carolina
2012-CP-14-0132

Dear Mr. Kent:

Enclosed please find a copy of the correspondence Assistant Attorney General Megan Harrigan received from your client in the above referenced case.

Sincerely,

Lauren Meara

Lauren Meara
Legal Assistant

/lm

Enclosure

Exhibit #11

Billy Lee Loxley JR #200273
 Tygerhine C I
 200 Prison Rd
 Enoree, S.C. 29335

The Office of Attorney General of S.C.
 PO Box 11549
 Columbia, SC 29211-1549

Dated: Sept. 11th 12
 RE: PC R. 2012 - CP 14-00112

Dear A.G. (P.C.R Section)

I filed a P.C.R in Clarendon County back in March of 2012,
 and it was a guilty plea. As of today I haven't heard anything from it.

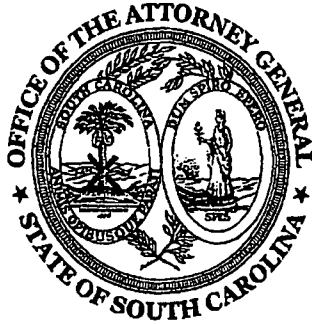
On the Caption it has Chesterfield County, because I got the
 form from Chesterfield County. But it suppose to be Clarendon County.

Will you please look into this and give me a response?

Thanking you in advance!

Billy L.

Exhibit #12



ALAN WILSON
ATTORNEY GENERAL

January 24, 2013

Billy Lee Lisenby, Jr., #200273
Tyger River Correctional Institution
100-200 Prison Road
Enoree, SC 29355

Re: Billy Lee Lisenby, Jr., 200273 v. State of South Carolina
2012-CP-14-0132

Dear Mr. Lisenby:

This office is in receipt of your letter requesting a copy of your Return. Because you are represented by counsel, our office cannot respond to any pro se communications or requests.

Enclosed please find an order dated and filed June 27, 2012, appointing Shaun Kent, Esquire, to your Post-Conviction Relief case. I have Mr. Kent's address as:

Shaun Kent, Esquire
Coffey Chandler & Kent, PA
Post Office Box 1292
Manning SC 29102-1292

Any questions or concerns regarding your current case should be directed to your counsel at the above referenced address.

Sincerely,

Megan E. Harrigan

Megan E. Harrigan
Assistant Attorney General

MEH/lm

Enclosure

Exhibit #13

cc: Shaun Kent, Esquire

Billy Lee Lisenby JR, # 200273
Keeshaw Corr. Inst. SMU #33
4348 Gullmore Highway
Keeshaw, S.C. 29667

Dated: July 31, 2012

RE: 2012-CP-14-00132

Office of The Attorney General
Attor: Post-Correction Relief Dept.
PO Box 11549
Columbia, S.C. 29211

Dear A.G.,

I filed a P.C.R. in Clarendon County on March 14, 2012 case number 2012-CP-14-00132, which resulted from a guilty plea. As of today I have yet to receive an answer or return. Have you filed an answer yet?

Please let me know if you filed an answer, because I have not received

one yet.

Thanking you in advance!

Billy L.

Exhibit # 14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
)	
Billy Lisenby, #200273,)	
	)	2013-CP-14-444
Applicant,)	
)	
v.	)	RETURN AND MOTION TO DISMISS
	)	ALL CLAIMS EXCEPT AUSTIN REVIEW
State of South Carolina,)	
)	
Respondent.)	

In response to the post-conviction relief application filed October 25, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was true bill indicted during the October 2010 term of the Clarendon County Grand Jury for Assault on a Correctional Facility (2010-GS-14-0484). Scott Robinson, Esquire, represented him. On July 19, 2010, the Applicant pled guilty. He was sentenced by the Honorable Howard P. King to six months imprisonment.

A timely Notice of Appeal was filed. The appeal was dismissed in a written order dated and filed March 6, 2012, for failing to establish any preserved issues. The Remittitur was sent on March 22, 2012.

The Applicant subsequently filed an application for post-conviction relief (PCR) on March 14, 2012 (C.A. No. 2012-CP-14-00132). An evidentiary hearing into the matter was convened on March 20, 2013, at which the Applicant was present and represented by Shaun C. Kent, Esquire. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of trial counsel.
 - a. Counsel was ineffective for failing to file a direct appeal.
 - b. Counsel was ineffective for failing to pursue an insanity defense

The Honorable W. Jeffrey Young denied and dismissed Applicant's application with prejudice by written Order dated April 11, 2013 and filed April 17, 2013. No appeal was filed.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of Counsel
2. Denial of Due Process
3. Conflict of Interest
4. The right to file an appeal from the denial of my P.C.R.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, and the prior PCR records, and Appellate Records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

IV.

