

MAC | VANCE ATTORNEYS, LLC

RECEIVED

JUL 21 2017

S.C. SUPREME COURT

July 20, 2017

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

Re: Darrell Heyward, #170239 v. State of South Carolina  
2016-CP-07-01991

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. By way of this letter I am copying the Office of Appellate Defense, as I was appointed to represent Mr. Hyatt.

Best regards,

Ashley A. McMahan  
Attorney at Law

AAM

cc: Darrell Heyward  
Ruston W. Neely, Asst. Attorney General  
Beaufort County Clerk of Court  
Office of Appellate Defense

STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

JUL 21 2017

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2016-CP-07-01991

Darrell Heyward, #170239, ..... Petitioner,

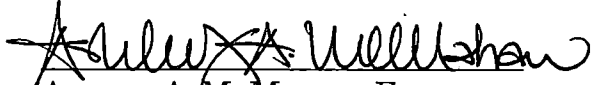
v.

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

**NOTICE OF APPEAL**

Applicant, Darrell Heyward, appeals the order of the Honorable Diane S. Goodstein dated July 5, 2017, and filed July 10, 2017.

July 20<sup>th</sup>, 2017

  
ASHLEY A. MCMAHAN, ESQUIRE  
MAC | VANCE ATTORNEYS, LLC  
PO Box 5501  
West Columbia, SC 29171  
803-219-1110  
ashley@macvance.com  
SC Bar No. 71676  
ATTORNEY FOR APPLICANT

Opposing Counsel:  
Ruston W. Neely, Asst, Attorney General  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

**RECEIVED**

JUL 21 2017

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Diane S. Goodstein, Circuit Court Judge

---

Case No. 2016-CP-07-01991

---

Darrell Heyward, #170239, ..... Petitioner,

v.

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

---

**PROOF OF SERVICE**

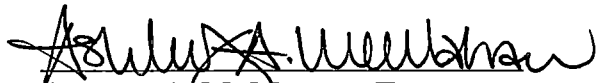
---

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Ruston W. Neely, Asst, Attorney General  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

July 20~~16~~, 2017

  
ASHLEY A. McMAHAN, ESQUIRE  
MAC | VANCE ATTORNEYS, LLC  
PO Box 5501  
West Columbia, SC 29171  
803-219-1110

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2016CP0701991**

Darrell Heyward		South Carolina State Of	
-----------------	--	-------------------------	--

<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
<b>Submitted by:</b>	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- 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

Statement of Judgment by the Court:

**Order of Dismissal And Grant of Belated Appeal**

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
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/ D. S. Goodstein  
Circuit Court Judge

2112  
Judge Code

7/5/2017  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on **July 10, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **July 12, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

**Darrell Heyward** #170239 R C I Sb 44 Post Office Box  
2039 Ridgeland, SC 29936  
**Ashley A. McMahan** PO Box 5501 West Columbia, SC  
29169

**Ruston Wesley Neely** PO Box 11549 Columbia, SC 29211

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

Melissa Kilby

\_\_\_\_\_  
**Court Reporter**

\_\_\_\_\_  
**Jerri Ann Roseneau - 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.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

THE COURT OF COMMON PLEAS  
FOR THE 14<sup>th</sup> JUDICIAL CIRCUIT  
Case No.: 2016-CP-07-01991

Darrell Heyward, #170239, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**ORDER OF DISMISSAL AND  
GRANT OF BELATED APPEAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 9, 2016, and amended on May 25, 2017. The Respondent made its Return on or about April 20, 2017.

An evidentiary hearing was held on June 9, 2017, at the Beaufort County Courthouse. Ashley A. McMahan, Esquire represented the Applicant. Assistant Attorney General Ruston W. Neely represented the Respondent.

**I.**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. Applicant was indicted at the December 2012, term of the Beaufort County Grand Jury for Burglary, 2<sup>nd</sup> Degree - violent (2012-GS-07-02390) Jeffrey S. Stephens, represented him. On May 28-29, 2015, Applicant underwent a jury trial, pursuant to which he was found guilty as indicted. The Honorable Perry H. Gravely sentenced him to confinement for a period of nine (9).

A Notice of Appeal was filed, but it was not timely. The South Carolina Court

of Appeals dismissed the Applicant's appeal on October 19, 2015. See Appellate Case Number 2015-001680. The Remittitur was sent on December 7, 2015.

## II.

At the hearing, the Applicant alleged that he was denied effective assistance of counsel when trial counsel failed to timely file an appeal from his trial. The State consented to allow the Applicant to file his belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The Applicant withdraws all other claims raised in this PCR application.

This Court agrees that the allegation that the Applicant was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. See White. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White, Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his or her appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).<sup>1</sup>

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the

---

<sup>1</sup> "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

Applicant is entitled to a belated review of his conviction(s). A petition for belated review pursuant to White v. State can remedy the Applicant's lack of a direct appeal.

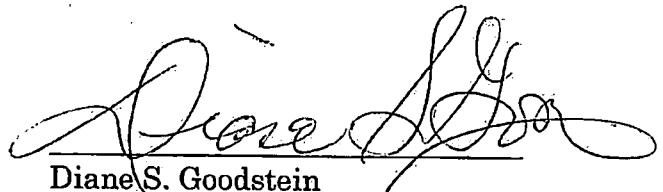
III.

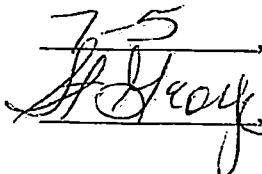
This Court finds that the grant of a belated direct appeal is proper. This Court further finds that based upon Applicant's testimony, the dismissal of this application for post-conviction relief (with the exception for the belated appeal request) is voluntary and that Applicant has knowingly and intelligently elected to have his application dismissed with prejudice.

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 direct appeal 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 the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' 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 243(i) for the appropriate procedure for securing belated appellate review.
3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED!

  
Diane S. Goodstein  
Presiding Circuit Court Judge

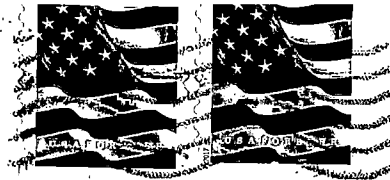
7-5, 2017  
 South Carolina.



MAC | VANCE ATTORNEYS, LLC  
PO Box 5501  
West Columbia, SC  
29171

COLUMBIA SC 299

20 JUL 2017 PM 2 L



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

29211-133030

