

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY
COURT OF COMMON PLEAS

RECEIVED

MAR 29 2017

The Honorable Frank R. Addy, Jr., Circuit Court Judge **S.C. SUPREME COURT**

Case No. 2015-CP-11-0381

JOHN B. BONNER, #338030,

Respondent,

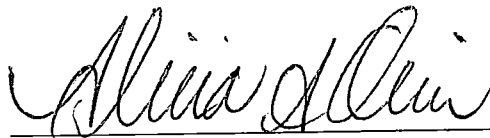
v.

STATE OF SOUTH CAROLINA

Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable Frank R. Addy's order dated January 26, 2017 and filed January 30, 2017 granting post-conviction relief to the Respondent. Judge Addy denied the State's Motion for Reconsideration in an order dated February 17, 2017 and filed February 22, 2107. The State received notice of entry of the orders on February 27, 2017. A copy of the orders on appeal is attached to this notice.



Alicia A. Olive
Assistant Attorney General
South Carolina Bar No. 102089
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

March 29, 2017

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL TO CHEROKEE COUNTY
COURT OF COMMON PLEAS

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No. 2015-CP-11-0381

RECEIVED

MAR 29 2017

S.C. SUPREME COURT

JOHN B. BONNER, #338030,

Respondent,

v.

STATE OF SOUTH CAROLINA

Petitioner.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on March 29, 2017, to Steven D. Epps, Esquire, his attorney of record, to the address below.

Mr. Steven D. Epps, Esquire
104-A Franklin Ave., #281
Spartanburg, SC 29301



Alicia A. Olive
Assistant Attorney General

SWORN to before me this 29th day of March, 2017.



Notary Public for South Carolina.
My Commission Expires: 3-18-2023



ALAN WILSON
ATTORNEY GENERAL

March 29, 2017

RECEIVED

MAR 29 2017

S.C. SUPREME COURT

Julie A. Ashbrook, Court Reporter
P.O. Box 27248
Greenville, SC 29616-0757

Re: John B. Bonner v. State of South Carolina
2015-CP-11-0381

Dear Ms. Ashbrook:

Please prepare a Post-Conviction Relief Hearing transcript taken November 9, 2016, of the above named individual, before the Honorable Frank R. Addy, Jr., for the term of the Court of Common Pleas in Spartanburg County. If you have already typed it once for Appellate Defense, let me know before you send me a copy. If this transcript no longer exists, please send a letter to that effect.

Please note that Rule 243(f)(3), SCACR, now requires as detailed an index for PCR hearings as for trial transcripts filed in the Supreme Court. The index should include all exhibits. If exhibits were not introduced, then please note that no exhibits were submitted at the hearing. Please prepare the transcript in accordance with the format requirements as set forth in the Court Reporter Manual.

If the cost of this transcript will exceed \$500, please inform me in writing before you complete the transcript. If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment. Please note that all statements are to be signed

Sincerely,

Ashley Haworth
Paralegal

(803) 734-3737

seventhcircuitpcr@scag.gov

cc: Desiree R. Allen, Court Administration

RECEIVED

MAR 29 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS SUPREME COURT
) SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE) CASE NO.: 2015-CP-11-0381

John B. Bonner #338030,)
Petitioner,)
)
v.)
)
State of South Carolina,)
Respondent.)

Order of the Court

FILED IN THE OFFICE
CLERK OF COURT
2017 JAN 30 P 3:23
CHEROKEE COUNTY

DATE OF HEARING: Wednesday, November 9, 2016
TRIAL JUDGE: The Hon. Frank R. Addy, Jr.
PETITIONER'S ATTORNEY: Steven D. Epps, Esq.
RESPONDENT'S ATTORNEY: Alicia A. Olive, Esq.
COURT REPORTER: Julie A. Ashbrook