Except for Applicant's claim that he was denied an appeal from his first PCR application, the Court should summarily dismiss any additional allegations raised because the application is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application,

then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised all grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised any additional allegations in his previous post-conviction relief application. Accordingly, Respondent will move for a summary dismissal of any additional allegations other than Applicant's claim for relief pursuant to Austin v. State, supra.

V.

Except for Applicant's claim that he was denied an appeal from the denial of his first PCR application, the Respondent submits that any additional allegations which may be raised should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on July 19, 2010. The Applicant was therefore required to file his application on or before July 20, 2011.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

(1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent will request that this Court summarily dismiss any additional allegations which may be raised for failure to file within the time mandated by the Post Conviction Procedure Act.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to a review of his first PCR application pursuant to Austin v. State, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent requests counsel be appointed and an evidentiary hearing be held solely on the matter of the Applicant's entitlement to an Austin Review.

[Signatures on next page.]

Respectfully submitted,

ALAN WILSON
Attorney General

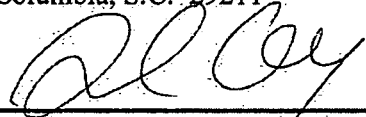
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Chief Deputy Attorney General

KAREN RATIGAN
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DANIEL GOURLEY
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina

April 14, 2014

STATE OF SOUTH CAROLINA))
 COUNTY OF CLARENDON)) COURT OF COMMON PLEAS

BILLY L. LISENBY)
 200273)
 PETITIONER,)

v.)

TRANSCRIPT OF RECORD
 13-CP-14-444

STATE OF SOUTH CAROLINA,)
 _____)
 RESPONDENT.)

December 18, 2014
 Sumter, South Carolina

BEFORE :

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

APPEARANCES:

STEVEN W. FOWLER, ESQ.
 Attorney for the Petitioner

DANIEL GOURLEY, ESQ.
 Attorney for Respondent

FRANCES B. RAY, RPR
 Circuit Court Reporter

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1 MR. GOURLEY: This is Billy Lisenby versus
2 the State of South Carolina, docket number
3 2013-CP-14-0444. He's presently confined in the
4 South Carolina Department of Corrections pursuant to
5 orders of commitment of the Clarendon County Clerk
6 of Court. He was true bill indicted during October
7 2010 term of the Clarendon County grand jury for
8 assault on a correctional facility — correctional
9 officer. Scott Robinson represented him on
10 July 19th, 2010. He pled guilty, was sentenced by
11 the Honorable Howard P. King, six months
12 imprisonment. A timely notice of appeal was
13 dismissed by order dated March 6th, 2012.

14 Remittitur was issued March 22nd, 2012, subsequently
15 filed an application for PCR on March 14th, 2012.

16 Evidentiary hearing into the matter was
17 convened March 20th, 2013 and was represented by
18 Mr. Kent. He raised ineffective assistance of
19 counsel claim in his PCR. The Honorable W. Jefferey
20 Young denied, dismissed his application with
21 prejudice by written order dated April 11th, 2013,
22 filed April 17th, 2013, did not file an appeal,
23 filed a second application for PCR on October 25th,
24 2013, alleging that he did not knowingly and
25 intelligently waive his right to file appeal

1 following denial of his first PCR application.

2 The State filed its return and motion to
3 dismiss all claims except for an appeal pursuant to
4 Austin v. State on April 14th, 2014. He's
5 represented in this matter by Mr. Fowler.

6 THE COURT: All right. So my
7 understanding is what we're here today for is
8 whether or not he has, he should be given an
9 extended time to appeal the dismissal of his PCR,
10 right?

11 MR. GOURLEY: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. FOWLER: Your Honor, after discussions
14 with my client he obviously feels neglected in terms
15 of him not having a right to file an appeal on that,
16 and he is — we would be interested in showing some
17 evidence that he did not receive any information.

18 THE COURT: Yeah, and why don't we do it
19 this way, I mean, just so you understand, sir. By
20 the way, are you from Oconee?

