

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
*Also admitted in Florida

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January 12, 2017

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

The Honorable Teresa A. Brown
PO Box 387
Bishopville, SC 29010-0387

RECEIVED

JAN 13 2017

S.C. SUPREME COURT

RE: Ernest Toney, #353588, v. State of South Carolina
2015-CP-31-121

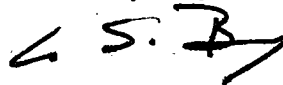
Dear Mr. Shearouse and Ms. Brown:

Enclosed for filing is a Notice of Appeal pursuant to *White v. State* in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Toney in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Toney in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG
Loriene French, OAD
Ernest Toney, #353588

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JAN 13 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM LEE COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Case No. 2015-CP-31-121

Ernest Toney, #353588,.....Petitioner,

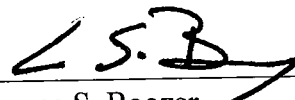
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Now comes the Petitioner, by and through his undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Final Order of the Honorable Jocelyn Newman, which granted a *White* review of the Petitioner's trial held December 14, 2012, (2011-GS-31-156). The Final Order denied Petitioner's remaining allegations as beyond the statute of limitations. The Petitioner received written notice of the Final Order granting a *White* review and denying Petitioner's remaining allegations on January 11, 2017. A copy of the Final Order is attached herewith.

Respectfully submitted,



Lance S. Boozer
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Columbia, South Carolina
January 12, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JAN 13 2017

APPEAL FROM LEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Jocelyn Newman, Circuit Court Judge

Case No. 2015-CP-31-121

Ernest Toney, #353588,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 12th day of January, 2017.



Lance S. Boozer
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STATE OF SOUTH CAROLINA
COUNTY OF LEE

2016 AUG

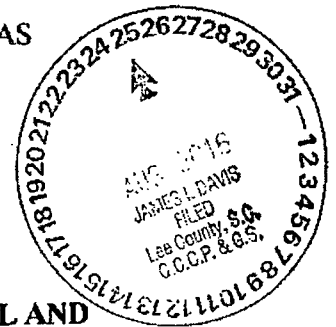
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IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2015-CP-31-121

Ernest Toney, #353588,

JAMES L. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.



)
) Applicant,

)
) v.

)
) State of South Carolina,

)
) Respondent.
)

**CONSENT ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT TO
WHITE V. STATE¹**

This matter comes before the Court by way of an Application for post-conviction relief filed May 8, 2015. Respondent made its Return and Motion to Dismiss All Claims But White v. State on July 9, 2015. An evidentiary hearing was held on July 26, 2016 at the Sumter County Courthouse. Applicant was present and represented by Lance Boozer, Esquire. Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office represented Respondent.

I.

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 Lee County Clerk of Court. In September 2011, the Lee County Grand Jury indicted Applicant for Murder (2011-GS-31-0156). Shaun Courtney Kent, Esquire, represented Applicant. On December 14, 2012, Applicant proceeded to trial before the Honorable George C. James, Jr., and a jury. The jury found Applicant guilty as indicted. Judge James sentenced Applicant to forty (40) years imprisonment without negotiations or recommendation. Applicant did not appeal his conviction or sentence.

¹ White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

A handwritten signature in dark ink, appearing to be "JW".

Applicant filed this application for post-conviction relief on May 8, 2015, alleging he was being held unconstitutionally based on the following allegations:

1. "Applicant was denied the right to effective assistance of counsel"
 - a. "Counsel failed to investigate, develop (sic), and present all available, relevant and admissible evidence"
 - b. "Counsel failed to present expert witnesses i.e. handwriting-expert to expose a fraudulent signature on a fraudulent statement"
 - c. "Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the prosecution. As a result of counsels failure to make all appropriate objections, applicants sentence is unreliable."
 - d. "Counsel instructs applicant to list all grounds in which he would be entitled to post-conviction relief, which counsel did not timely file appeal, left applicant without a transcript to fully review all his grounds for relief"

II.

At the outset of the hearing, Respondent renewed its Motion to Dismiss All Claims But White v. State as being untimely for being filed past the one year statute of limitations. This Court granted that motion and proceeded solely on the claim of relief under White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Respondent indicated to this Court that it consented to the granting of this relief.

This Court agrees that Applicant did not waive his right to a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the

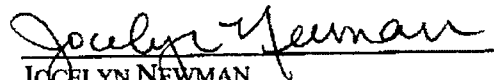
applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

This Court affirmatively finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to White v. State can remedy Applicant's lack of a direct appeal.

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. That Applicant remain in custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9th day of August, 2016.


JOCELYN NEWMAN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)
Ernest Toney,)
Plaintiff(s),)
-vs-)
State Of South Carolina,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.: 2015CP3100121
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case Adoption Juvenile
 SVP case Custody and/or Visitation Abuse and Neglect
 Minor Name Change Other: Post Convict Rel 500

It appears Ernest Toney, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
 counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 Other: .

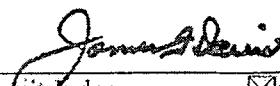
Therefore, it is ordered that LANCE BOOZER hereby is appointed as (Select one.)

counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
June 29, 2015


 Circuit Judge Clerk of Court

Plaintiff Attorney:

LANCE BOOZER	
1331 PARK STREET	
COLUMBIA, SC 29201	

Defendant Attorney:

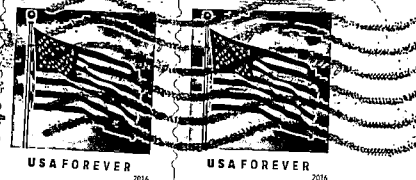
NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

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1400 Laurel Street, Suite 4A
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COLUMBIA SC 29201

12 JAN 2017 PM 1 L



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

29211-133030

