

THE BOOZER LAW FIRM, LLC

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APR 07 2017

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

S.C. SUPREME COURT

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April 3, 2017

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

William B. Funderburk
Marlboro County Clerk of Court
P.O. Drawer 996
Bennettsville, SC 29512

**RE: Lee Ellerbee, #297877, v. State of South Carolina
2014-CP-34-215**

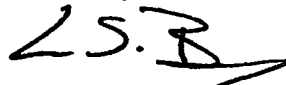
Dear Mr. Shearouse and Mr. Funderburk:

Enclosed for filing is a Notice of Appeal 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. Ellerbee in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Ellerbee in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Valerie Giovanoli, AAG
Loriene French, OAD
Lee Ellerbee, #297877

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APR 07 2017

APPEAL FROM MARLBORO COUNTY S.C. SUPREME COURT
Court of Common Pleas

The Honorable Roger E. Henderson Circuit Court Judge

Case No. 2014-CP-34-215

Lee Ellerbee, #297877,Petitioner,

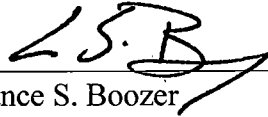
v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable Roger Henderson's Order dated March 2, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on March 24, 2017. A copy of the Order on appeal is attached to this notice. Pursuant to Rule 243(c), SCACR, undersigned counsel is unable to provide an arguable basis for asserting the PCR court ruling was improper. Petitioner is advised that he has twenty (20) days from the date of this appeal to file a pro se explanation as to why he believes that the determination by the PCR court was improper. *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L.S. Boozer", is written over a horizontal line.

Lance S. Boozer
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April 3, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson Circuit Court Judge

Case No. 2014-CP-34-215

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S.C. SUPREME COURT

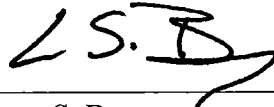
Lee Ellerbee, #297877,Petitioner,

v.

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

PROOF OF SERVICE

I, Lance S. Boozer, appointed 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 Valerie Giovanoli, P.O. Box 11549, Columbia, SC 29211 and Lee Ellerbee, #297877, Evans Correctional, 610 Hwy. 9W, Bennettsville, SC 29512. I further certify that all parties required by Rule to be served have been served this 3rd day of April, 2017.



Lance S. Boozer
The Boozer Law Firm, LLC
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Tele: 803-608-5543

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

Lee E. Ellerbee, #297877,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No.: 2014-CP-34-0215

FINAL ORDER OF DISMISSAL

ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

2017 MAR 15 PM 3 51

FILED

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed August 18, 2014. Respondent made its return on or about September 22, 2016, 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 September 30, 2016, and filed December 15, 2016, 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.

Applicant's Attorney, Lance S. Boozer, filed a document titled "Applicant's Response to State's Return and Motion to Dismiss" on October 7, 2016, in which Applicant argues that his indictment is fraudulent and that the trial court lacked subject matter jurisdiction due to the fraudulent indictment. Subsequently, Applicant's attorney filed a document titled "Applicant's Opposition to Conditional Order of Dismissal" on January 5, 2017, reasserting jurisdictional defects under subject matter jurisdiction.



This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, 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 finds Applicant's responses do not give rise to any genuine issue of material fact that would require an evidentiary hearing and therefore have failed to provide sufficient reasons why the Conditional Order of Dismissal should not become final.

This Court finds that defects in the indictment do not affect subject matter jurisdiction. However, an Applicant may challenge the subject matter jurisdiction of the trial court and such a claim may be raised at any time. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777. The circuit court obviously has subject matter jurisdiction to try criminal matters. Therefore, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the Circuit Court had subject matter jurisdiction.

The Court submits further that a challenge to the legality and sufficiency of the process of the state grand jury does not implicate the subject matter jurisdiction of the circuit court. Evans v. State, 363 S.C. 495, 509-10, 611 S.E.2d 510, 518 (2005). Further, a defendant must challenge the legality and sufficiency of the process before the jury renders a verdict in order to preserve the issue for appellate review. Id. The regularity of grand jury proceedings is presumed absent clear evidence to the contrary. Id. at 514, 611 S.E.2d at 520.

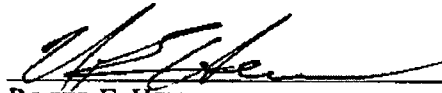


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2017 FEB 15 PM 3 51
ANITA M. WILLIAMS
CLERK OF COURT
HARLEBOO COUNTY, S.C.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 2nd day of March, 2017.



ROGER E. HENDERSON
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Chesterfield, South Carolina

FILED
2017 MAR 15 PM 3 51
ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

State of South Carolina,
Plaintiff,

LEE ELLENDEE

Defendant Juvenile.

Offense(s): PCR

IN THE COURT OF (Select one.)

GENERAL SESSIONS FAMILY COURT

FOURTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-34-00215

APPOINTMENT OF COUNSEL

(Select one.)

ORDER

AMENDED ORDER

It appears that the above named person is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- the public defender now represents another person involved herein and that a conflict would arise if that office represents the above-named individual.
- the public defender has indicated a possible conflict of interest or other good cause warranting the appointment of counsel based on:

- the public defender or court-appointed counsel has indicated that the named individual has now retained private counsel and is no longer entitled to appointed counsel.
- court-appointed counsel has claimed an exemption or has demonstrated good cause pursuant to Rule 608 warranting the appointment of new counsel based on:
- court-appointed counsel has obtained substitute counsel named below pursuant to Rule 608(h)(2); only the member who originally received the appointment and substitute counsel shall receive credit for the appointment.

Therefore, it is ordered that Lance Boozer, Esquire hereby is appointed as
(Select only one.) counsel lead counsel (if capital PCR case)

for the above-named person. Counsel previously appointed is/are hereby relieved as

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

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

IT IS SO ORDERED THIS 6 DAY OF October, 2014.

William B. Sunderbank
 Circuit Judge Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2005, 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.scofd.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.

2014 OCT 6 AM 11:42
WILLIAM B. SUNDERBANK
CLERK OF COURT
MARLBORO COUNTY, SC

FILED

THE BOOZER LAW FIRM, LLC

1400 Laurel Street, Suite 4A
Columbia, SC 29201



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