21 THE PETITIONER: No, sir.

22 THE COURT: So you never had — you've
23 never been in front of me in the upstate, have you?

24 THE PETITIONER: No, sir.

25 THE COURT: Okay. Since you're — just so

1 the record is clear, since this case has been
2 dismissed I can't get into any of the facts. In
3 other words, the only issue I can deal with is
4 whether you should have an extended time to file
5 your appeal in 30 days. So what I need to do is
6 call a proffer. I'm basically just going to put you
7 up on the stand. I need to let your lawyer ask you
8 about the date when you found out that you had a
9 right to appeal, etc., and then I'll either give you
10 the 30 more days to file an appeal or I'll say you
11 don't and we'll go from there so. Why don't you
12 come on up?

13 MR. FOWLER: And Your Honor, to be clear,
14 I have discussed this with him both earlier this
15 morning and after there was some discussion between
16 the parties and the Court earlier today between that
17 time and now so.

18 THE COURT: Yeah, and we've had — just so
19 the record is real clear, we've had an
20 off-the-record discussion about the facts. That's
21 how I knew them, just because I was a little
22 confused about exactly where we were with this thing
23 so.

24 Okay, come on up.

25 THE CLERK: Place your left hand on the.

PW - B. LISEBY - DIRECT

1 Bible and raise your right hand. State your full
2 name please.

3 THE WITNESS: Billy Lisenby.

4 WHEREUPON,

5 **BILLY LISEBY,**

6 having been duly sworn by the Clerk, testified as
7 follows:

8 THE CLERK: Thank you. Have a seat up
9 here please. Please state your full name and spell
10 your last name for the record.

11 THE WITNESS: Billy Lee Lisenby, Jr. My
12 last name is L-I-S-E-N, B as in boy, -Y.

13 THE COURT: All right, yes, sir.

14 **DIRECT EXAMINATION**

15 BY MR. FOWLER:

16 Q Mr. Lisenby, you filed a notice, an application
17 for post conviction relief in this court case,
18 correct, 2013-CP-14-444?

19 A Yes, sir.

20 Q Okay. And you filed that with the Clerk of
21 Clarendon County on October 25th, 2013 I believe,
22 correct?

23 A That sound about right.

24 Q Yes, sir. There has been some confusion or some
25 question rather, about when this matter was heard

PW - B. LISEBY - DIRECT

1 and your interest in appealing. If you and the —
2 the hearing was heard, the PCR hearing was
3 originally heard on March 20th, 2013; is that
4 correct?

5 A Yes, sir.

6 Q Okay. And if you, going into that and now and
7 what have you, you would still be interested in
8 filing a notice of appeal; is that correct?

9 A I would, sir.

10 Q And you'd also be interested in filing perhaps a
11 Rule 59(e), as in Everette; is that correct?

12 A Yes, sir.

13 Q Now you're contending today that you were never
14 notified of the judge's ruling in a timely manner;
15 is that correct?

16 A Yes, sir.

17 Q It's my understanding you have perhaps a maximum
18 of 30 days to file an appeal after the decision is
19 made?

20 A Yes, sir.

21 Q Okay.

22 A And 10 for a Rule 59, and —

23 Q And 10 for a Rule 59. So you would have been
24 interested in both of those dates, correct?

25 A Yes, sir.

PW - B. LISEBY - DIRECT

1 Q And those are standard rules of law that apply to
2 any PCR case, correct?

3 A Yes, sir.

4 Q Okay. So, and you feel like you have a right to
5 either one of those through your attorney; is that
6 correct?

7 A Yes, sir.

8 Q And Mr. Kent was your attorney in that PCR
9 hearing on March 20th; is that correct?

10 A He was.

11 Q Okay. And where were you incarcerated between
12 March 2013 and, say, September of 2013?

13 A Tiger River Correctional Institution in Enoree,
14 South Carolina.

15 Q Where's that located again please?

16 A Enoree, South Carolina, Spartanburg County.

17 Q Now you were in lockup during that time, correct?

18 A Yes, sir.

19 Q Do you remember the dates of your lockup?

20 A Well, I was on lockup from August 2012 and — no,
21 June 2012 until August of 2013.

22 Q Okay. Now are the options for receiving mail
23 limited in that?

24 A Yes, sir.

25 Q How so?

PW - B. LISEBY - DIRECT

1 A They have to — they bring it to your door and
2 you can't go pick it up. They have to bring legal
3 mail to your door.