THIS MATTER came before the Court pursuant to Petitioner's application for Post-Conviction Relief (PCR) filed May 12, 2015 which was amended by a Supplemental Petition filed October 26, 2016. This Court reviewed the file and conducted a PCR hearing in this matter on the above date where Petitioner and Petitioner's former attorneys, Joshua Schultz and Susan Hackett, were sworn in and presented testimony. Based upon the evidence presented to the Court and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. Petitioner was charged with various crimes which occurred while he was a juvenile. He proceeded to trial and was convicted of Burglary, 1st Degree, Burglary, 2nd Degree, Kidnapping, Armed Robbery, Assault and Battery of a High and Aggravated Nature (ABHAN), and Grand Larceny on November 18, 2009 in Cherokee County. Petitioner was sentenced as follows: Burglary 1st, Life without Parole (LWoP); Burglary 2nd, 15 years; Kidnapping, 30 years; Armed Robbery, 30 years; ABHAN, 10 years; and Grand

1
2MA

PROVISIONAL
WIKI BY RAK
Larceny, 5 years. All of the above sentences were to run concurrent except for the 10-year sentence to ABHAN which ran consecutive to all sentences.

2. On May 17, 2010, the United States Supreme Court issued its decision in Graham v. Florida, 130 S.Ct. 2091 ("Graham"). Among other things, the Court held "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." Graham, 130 S.Ct. ____, 560 U.S. __ (slip. op. at 32) (2010).

3. On appeal, the Court of Appeals found Petitioner's LWoP sentence to his charge of Burglary, 1st degree violated the Eighth and Fourteenth Amendments of the U.S. Constitution pursuant to Graham and remanded that sentence for resentencing on November 14, 2012. See State v. Bonner, Op. No. 5048 (S.C. Ct. App. filed November 14, 2012).

4. Petitioner, represented by his original trial counsel, Joshua Schultz, was resentenced on January 22, 2013 by The Honorable J. Derham Cole. At the resentencing, Judge Cole sentenced Petitioner to a term of 60 years on the Burglary, 1st degree charge. This sentence, in following with the other sentences handed down after the trial, would be followed by a 10-year consecutive sentence on an ABHAN charge, as mentioned above.

5. Attorney Schultz did not object to the 60-year sentence handed down by Judge Cole during Petitioner's resentencing hearing nor did he request a reconsideration of the 60-year sentence. He further did not object to, or request reconsideration of, that

AK

FILED IN THE OFFICE
CLERK OF COURT
JAN 30 2013
3:23
CLERK OF COURT
JAN 30 2013

sentence relative to the consecutive 10-year ABHAN sentence which was to be served after it. He did file a Notice of Appeal as to the 60-year sentence but the Court of Appeals affirmed holding no issue had been preserved for appellate review. See State v. Bonner, Op. No. 14-UP-401 (S.C. Ct. App. filed November 12, 2014).

6. Evidence was presented to the Court that Petitioner is currently confined within the Department of Corrections on the above charges with a release date of February 5, 2064. At that point in time, Petitioner will be 73 years and 13 days old. He is classified by the Department of Corrections as ineligible for parole as his sentence "max out" date comes before his parole eligibility date. Therefore, there is a strong possibility that Judge Cole's resentencing of Petitioner to a 60-year sentence on a Burglary 1st degree charge coupled with a 10-year consecutive sentence to ABHAN will result in a *de facto* life sentence depriving Petitioner of a realistic opportunity to obtain release before the end of his prison term in violation of Graham.

