

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

APR 22 2016

D. GARRISON HILL, CIRCUIT COURT JUDGE
S.C. SUPREME COURT

APPELLATE CASE No. 2016-000664

MARION JAMES DODD, APPELLANT,
vs.

STATE OF SOUTH CAROLINA RESPONDENT

NOTICE OF RE-IN-STATEMENT

I MARION JAMES DODD, PLED GUILTY TO POSSESSION WITH INTENT TO DISTRIBUTE, COCAINE. BASE, 2nd offense. (10-28 grams) DURING THE MAY 2011 TERM OF GENERAL SESSION IN GREENVILLE COUNTY. ON THE ADVICE OF PLEA COUNSEL, & TRAFFICKING, HONORABLE G. EDWARD WELMAKER, RAN BOTH CHARGES TOGETHER TO RUN CONCURRENTLY, PETITIONER WAS SENTENCED TO EIGHT-YEAR'S. PETITIONER WAS REPRESENTED BY LARRY COOKE, I ASKED FOR AN APPEAL COUNSEL CLAIMED I COULD NOT RECEIVE ONE BASED ON HIS REPRESENTATION. APPELLATE COUNSEL ARGUED THE ISSUE OF NOT BEING AFFORDED THE OPPORTUNITY TO RECEIVE AN DIRECT APPEAL, NOR ANY APPEAL.,

HISTORY

ON AUGUST 1, 2011, I # 236658 I HAD AN INMATE HELP ME FILE FOR AN (PCRA) POST CONVICTION RELIEF APPLICATION., SINCE THERE WAS NO OTHER WAY TO FILE FOR AN APPEAL., ON JUNE 18, 2013 AN HEARING WAS HELD BASED ON MY PLEA COUNSEL DENYING ME THE RIGHT TO A DIRECT APPEAL AND FOR THE STATE TO TRY AND RE-CREATE AN PLEA TRANSCRIPT, WHICH WAS VIOLATIVE AGAINST PETITIONER, PCR "EVIDENTIARY HEARING." THE PCR JUDGE WAS HONORABLE D. GARRISON HILL. I WAS REPRESENTED BY CARDINE M. HORLBECK.,

ALLEGATION(S). I

ON AUGUST 1, 2013., HONORABLE D. GARRISON HILL ISSUED AN ORDER DENYING PETITIONERS ALLEGATIONS OF (IAC) INEFFECTIVE ASSISTENCE OF COUNSEL CLAIM. PETITIONER APPEALED, TO THE

2016-000664

SOUTH CAROLINA SUPREME COURT OF APPEALS COURT I WAS REPRESENTED, BY WANDA H. CARTER, CHIEF APPELLATE DEFENDER, ON MAY 21, 2014. A JOHNSON PETITION WAS DISMISSED PETITIONER CONTACTED MS. CARTER JUNE OF 2014 BY PHONE AT THE APPELLATE DIVISION LOCATED IN COLUMBIA, ON MY BEHALF, ON OCTOBER, 30 2014 PETITIONER FILED ANOTHER (PCR) POSTCONVICTION RELIEF APPLICATION.

II

THE RESPONDENT MADE ITS RETURN ON FEBRUARY 25, 2015, REQUESTING APPLICATION BE SUMMARILY DISMISSED BASED ON THE EXPIRATION OF THE STATUTE OF LIMITATION AND THE PRESUMPTION AGAINST SUCCESSIVE PCR APPLICATIONS AND AN CONDITIONAL ORDER ISSUED MARCH 12, 2015, DISMISSED MAY 12, 2015, SERVED ON PETITIONER APRIL 9, 2015.

ON NOVEMBER 4, 2015, I RECEIVED A LETTER FROM GREENVILLE, COUNTY CLERK OF Ct., STATING MY 2014-CP-23-05943 APPEAL HAD BEEN DISMISSED PER ORDER DATED 5/19/15, NOTICE OF APPEALS WAS CLOCKED 5/28/15 AND FORWARDED TO ATTORNEY GENERAL OFFICE

III

ON APRIL 4, 2016 I RECEIVED A LETTER MOTION FROM HONORABLE DANIEL E. SHEAROUSE CLERK OF S.Ct., DATED MARCH 31, 2016, ASSERTING THAT IN ORDER FOR MY APPEAL TO BE ACCURATE IT MUST BE SUFFICIENT PURSUANT TO RULES 203 and 243.(c), SCACR, I WAS PROVIDED FIFTEEN DAYS OF THE DATE OF THIS LETTER.

CONCLUSION

BASED ON LEWIS V. STATE; 630 S.E. 2D 464 (2006), THE S.Ct., HELD: IN OUR OPINION, A CONDITIONAL ORDER OF DISMISSAL IS NOT THE FINAL JUDGMENT, THERE IS ANOTHER ACT TO BE DONE "REINSTATE THE APPEAL" PURSUANT TO THE RECEIVED RULE OF THE (15) FIFTEEN DAYS SCACR, LANGUAGE DEFINED IN WISE V. SCDC, 372 S.C. 173, 642 S.E.2D 551 (SC. APP 2007).

