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SC SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

February 12, 2016

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

Re: Marion Alexander Lindsey v. State of South Carolina
Appellate Case No. 2015-000385
2007-CP-42-2848 - Status of Appeal

Dear Mr. Shearouse:

This is to request information concerning the status of the appeal before this Court. On October 2, 2015, this Office received from the Clerk of Court for Spartanburg County a filed copy of the Amended Order Denying Post-Conviction Relief entered October 2, 2015, dated September 28, 2015. The Amended Order was completed pursuant to an Order of Remand by this Court on September 30, 2014. In that Order, this Court directed also that "Petitioner may serve and file a new notice of appeal following the issuance of the amended order, or upon receipt of written notice of entry of an order ruling on any motion to alter or amend judgment."

A certificate of service by the Clerk of Court reflects the amended order was served by mail on October 2, 2015 upon Mr. Lindsey's post-conviction relief hearing counsel, Rick Vieth and David Collins, among others. (Copy attached). My review of the Spartanburg County Clerk of Court Docket Sheet reflects the same. Further, I have not received any motion to alter or amend or notice of appeal.

I bring these matters to the Court's attention to the different procedural history in this case and the fact that the stay of execution has been pending. I await instructions from the Court on how to proceed to resolve this matter.

Honorable Daniel E. Shearouse
February 12, 2016

Page -2-

By copy of this letter, I am advising post-conviction relief hearing counsel, Rick Vieth and David Collins, and post-conviction relief appellate counsel, Robert M. Dudek and David Alexander, of this communication.

Sincerely,

A handwritten signature in black ink, appearing to read 'Donald J. Zelenka', with a long horizontal flourish extending to the right.

Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/lbb

Enclosure: Certificate of Service

cc: Richard W. Vieth, Esquire
David Collins, Esquire
Robert M. Dudek, Esquire
David Alexander, Esquire
Honorable Paul M. Burch
Barry J. Barnette, Solicitor

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Marion Alexander Leitchley
10015
Applicant

7TH JUDICIAL CIRCUIT

CASE # 2019CPD-2848

CERTIFICATE OF SERVICE

VS
State
Respondent

I certify that, on this date, I served a copy of the Quenched Order Denying Post-Conviction
in this action dated 9-28-2015 on 10-2-15 Relief

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Archie Hammett

Rick Veltz

Bill Goodrey

David Collins - Donald Zepuka

10-2-15
(Date)

Carrie Day
(Signature)

Hopkins, Debbie

From: Robert M. Dudek <RDudek@sccid.sc.gov>
Sent: Friday, February 12, 2016 5:15 PM
To: Zelenka, Don; Rick Vieth; David Collins
Cc: David Alexander; Hopkins, Debbie; Barnette, Barry
Subject: RE: Marion Lindsey v. State - Death Penalty PCR - Status Request Concerning Amended Order Denying Relief
Attachments: Ltr Court PDF 02.12.2016.pdf

Debbie: Attached is a letter responding to the events of today regarding the non-service of the amended order of dismissal on trial level PCR counsel. Thank you –

Bob
803-734-1955

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29201-1589
(803) 734-1330 – Telephone
(803) 734-1397 - Fax

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SO SUPREME COURT

From: Don Zelenka [mailto:DZelenka@scag.gov]
Sent: Friday, February 12, 2016 12:34 PM
To: Rick Vieth; David Collins
Cc: Robert M. Dudek; David Alexander; Debbie Hopkins; Barnette, Barry
Subject: RE: Marion Lindsey v. State - Death Penalty PCR - Status Request Concerning Amended Order Denying Relief

Rick -
Thank you for the follow-up. Does the Spartanburg Clerk generally serve your office in any different manner as counsel than by mail. The Amended order in this case is 187 pages. The certificate of service by the Clerk I received indicated service by mail.

Don

From: Rick Vieth [mailto:rvith@hbvlaw.com]
Sent: Friday, February 12, 2016 12:26 PM
To: David Collins
Cc: Don Zelenka; Robert M. Dudek; David Alexander (dalexander@sccid.sc.gov); Debbie Hopkins; Barnette, Barry
Subject: RE: Marion Lindsey v. State - Death Penalty PCR - Status Request Concerning Amended Order Denying Relief

We have same March 2 email regarding our proposed Order. We are looking though the entire file, but in our 'correspondence' file, this was last entry. David Alexander and Mr. Dudek sent a letter on March 3 regarding Reply to Return to Petition for Extraordinary Relief. That is last date we see so far.

Rick Vieth
Henderson, Brandt & Vieth, P.A.
360 E. Henry Street, Ste. 101
Spartanburg, SC 29302



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
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Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

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SC SUPREME COURT

VIA EMAIL ONLY

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211
DJHopkins@sccourts.org

Re: Marion Lindsey v. State, CA No. 2007-CP-42-2848
Appellate Case No. 2012-206087

Dear Mr. Shearouse:

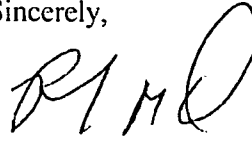
This letter will respond to Mr. Zelenka's letter of earlier today and will also confirm today's email correspondence between the parties and the Court.