4 Q Okay.

5 MR. FOWLER: May I approach the witness,
6 Your Honor.

7 THE COURT: Yes, sir.

8 BY MR. FOWLER:

9 Q Okay. In your application for post-conviction
10 relief there's an exhibit 6, and could you describe
11 what that is to me and the Court please.

12 A It's a letter from Mr. Shaun Kent, attorney Shaun
13 Kent, dated June 23rd, 2013.

14 Q And if you would, read the substance. I think
15 it's a one sentence paragraph. Could you read that
16 please.

17 A Dear Mr. Lisenby, enclosed please find a copy of
18 your file. Should you have any questions please do
19 not hesitate to contact me.

20 Q Okay. And that's the complete substance of the
21 file other than the address and some niceties at the
22 bottom, correct?

23 A Yes, sir.

24 Q Now is this also, you have an exhibit seven in
25 your application for post-conviction relief; is that

PW - B. LISEBY - DIRECT

1 correct?

2 A Yes, sir.

3 Q All right. Now could you describe what this
4 exhibit 7 is to me.

5 A It's a copy of the actual envelope that he sent
6 me and it states, received on June 27th, 2013.

7 Q Okay. And what is that — what is that TYRCI?
8 What does that stand for?

9 A Tiger River Correctional Institution.

10 Q Okay. And that June 27th is just a few days
11 after the June 29th exhibit six, correct?

12 A It is.

13 Q Okay. Now tell me a little bit about when you
14 received this document, or how you received this
15 document? What's the status of that?

16 A It was brought to me by the mail room personnel,
17 and when I received it I saw that the order wasn't
18 signed.

19 Q Okay. So you — and I think that's also
20 reflected in your case as exhibit 10; is that
21 correct?

22 A Yes, sir.

23 Q And that's an order of dismissal — may I
24 approach the witness again, Your Honor.

25 THE COURT: Yes, sir.

PW - B. LISEBY - DIRECT

1 MR. FOWLER: Thank you.

2 BY MR. FOWLER:

3 Q Could you describe what exhibit 10 is to the
4 Court briefly, and then we'll turn to another page.

5 A It's an order of dismissal by the attorney
6 general.

7 Q Okay. Well, it's signed by — or well, let me
8 rephrase that.

9 A Attorney general drafted it.

10 Q The attorney general drafted it. And on page 9
11 of 9 within exhibit 10, could you tell me what it
12 says starting right there?

13 A It is so ordered this — and it doesn't have
14 anything.

15 Q Okay, continue on.

16 A Day of, blank, 2/13, W. Jefferey Young presiding
17 judge, third circuit judicial circuit and blank.

18 Q So you did not receive this order of dismissal in
19 Mr. Kent's June — excuse me, I want to get my days
20 right — June 23rd, 2013, letter; is that correct?

21 A Right.

22 Q Okay. Did that bother you that you did not get a
23 clocked copy of that order of dismissal?

24 A Yes, 'cause I didn't know when it had been
25 dismissed.

PW - B. LISENBY - DIRECT

1 Q Okay. So it left you in a — how did you feel —
2 and also, were you upset that there was no signature
3 of the judge on that order?

4 A Yes.

5 Q Okay. How did that make you feel in general?

6 A That I lost my right to appeal, it was over, so
7 that's when I immediately contacted the clerk of
8 court, Mr. Kent, and the attorney general's office.

9 Q Okay. Tell me a little bit about your, what you
10 did after that. You said you contacted the Clerk of
11 Court. Well, let me rephrase that, Your Honor, if
12 you may. How did you — did the general counsel at
13 any point tell you that the order was, that your
14 case was dismissed?

15 A That's how I found out the case was dismissed.
16 Mr. Christopher Flora for general counsel, in order
17 more for me to send mail out by SCDC dealing with
18 any case, I have to put a case number on there. And
19 when I put the case number on one of my documents to
20 the Clerk of Court they said, well, I can't, I can't
21 send it to clerk of court because I'm indigent, they
22 have to pay for it because the case had been
23 dismissed in April of 2014 — 2013, 2013.

24 MR. FOWLER: And if I may approach, Your
25 Honor.

PW - B. LISEBY - DIRECT

1 THE COURT: Sure.

2 MR. FOWLER: Thank you, Your Honor. I'll
3 keep asking that unless you grant me otherwise.

4 BY MR. FOWLER:

5 Q Could you describe exhibit 1 here please.

6 A Yes, it's a letter from general counsel stating
7 South Carolina Department of Corrections, Office of
8 General Counsel, response to inmate correspondence.