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APPEAL FROM GREENVILLE COUNTY
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D. GARRISON HILL, CIRCUIT COURT JUDGE

APPELLATE CASE No. 2016-000664

MARION JAMES DODD APPELLANT.

VS.

STATE OF SOUTH CAROLINA RESPONDENT

Proof of Service

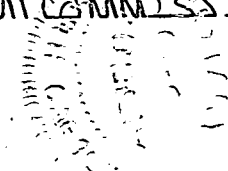
I CERTIFY that I HAVE SERVED THE REINSTATED NOTICE OF APPEAL ON HONORABLE DANIEL E. SHEAROUSE AT POST-OFFICE-BOX 11330 COLUMBIA S.C. 29211, ON THIS APRIL 18 2016 BY PERSONALLY DELIVERING A TRUE COPY THROUGH THE SCDC TYGER RIVER CORRECTIONAL INSTITUTION, AT 200 PRISON ROAD, ENOREE, S.C. - 29335.,

APRIL 18 2016

S/ Marion J Dodd
MARION JAMES DODD
TYGER RIVER INST-3-B-125
200 PRISON ROAD
ENOREE, S.C. 29335

Sworn to and subscribe before me
THIS 18th DAY of April, 2016
Paul [Signature] (LS)
NOTARY FOR SCDC / SC

MY COMMISSION EXPIRE Dec 10 2024



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

APR 22 2016

D. GARRISON HILL, CIRCUIT COURT ~~FILED~~ SUPREME COURT

APPELLATE CASE NO. 2016-000664

MARION JAMES DODD APPELLANT,

vs.

STATE OF SOUTH CAROLINA RESPONDENT

EXPLANATION 243(c)

PURSUANT TO AN AFFIDAVIT SERVED ON PETITIONER DATED APRIL 9, 2015, AT WATEREE RIVER CORRECTIONAL INSTITUTION, THE ORDER WAS SERVED AS AN CONDITIONAL ORDER OF DISMISSAL. THE RESPONDENT HAD GIVEN ME PETITIONER 20 DAYS TO SHOW WHY THE DISMISSAL SHOULD NOT BECOME FINAL.

I WAS MISLEAD BY OF LANGUAGE CITED IN STATE'S ORDER § 17-27-20. STATE'S THAT I HAVE ONE (1) YEAR TO FILE ANY NEW CLAIM, AS WELL AS § 17-27-45 THERE IS NO LANGUAGE IN THE ORDER STATING A NOTICE TO SEEK APPEAL ONLY 20 DAYS AS TO WHY IT SHOULD BE DISMISSED. BASED ON SCACR 602(c)(4) IS PETITIONER CLAIM OF ACTION. AND RELIES ON THIS LANGUAGE; BECAUSE HAD I KNEW THAT I WASN'T TO FILE FORE ANOTHER (PCRA) POSTCONVICTION-RELIEF APPLICATION BASED ON THIS NOTICE OF APPEAL RULE 203.,,

VI RIGHT

WITHOUT THE ASSISTENCE OF A "SIXTH AMENDMENT COUNSEL" PETITIONER HAS FAILED INTO THE 1932 AREA OF POWELL V. ALABAMA, 53 S. CT. 55 (1932) WHERE THE COURTS RELIED ON THIS LANGUAGE, THE FAILURE TO PROVIDE EFFECTIVE ASSISTENCE IS A FUNDAMENTAL CONSTITUTIONAL ERROR THAT UNDERMINES THE ENTIRE ADVERSARY PROCESS. ALSO SEE GIDEON V. WAINWRIGHT, 83 S. CT. 792 (1963).

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Marion James Dodd,)
 S.C.D.C. No. 236658,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 2014-CP-23-5943

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKERSHIMER
 2015 MAY 19 9 10 01

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 30, 2014. The Respondent made its return on February 25, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed March 12, 2015 and filed March 16, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated April 9, 2015, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Response to Respondent's Return and Motion to Dismiss" and filed March 26, 2015, the Applicant argues "[b]ecause of his race, and because of his lack of legal knowledge, [he] was illegally, and unconstitutionally subjected to a discriminatory and

RB 9

selective application and enforcement of the law during the course of the PCR process that was provided for him by the State.” The Applicant argues his first PCR application was “illprepared and incomplete” and that an amendment to that application was never filed. The Applicant argues the Respondent’s position that this is a successive PCR application is without merit. The Applicant argues he was denied the right to appeal his guilty plea and sentence.