I have spoken to both Rick Vieth and David Collins. They both thoroughly reviewed their file and told me they did not receive the amended order referred to in Mr. Zelenka's letter. They both stated that it would be extremely unlikely that they could overlook what Mr. Zelenka says is a 187 page order in a death penalty case. They also stated that in their years of practice in Spartanburg County, they cannot recall having ever seen a "certificate of service" from the clerk of court that looked like the one attached to Mr. Zelenka's letter. Appellate co-counsel David Alexander, who practiced in the upstate for a number of years, also said he cannot recall such a form. In any event, the form does not indicate an address of service nor does it indicate that appellate counsel were served with the order. As of the writing of this letter, I still have not seen this amended order.

I would respectfully suggest that either the circuit court or Mr. Zelenka serve the amended order on appellate counsel rather than trial-level PCR counsel, thereby beginning the deadlines for filing either a Rule 59(e) Motion or a Notice of Appeal. Properly serving the amended order would avoid the need to either litigate the service issue or trigger the need for Mr. Lindsey to file a PCR seeking relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Both of these options appear to be a waste of time and judicial resources, especially considering that this action has been pending since 2007.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'R M D', written in a cursive style.

Robert M. Dudek
Chief Appellate Defender

cc. The Honorable Paul M. Burch
Donald J. Zelenka, Esq.
David Alexander, Esq.
Richard W. Vieth, Esq.
David Collins, Esq.
Barry J. Barnette, Esq.
Client (VIA US Mail only)

private line (864) 583-5430
office ph.: (864) 582-2962
fax (864) 583-1894
rvieth@hbvlaw.com
www.hbvlaw.com

From: David Collins [<mailto:david@carolinafamilymatters.com>]
Sent: Friday, February 12, 2016 12:11 PM
To: Rick Vieth <rvieth@hbvlaw.com>
Cc: Don Zelenka <DZelenka@scag.gov>; Robert M. Dudek <RDudek@sccid.sc.gov>; David Alexander (dalexander@sccid.sc.gov) <dalexander@sccid.sc.gov>; Debbie Hopkins <djhopkins@sccourts.org>; Barnette, Barry <bbarnette@spartanburgcounty.org>
Subject: Re: Marion Lindsey v. State - Death Penalty PCR - Status Request Concerning Amended Order Denying Relief

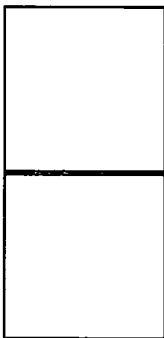
Don,

Rick is correct about the date - it was March 2, 2015.
Judge Burch's office requested a copy of our previous proposed order in Word format.
I have no record of any activity since that time.

Thanks,
David

--
David M. Collins, Jr.
P.O. Box 2465
Greenville, SC 29602
(864) 990-3061 - Phone
(864) 990-3062 - Fax
david@carolinafamilymatters.com

Visit our website at www.carolinafamilymatters.com.



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On Fri, Feb 12, 2016 at 12:05 PM, Rick Vieth <rvieth@hbvlaw.com> wrote:

Don, I just got off phone with David Collins. He said last activity he has in his file is March of, I think, last year. Dave can reply if I'm wrong on last activity in his file. I will take a look at file either later today or first thing Monday to see if I have a copy of Order from just 4 months ago. Seems like I would recall that if I got it,

but if we got and failed to file Notice to Appeal, we will acknowledge fault on our behalf if someone has to file PCR against us. Thanks for sending. rv

Rick Vieth

Henderson, Brandt & Vieth, P.A.

360 E. Henry Street, Ste. 101

Spartanburg, SC 29302

private line (864) 583-5430

office ph.: (864) 582-2962

fax (864) 583-1894

rvieth@hbvlaw.com

www.hbvlaw.com

From: Don Zelenka [mailto:DZelenka@scag.gov]

Sent: Friday, February 12, 2016 11:47 AM

To: Robert M. Dudek <RDudek@sccid.sc.gov>; David Alexander (dalexander@sccid.sc.gov) <dalexander@sccid.sc.gov>; Rick Vieth <rvieth@hbvlaw.com>; david@carolinalegalmatters.com

Cc: Debbie Hopkins <djhopkins@scccourts.org>; Barnette, Barry <bbarnette@spartanburgcounty.org>

Subject: Re: Marion Lindsey v. State - Death Penalty PCR - Status Request Concerning Amended Order Denying Relief

To all –

Attached is a letter sent this date to the Clerk of the South Carolina Supreme Court requesting information concerning Mr. Lindsey's case. In short, my records reflect that an amended order was served on October 2, 2015 upon PCR hearing counsel by the Spartanburg County Clerk of Court. No motion to alter or amend and no notice of appeal was served upon my records and a review of the Spartanburg County docket.

Don Zelenka

Donald J. Zelenka

Senior Assistant Deputy Attorney General

South Carolina Office of the Attorney General

P. O. Box 11549

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803-734-3601

FAX – 803-734-4035

dzelenka@scag.gov