9 Q Okay. And what did it say?

10 A The case you're referencing was dismissed on
11 4/17/13 and Shaun Kent was not listed as attorney
12 for you.

13 Q So that was the real first time that you found
14 out that it was dismissed officially, correct?

15 A Yes.

16 Q Okay. It's my understanding that you sent
17 correspondence to the attorney general, attorney
18 Kent and the Clerk of Court on 8/6/13; is that
19 correct?

20 A Sounds about right.

21 Q Okay. And you also found out -- okay, and the
22 date of that letter, exhibit 1, is 8/21/13. And you
23 also asked for the clerk of court to send you
24 information; is that correct?

25 A Yes, sir.

PW - B. LISEBY - DIRECT

1 MR. FOWLER: If I may just a moment, Your
2 Honor.

3 THE COURT: Okay.

4 MR. FOWLER: Thank you.

5 BY MR. FOWLER:

6 Q You sent that letter on September 6th, 2013; is
7 that correct?

8 A Sounds about right.

9 Q Okay. And they asked you to provide some kind of
10 money for a copy of that —

11 A Yes, sir.

12 Q —that dismissal. So once again, just to
13 conclude my questioning, you were interested in a
14 right of appeal?

15 A Yes, sir.

16 Q And you were interested in perhaps a 59(e),
17 correct?

18 A Yes, sir.

19 Q And those two items ended at a maximum of on
20 April 17th, 2013, correct — excuse me, May 17th,
21 2013?

22 A Yes, sir.

23 Q Okay. And the letter you received from Kent as
24 exhibit 6 was received by Tiger River on June 23rd,
25 2013?

PW - B. LISEBY - DIRECT

1 A Yes, sir.

2 Q So you —

3 A Was received on July 7th, 17th, excuse me.

4 Q Exactly, yes, sir. Are you asking this Court for
5 an extension to file an appeal on a notice of appeal
6 and/or a 59(e) on your March 2013 PCR?

7 A I am.

8 Q Okay. Is there anything else at this point that
9 you'd like to express to the Court or anyone here
10 today in terms of what your concerns about this
11 matter and the timeline of you receiving proper
12 notice on this?

13 A I think that just about sums it up. That —
14 well, I wanted, I should have been notified of that
15 notice, I mean, my right for notice of appeal as,
16 well, as my case was turned down so I could have had
17 took those options.

18 Q And if you do receive something coming out of
19 today's hearing you will be your planning on filing
20 a notice of appeal or 59(e); is that correct?

21 A I will do so.

22 Q Okay. Unless you have anything else you'd like
23 to say, I have no further questions.

24 THE COURT: Okay. Anything from the
25 State?

PW - B. LISEBY - CROSS

1 MR. GOURLEY: Yes, Your Honor, very
2 briefly.

3 **CROSS-EXAMINATION**

4 BY MR. GOURLEY:

5 Q Mr. Lisenby, did you ask your attorney to file an
6 appeal?

7 A Yes, sir.

8 Q And when did you do that?

9 A Well, I asked — I told him that day I wanted to
10 file a Rule 59(e) before I filed an appeal to make
11 sure that everything is in my order, and I explained
12 to him that — he told the attorney general to draft
13 it, and I asked him to make sure to look over it
14 'cause they don't put everything in there.

15 Q So Judge Young denied your PCR from the Bench?

16 A No, no, I had spoke to Mr. Kent about that 'cause
17 I had been through it over and over again.

18 Q So you told Mr. Kent the day that you were at
19 your PCR hearing —

20 A I told him the day of the PCR hearing and when he
21 called me at Tiger River, prior to that.

22 Q Okay, thank you.

23 THE COURT: Anything else?

24 MR. FOWLER: If I may.

25 **REDIRECT EXAMINATION**

PW - B. LISEBY - REDIRECT

1 BY MR. FOWLER:

2 Q If something does come out of this hearing you
3 understand that there's a very limited time window.
4 If the judge were to grant an extension, appeal
5 extension, it would be approximately the same dates
6 coming out of his signature and file date, correct?