This Court has reviewed the Applicant’s response to the Conditional Order of Dismissal in its entirety,¹ in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant pled guilty and was sentenced on May 24, 2011. As this action was filed on October 30, 2014, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant’s second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on June 18, 2013. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

¹ This Court also received a letter from the Applicant, dated April 6, 2015, in which he argues he is entitled to court-appointed counsel. This request appears to be based upon the lack of a guilty plea transcript. The Applicant argues the South Carolina Supreme Court “is deprived of jurisdiction on an appeal if there is no transcript.” This Court notes the unavailability of the transcript from the guilty plea hearing was addressed at the first PCR hearing, and a plea reconstruction was also had at that time. This Court notes the Applicant has provided no cognizable basis for his assertion that the lack of a plea transcript deprived the Supreme Court of jurisdiction to hear the appeal from his first PCR application.

This Court notes the Applicant admits that he raised several of these arguments – specifically those related to his “illprepared and incomplete” and un-amended first PCR application – in his pro se Johnson petition during the appeal from his first PCR hearing. These arguments were, therefore, before the South Carolina Supreme Court and that Court chose not to address them. Regardless, this Court finds the Applicant has failed to articulate why he is entitled to disregard the statute of limitations and presumption against successive PCR applications when he had court-appointed counsel for his first PCR action, a full evidentiary hearing, and a Johnson appeal.

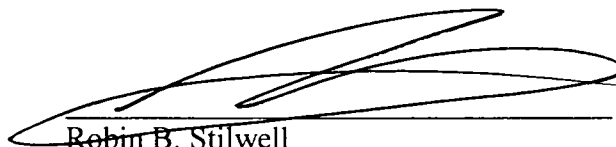
This Court notes the Applicant argues he was denied the right to appeal from his guilty plea. This Court, however, is not persuaded to grant a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). By the Applicant’s admission, his guilty plea attorney testified at his first PCR hearing that he did not advise the Applicant of his right to appeal. The Applicant did not amend his PCR application at that time to assert an allegation that he was entitled to a White appeal. Further, a post-trial motion was not filed to ask this matter be addressed. See, e.g., Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991). Regardless, the guilty plea attorney was not obligated to advise the Applicant of the right to appeal his guilty plea. See Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). The prior PCR records in this case were attached and incorporated to the Respondent’s return and motion to dismiss. This Court notes the Applicant’s statement that plea counsel testified he did not advise the Applicant of the right to appeal is correct. This Court, however, also finds the Applicant never testified at the first PCR hearing that he wanted an appeal. This Court further finds the Applicant failed to testify at the first PCR hearing (or provide proof in

this current PCR action) that he reasonably demonstrated to plea counsel that he wanted an appeal. As such, this allegation is denied.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

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

AND IT IS SO ORDERED this 2TH day of May, 2015.



Robin B. Stilwell
Chief Administrative Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated Tonya James (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)

AFFIDAVIT OF PERSONAL SERVICE

COUNTY OF Sumter)

On this 9th day of April 2015, I served the **Conditional Order of Dismissal**, on **Inmate Marion James Dodd, SCDC Inmate # 236658**, by delivering personally and leaving a copy of the same at **Wateree River Correctional Institution, Bembert**. Deponent is not a party to this action.

s/ Tonya James
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 9th day of April, 2015

Lee John Lee Labor (L.S.)
Notary Public for South Carolina

RECEIVED

APR 08 2015

W.R.C.I.
WARDEN OFFICE

My Commission Expires: 02/15/2017

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Wateree Correctional Institution), Bembert, Sumter County, SC this 9th day of April, 2015.

s/ Marion Dodd
Inmate
SCDC Inmate #: 236658

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Marion James Dodd, 236658)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-236658-94

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. BENSINGER
2014 MAY 05 PM 10 01

Plaintiff's Attorney: Marion James Dodd, 236658, Bar No. Address: Wateree River CI POBox 189 Rembert SC 29128 phone: fax: e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Sadag, Bar No. 68337 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff Defendant

Date submitted: May 5, 2015

SECTION III: Motion Fee

PAID - AMOUNT: _____
 EXEMPT:

(check reason) Rule to Show Cause in Child or Spousal Support

Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

 JUDGE

CODE: _____ Date: _____

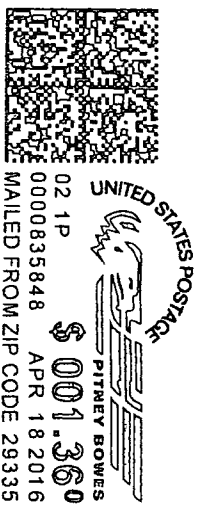
CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

MR. MARIION JAMES DODD, # 236658
TYGER RIVER INSTITUTION - UNIT-3-B-125 44
200 PRISON ROAD
ENDREE, SOUTH CAROLINA,
29335



TYRRC MAILROOM

APR 18 2016

RECEIVED

HONORABLE DANIEL E. SHEAROUSE
CLERK OF S.C. SUPREME COURT
SUPREME COURT BLDG.,
POST OFFICE BOX 1133D
COLUMBIA, SOUTH CAROLINA
29211