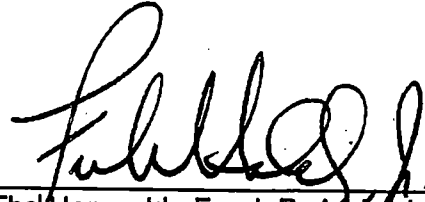
FILED IN THE OFFICE
OF THE CLERK OF COURT
2015 JAN 0 P 3:23
JUDGE
CHICKASAW COUNTY, SC

Conclusions of Law

1. These above issues were not preserved for appellate review by attorney Schultz and, thus, the Court of Appeals did not rule upon them. This Court finds Mr. Schultz was ineffective for failing to object to, or file a motion to reconsider, Judge Cole's 60-year resentencing on the LWoP charge, particularly in that there was also a 10-year concurrent sentence for ABHAN after it. This ineffectiveness was prejudicial to Petitioner as it denied him any meaningful opportunity to appeal this 60 + 10 year sentence, as shown above.
2. Accordingly, this Court grants Petitioner's request for relief in this PCR solely on the issue of whether Petitioner may file a motion for reconsideration as to the 60-year sentence for Burglary, 1st degree with a consecutive sentence of 10 years for ABHAN.

AND IT IS SO ORDERED.

Jan.
December 26, 2016
Greenwood, South Carolina



The Honorable Frank R. Addy, Jr.
Circuit Court Judge

FILED IN THE OFFICE
CLERK OF COURT
2017 JAN 30 P 3:23
JENNIFER H. HADLEY
CLERK OF COURT
GREENWOOD COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
2015-CP-11-381

JOHN B. BONNER,
Applicant

ORDER DENYING STATE'S MOTION FOR
RECONSIDERATION

-v-

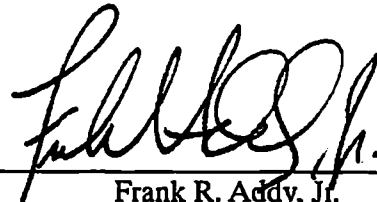
STATE OF SOUTH
CAROLINA,
Defendant.

Addy, J.

THIS MATTER CAME BEFORE THE COURT on a motion for reconsideration filed by the State of South Carolina. In a prior order dated January 26, 2017, the Court granted Mr. Bonner a new sentencing hearing for the reasons stated in that order.

The Court has reviewed and considered the arguments of Assistant Attorney General Alicia Olive as contained in the State's Rule 59 (e) motion dated February 13, 2017, as well as Mr. Bonner's arguments presented by Steven Epps, Esq. in his letter dated February 16, 2017. Having fully reviewed and reconsidered the Court's prior rulings, the Court declines to alter or amend the Order of January 26, 2017.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Presiding Judge, Seventh Judicial Circuit

February 17, 2017
Greenwood, South Carolina

FILED IN THE OFFICE
CLERK OF COURT
2017 FEB 22 A 11:01
CHEROKEE COUNTY, SC

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF CHEROKEE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP1100381

John Bonner #338030

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC; Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: Order Denying State's Motion for Reconsideration

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
 Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ Frank R. Addy, Jr.

2159

2/22/2017

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

FILED IN CLERK'S OFFICE
 2017 FEB 22 11:59 AM
 CHEROKEE COUNTY, SC

This judgment was entered on the 22nd day of February, 2017, and a copy mailed first class or placed in the appropriate attorney's box on the 22nd day of February, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Steven D. Epps 104-A Franklin Avenue #281 Spartanburg,
SC 29301

Alan McCrory Wilson PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Court Reporter

Brandy W. McBee - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



ALAN WILSON
ATTORNEY GENERAL

March 29, 2017

RECEIVED

MAR 29 2017

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: John B. Bonner v. State of South Carolina
2015-CP-11-0381

Dear Mr. Shearouse:

Enclosed are the following:

1. Notice of Appeal
2. Proof of Service of the notice of appeal on the Respondent
3. A copy of the order which is to be challenged on appeal.
4. A letter ordering the PCR transcript from the court reporter

Sincerely,

Alicia A. Olive
Assistant Attorney General

AAO/ah
Enclosures

cc: Steven D. Epps, Esquire
The Honorable Brandy W. McBee, Clerk of Court of Cherokee County
The Honorable Barry J. Barnette, Seventh Circuit Solicitor
SCCID, Division of Appellate Defense
Vincent J. Barton, Esquire
Trisha Allen, Victims Services