7 A I understand that.

8 MR. FOWLER: No further questions, Your
9 Honor.

10 THE COURT: Okay. You can step down.
11 Anything else from the Applicant?

12 MR. FOWLER: No, Your Honor.

13 THE COURT: Okay, anything from the State?

14 MR. GOURLEY: Yes, Your Honor, we call
15 Mr. Kent very briefly.

16 THE COURT: All right.

17 THE CLERK: Place your left hand on the
18 Bible, raise your right hand. State your name
19 please.

20 THE WITNESS: Shaun Kent, S-H-A-U-N.

21 WHEREUPON,

22 **SHAUN KENT,**
23 having been duly sworn by the Clerk, testified as
24 follows:

25 THE CLERK: Have a seat up here please.

RW - SHAUN KENT - DIRECT

1 State your full name for the record.

2 THE WITNESS: Shaun Kent, S-H-A-U-N
3 K-E-N-T.

4 **DIRECT EXAMINATION**

5 BY MR. GOURLEY:

6 Q Mr. Kent, is it your practice to discuss the
7 right of appeal with your clients?

8 A Yes, I do generally.

9 Q And when do you typically do this?

10 MR. FOWLER: Objection, Your Honor, as a
11 general question we're here specifically on this
12 client's procedure.

13 THE COURT: Okay, overruled. I'll allow
14 you to ask the question.

15 BY MR. GOURLEY:

16 Q And when do you typically do this?

17 A Usually -- and I say generally 'cause I don't
18 usually do PCR cases, I usually do criminal defense
19 work cases. And in criminal defense work cases,
20 when the client comes into me initially I tell them
21 that I don't handle appellate work.

22 Q Okay.

23 A In PCR type cases it just depends on when it may
24 or may not come up.

25 Q Okay. Did you discuss or do you recall

RW - S. KENT - CROSS

1 discussing Mr. Lisenby's right to appeal with him?

2 A I do not.

3 Q Okay. And did he ever indicate to you that he
4 wanted an appeal?

5 A And I heard from his testimony we never discussed
6 his appellate rights during the hearing. That was
7 definitely a conversation we did not have.

8 Q Okay.

9 MR. GOURLEY: Your Honor, I have no other
10 questions. Thank you, Mr. Kent.

11 THE COURT: Anything from the Applicant?

12 **CROSS-EXAMINATION**

13 BY MR. FOWLER:

14 Q Do you think it's a good practice, Mr. Kent, to
15 discuss appellate rights with a client on a PCR
16 hearing?

17 A On a PCR hearing?

18 Q On a PCR — if you have a PCR client do you think
19 it's a good idea to discuss appeal rights and
20 deadlines with that client?

21 A I guess so. It depends on a case-by-case basis
22 to be perfectly honest.

23 MR. FOWLER: If I may approach, Your
24 Honor.

25 THE COURT: Sure.

RW - S. KENT - CROSS

1 BY MR. FOWLER:

2 Q This is exhibit 6 that we went over earlier.

3 It's — could you describe this for me again please.

4 A Yes, sir. That's a letter dated from my office
5 on June 23rd, 2013 in response to Mr. Lisenby. He
6 had sent me a letter specifically asking for a copy
7 of his file and so I sent him a copy of his file.

8 Q And that's your signature, —

9 A That is my signature, yes.

10 Q —correct? And finally on exhibit 7, that is
11 your office logo, correct?

12 A Yes, sir.

13 Q And this is a letter you sent to him?

14 A Yes.

15 Q And can you show the receive date there?

16 A June 27, 2013.

17 Q And that's at Tiger River again, correct?

18 A Yes, sir, that would be my assumption.

19 Q And that's an approximate receipt date that
20 you're okay with, correct?

21 A Yes, sir.

22 Q And both of these days, both of those dates, the
23 23rd of June and the 27th, both fall out of the 30,
24 10 to 30 day window after the dismissal, correct?

25 A Well, and you bring up the dismissal, but that

RW - S. KENT - CROSS

1 —

2 Q Just answer the question if you don't mind, sir.

3 A Well, I can't answer your question with a yes or
4 no answer 'cause you say it's a dismissal, but the
5 order wasn't filed until January of 2014.

6 Q Well, it was after the hearing date, correct?

7 A After the hearing date, yes. I can't talk to you
8 about the dismissal because it wasn't filed yet.

9 MR. FOWLER: No further questions.

10 MR. GOURLEY: Your Honor, I have nothing
11 further.

12 THE COURT: Okay, thank you, sir.

13 THE WITNESS: Thank you, Judge.

14 MR. GOURLEY: Just very briefly, Your
15 Honor, I know we discussed it back in chambers, but
16 Rule 59(e), Mr. Lisenby is not entitled to file
17 that. There's no kind of belated Rule 59(e). I just
18 want to put that on the record.19 THE COURT: Right, okay. What I'm gonna
20 do, I mean, I —21 MR. FOWLER: May I have a moment with my
22 client, Your Honor.

