



ALAN WILSON
ATTORNEY GENERAL

November 8, 2016

The Honorable Jean H. Toal
Presiding Judge, Ninth Circuit
PO Box 12456
Columbia, SC 29211

Re: Samuel Brown, Jr. v. State of South Carolina
Appellate Case No.: 2016-002157
Circuit Court Case No.: 2014-CP-08-2566

Dear Justice Toal:

I represent the State in the above matter. A hearing was held in the above post-conviction relief (PCR) matter before Your Honor on September 16, 2016. On the same date, a form order granting the State's motion for summary judgment was filed. The form order did not indicate whether a formal written order was or was not to follow. A Notice of Appeal was filed on Mr. Brown's Behalf on October 3, 2016. Thereafter, by letter dated October 28, 2016, the Supreme Court directed the State to provide information concerning Mr. Brown's PCR action.

Our records reflect that former Assistant Deputy Attorney General, Rutledge Johnson, submitted a full written proposed order via email to opposing counsel, Rodney Davis, for his review on September 27, 2016. In the email, ADAG Johnson indicated he needed to send the proposed order for Your Honor's review on the same date. According to our records, Mr. Davis did not respond. Under these circumstances, it appears that even though it did not specify a formal order was to follow, the form order filed on September 16, 2016, was not intended to be the final order in Mr. Brown's PCR action, and through inadvertence, the proposed written order was never submitted for Your Honor's review. Enclosed is the proposed order and the letter from the Supreme Court dated October 28, 2016.

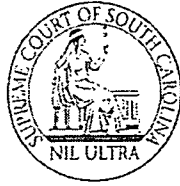
Thank you, and if you should have any questions or concerns, please contact me at (803) 734-3737.

Sincerely,

for Alicia A. Olive
Assistant Attorney General

cc: Rodney D. Davis, Esquire
The Honorable Daniel E. Shearouse, Clerk of Court, SC Supreme Court

Enclosure



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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October 28, 2016

Rodney Duane Davis, Esquire
4000 Faber Place Drive
Suite 300
Charleston SC 29405

James Rutledge Johnson, Esquire
PO Box 11549
Columbia SC 29211

Re: Samuel Brown v. State
Appellate Case No. 2016-002157
Lower Court Case No. 2014CP0802566

Dear Counsel:

This Court has received the notice of appeal in this matter, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of

personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

The notice of appeal states that the order on appeal was issued after an evidentiary hearing was held. The order on appeal is a Form 4 order that simply states that summary judgment is granted to the State because petitioner has served his sentence. The order does not indicate that a full written order is to follow.

I ask counsel to confirm that this form order was issued after an evidentiary hearing was held by the circuit court. If this is the case, I ask each counsel to explain how this order complies with the requirements of S.C. Code Ann. § 17-27-80 (After conducting an evidentiary hearing, "[t]he court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.").

Finally, I would ask the counsel for the State to advise this Court of the date on which petitioner completed the underlying sentence since the Department of Corrections website continues to show that both the sentence in this case which arose in Berkeley County (2013GS08011334) and his Charleston County sentence are both active.

I ask that each counsel respond within ten (10) days of the date of this letter.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a series of loops and a long horizontal stroke extending to the right.

CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
)
)
)
Samuel Brown, #254907,)
)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2014-CP-08-2566

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 20, 2014. The Respondent made its Return on August 31, 2015. An evidentiary hearing into the matter was convened on September 16, 2016, at the Berkeley County Courthouse. Rodney Davis, Esquire represented the Applicant. Christopher Harrison, a third-year law student at the Charleston School of Law under the South Carolina Supreme Court Rule 401 (Student Practice Rule), supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

This Court had before it a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the Applicant's application, the State's Return and the plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court.¹ The Applicant was

¹ Applicant is currently serving a 10-year cocaine sentence from Charleston County which he pled to prior to

indicted at the September 2013 term of the Berkeley County Grand Jury for Possession with Intent to Distribute Marijuana (PWID) (2013-GS-08-1334). Chad Shelton, Esquire represented the applicant. On May 20, 2014, the Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced the Applicant to terms of confinement for three (3) years.² The Applicant did not appeal his sentence or plea.

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

1. "Ineffective Assistance of Counsel"
 - a. "Failure to pursue [sic] a trial"
 - b. "Failure to show competent advice on a plea"
 - c. "Failure to investigate"
 - d. "Failure to suppress evidence"
 - e. "Failure to advise defendant"
2. "Rule 5/Brady Motion"
 - a. Failure to object and preserve Rule 5/Brady violation"
3. "Due Process of Law"
 - a. "Prejudice to show illegal search and seizure"

At the hearing, the State read the procedural history of the case and then made a motion pursuant to Rule 56 (b) & (c) SCRPC for summary judgment because the Applicant had already served the full three (3) year term of his sentence and deemed this PCR action moot.

Applicant then alleged that the collateral consequences of his PWID conviction could be unfairly used against him in unrelated and possibly future proceedings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments at the post-conviction relief hearing. This Court has further had the opportunity to listen

pleading to the charges in this case.

to the State's motion and the Applicant's response. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

State's Motion pursuant to 56 (b) & (c), SCRPC

Pursuant to Rule 56 (b) SCRPC, "A party against whom a claim...is asserted...may, at *any time*, move with or without supporting affidavits for summary judgment in his favor as to all or any part thereof" (emphasis added). Rule 56 (c) SCRPC states, in part: "The judgment sought shall be rendered forthwith if the pleadings...show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

In this case, Applicant claims he is suffering the collateral consequences of his conviction despite having already served the full term. First, this claim was not specifically alleged in the Applicant's PCR application. See Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965) ("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"). Second, this Court grants the State's motion for summary judgment because the Applicant failed to demonstrate any prejudicial effects resulting from the collateral consequences of his conviction. See Jackson v. State, 331 S.C. 486, 489 S.E.2d 915 (1997) (Where petitioner was entitled to evidentiary hearing "*because petitioner alleged in his application and during the hearing he was suffering continuing consequences of his alleged invalid conviction*") (emphasis added). Applicant did not make these allegations in his original application for post conviction relief filed on November 20, 2014, and did not file any subsequent amendments to his original application. The evidence before this Court clearly shows there is no genuine issue as to any material fact and the State, as the moving party is entitled to judgment as a matter of law.

² This sentence was satisfied in full not later than June 26, 2016.

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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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.

The Honorable Jean H. Toal
Presiding Circuit Court Judge
Ninth Judicial Circuit

_____, 2016

_____, South Carolina