

THE BOOZER LAW FIRM, LLC

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April 11, 2017

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

Gwen T. Hyatt
Dillon County Clerk of Court
P.O. Drawer 1220
Dillon, SC 29536-1220

RECEIVED

APR 12 2017

S.C. SUPREME COURT

**RE: Derrick Jones, #350885, v. State of South Carolina
2013-CP-17-254**

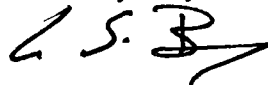
Dear Mr. Shearouse and Ms. Hyatt:

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. Jones in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Jones in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Valerie Giovanoli, AAG
Loriene French, OAD
Derrick Jones, #350885

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APR 12 2017

APPEAL FROM DILLON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2013-CP-17-254

Derrick Jones, #350885,Petitioner,

v.

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

NOTICE OF APPEAL

The Petitioner appeals the Honorable G. Thomas Cooper, Jr.'s Order dated February 22, 2017, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on April 11, 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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APPEAL FROM DILLON COUNTY
Court of Common Pleas

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The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2013-CP-17-254


Derrick Jones, #350885,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 Derrick Jones, #22857-171, USP Atlanta, 601 McDonough Blvd. SE, Atlanta, GA 30315. I further certify that all parties required by Rule to be served have been served this 11th day of April, 2017.



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and Judge Burch reduced the sentence to seven (7) years' imprisonment under the assumption that he could not run ten of the seventeen years concurrent with Applicant's ten year federal sentence. Applicant did not appeal his plea or sentence.

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

1. "Ineffective Assistance of Counsel"
2. "Denial of Due Process of Law"

In an attachment to his application, Applicant makes the following statements:

1. His sentence for ABIK violates S.C. Code Ann. § 16-3-29
2. The victim brought this situation on herself by not remaining loyal to Applicant.
3. Judge King said he would sentence Applicant after Applicant's federal sentencing.
4. Mr. Grove represented Applicant at his plea, but Mr. Jones represented Applicant at sentencing.
5. Mr. Jones did not meet with Applicant prior to sentencing.
6. A second solicitor who had no prior involvement with the case spoke at sentencing.
7. Counsel did not inform Applicant of the law and facts of his case.
8. Applicant did not have a preliminary hearing.

During the hearing, Respondent argued that the application should be dismissed as untimely. PCR counsel informed this Court that Applicant was not present because he was in federal custody. PCR counsel also stated that at the time of filing, Applicant's main concern was being transferred out of state custody and into federal prison to serve his federal sentence first. Sometime between the date of filing and the date of this hearing, Applicant had been transferred to federal custody. Furthermore, PCR counsel has been unable to communicate with Applicant, despite his attempts.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents and heard the arguments made by counsels for Applicant and Respondent. Pursuant to S.C. Code Ann. Sec. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds this matter should be summarily dismissed because Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

Applicant was sentenced for the pleas he challenges in this application on June 25, 2012. Applicant was therefore required to file his application before June 26, 2013. This application was filed on July 1, 2013, six days beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Therefore, this Court summarily dismisses this application for post-conviction relief with prejudice.

CONCLUSION

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991). Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED this 22 day of FEBRUARY, 2017.



G. THOMAS COOPER, JR.
Presiding Judge

Chesnut, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

IN THE COURT OF (Select one.)

COMMON PLEAS FAMILY COURT
4TH JUDICIAL CIRCUIT

DERRICK JONES,
Plaintiff(s),

) CASE NO.: 2013-CP-17-254

-vs-

) APPOINTMENT OF COUNSEL OR GAL
(Select one.)

STATE OF SOUTH CAROLINA,
Defendant(s).

) ORDER
) AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> SVP case | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change | <input checked="" type="checkbox"/> Other: | |

It appears that DERRICK JONES, 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 THIS 18 DAY OF NOVEMBER, 2014.


 Circuit Judge Clerk of Court

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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