23 THE COURT: Sure.

24 MR. FOWLER: I apologize, Your Honor, to
25 interrupt.

1 THE COURT: Yes.

2 (Attorney confers with petitioner Lisenby.)

3 MR. FOWLER: For the record, if you don't
4 mind, it's my understanding that speaking with my
5 client that his intention is that he would be able
6 to file Rule 59(e) as stated in Marler (ph) versus
7 South Carolina 2007 and Bostic versus Stevenson. So
8 it's our contention that the 59(e) still survives if
9 you were to provide him a opportunity to appeal.

10 THE COURT: All right.

11 Yes, sir.

12 MR. GOURLEY: Your Honor, it doesn't.
13 That's — I mean, I can get case law out there that
14 says — I don't know it off the top of my head.
15 Marler, he is correct saying Marler does deal with
16 59(e)s that talks about the right to 59(e)s. But
17 there's no case out there saying that you're
18 entitled to belated 59(e) similar to what we have in
19 Austin. Just for the record, Your Honor. It's been
20 raised and ruled upon by the Supreme Court.

21 THE COURT: Okay. What I'm gonna do,
22 based upon information in front of me I'm limited in
23 my ruling as to whether or not he's had sufficient
24 right to file his appeal. And based upon the dates
25 and the way the mail, I don't think it's anybody's

1 fault, I also understand that you know, supreme
2 court doesn't like us granting these unless they're,
3 if they're spurious. But I do think in this case
4 because of the timeframe he has a right to file his
5 appeal. As far as 59(e) I don't think that's an
6 issue unless you go back and look that up, and I
7 don't think he's right about that but if you find
8 that let me know. I'm gonna give him his right to
9 grant it. Now here's the deal, you got to file your
10 appeal within 30 days of the date that you receive
11 my order. You can't do it right now because you
12 don't know exactly what you're appealing but. It's
13 actually, and you're not appealing — you're
14 appealing the previous order. I mean, that's where
15 this thing has gotten real confused. I'm just
16 giving you the right to appeal that. But that time
17 will start when you get my order, okay.

18 MR. FOWLER: And that's not your signature
19 date necessarily or the file date that's when he
20 gets it by mail? That to be clear, Your Honor or

21 —

22 THE COURT: Well, the problem is that I
23 can't when he gets it by mail if he's in lockdown.
24 I mean, you understand that you go to lockdown
25 that's your — you did something to go to lockdown

1 and I can't help the fact that they don't deliver
2 your mail there so. I hate to tell you but I think
3 what probably should happen if, to be safe, is
4 they'll send me the order. Once I sign it it will
5 come back to both of y'all, and I would make sure
6 you notify him and I would give it then.

7 MR. FOWLER: Okay, and I — so the
8 attorney general is gonna prepare the order and
9 provide it to you and you send me a copy?

10 THE COURT: Then you need to let him know
11 and if then — I would say file the notice of intent
12 to appeal and then go from there.

13 MR. GOURLEY: Mr. Ballard can file the
14 notice of intent of appeal and get it to appellate
15 defense and they'll take over from there.

16 THE COURT: Yes, that's all you got to do.

17

18 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Billy Lisenby, #200273,

2013-CP-14-444

Applicant,

ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE

vs:

State of South Carolina,

Respondent,

CLARENCE COUNTY CLERK OF COURT
5 MAR 26 PM 2:40
CLARENCE COUNTY CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated October 25, 2013. The Respondent made its Return and Motion to Dismiss on April 14, 2014. An evidentiary hearing on the matter was convened on December 18, 2014, at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Steven Fowler, Esquire. Daniel Gourley, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the guilty plea transcript, the Clarendon County Clerk of Court's records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's Return and Motion to Dismiss, and the South Carolina Court of Appeals records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was true bill indicted during the October 2010 term of the Clarendon County Grand Jury for Assault on a Correctional Facility (2010-GS-14-0484). Scott Robinson, Esquire, represented him. On

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DATE 3/16/16
CLARENCE COUNTY CLERK OF COURT
CLARENDON

July 19, 2010, the Applicant pled guilty. He was sentenced by the Honorable Howard P. King to six months imprisonment.

A timely Notice of Appeal was filed. The appeal was dismissed in a written order dated and filed March 6, 2012, for failing to establish any preserved issues. The Remittitur was sent on March 22, 2012.

The Applicant subsequently filed an application for post-conviction relief (PCR) on March 14, 2012 (C.A. No. 2012-CP-14-00132). An evidentiary hearing into the matter was convened on March 20, 2013, at which the Applicant was present and represented by Shaun C. Kent, Esquire. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of trial counsel.
 - a. Counsel was ineffective for failing to file a direct appeal.
 - b. Counsel was ineffective for failing to pursue an insanity defense

The Honorable W. Jeffrey Young denied and dismissed Applicant's application with prejudice by written Order dated April 11, 2013 and filed April 17, 2013. No appeal was filed.

ALLEGATIONS

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

1. Ineffective assistance of Counsel
2. Denial of Due Process
3. Conflict of Interest
4. The right to file an appeal from the denial of my P.C.R.

Respondent made its Return and Motion to Dismiss on April 14, 2014, requesting an evidentiary hearing be held solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing was held to solely address whether or not the Applicant freely and voluntarily waived his right to appeal the denial of his application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. The Court heard testimony from Applicant, who testified that he requested his prior post-conviction relief counsel, Shaun Kent, Esquire, to file an appeal upon the denial of his prior action; several documents affixed to his current application support his testimony. Counsel testified that it was his practice to discuss the right to appeal with his clients. However, Counsel stated that he never discussed Applicant's right to appeal.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the Applicant is entitled to appeal the denial of his first post-conviction relief application (2012-CP-14-00132) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

However, this Court summarily dismisses the Applicant's allegation that his prior PCR Counsel was ineffective for failing to file a 59(e) and thereby entitling him to a belated 59(e) of his first PCR application (2012-CP-14-00132), as this claim is outside the scope of PCR. This Court notes the Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). This Court finds that the contention that prior PCR counsel was ineffective for failing to file a 59(e) is non justiciable. Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-

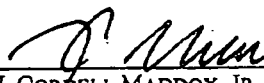
conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation . . ." Aice, 305 S.C. at 452, 409 S.E.2d at 394. Applicant invites this Court to extend Austin's holding to include a claim of ineffective assistance of PCR counsel for failing to file a motion to alter or amend judgment pursuant to rule 59(e) SCRCP. However, this Court finds Austin does not contemplate such reasoning and declines to extend Austin's specific exception to ineffective assistance of post-conviction relief counsel to include a claim of ineffective assistance of PCR counsel for failing to file a rule 59(e) SCRCP.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2012-CP-14-00132) pursuant to Austin v. State is warranted. All other allegations are denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2012-CP-14-00132 pursuant to Austin v. State; and
2. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 12 day of March, 2015.


 J. CORDELL MADDOX, JR.
 Presiding Judge
 Third Judicial Circuit

Anderson, South Carolina.

WITNESSES

Ladell Grice S C Dept Of Corrections

DOCKET NO. 2011-0347-0404

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

OCTOBER TERM 2010

THE STATE

vs.

BILLY LISENBY

ARREST WARRANT NUMBER

TM082581

ACTION OF GRAND JURY

Ladell Grice

Foreperson of Grand Jury

Date: 10-7-2010

VERDICT

Indictment for

ASSAULT ON A CORRECTIONAL FACILITY
EMPLOYEE

C. KELLY JACKSON, SOLICITOR

Foreperson of Petit Jury

Date:

136

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

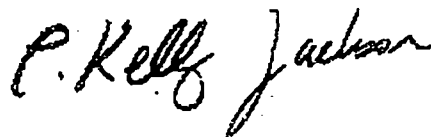
COUNTY OF CLARENDON)

ASSAULT ON A CORRECTIONAL FACILITY EMPLOYEE

At a Court of General Sessions, convened on October 7, 2010 the Grand Jurors of
CLARENDON County present upon their oath:

That Billy Lisenby did in Clarendon County on or about March 30, 2009, knowingly and willfully assault, beat or wound Correctional Facility Officer Natasha Miller, a peace officer of this State, while the defendant was an inmate at the Turbeville Correctional Institution, in violation of Section 16-03-0630, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made
and provided.



SOLICITOR