

September 25, 2017

Hon. Daniel E. Sheareuse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

SEP 27 2017

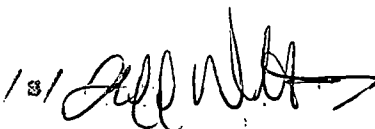
Re: Walker v. State, 2012-CP-40-05497
2.12.15 Clerk's letter enclosed
Appeal from Richland County

S.C. SUPREME COURT

Dear Clerk:

The undersigned has enclosed for processing with your office:

1. Notice of Appeal;
2. Order(s) to be challenged on appeal;
3. Proof of Service;
4. Etc., petition

1/s/ 

Jeffrey D. Walker, 314361
GCI, B4 28B
4556 Broad River Road
Columbia, SC 29210

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daiane S. Goodstein, Circuit Court Judge

Case No. 2012-CP-40-05497

RECEIVED

SEP 27 2017

S.C. SUPREME COURT

JEFFREY DOUGLAS WALKER-WILSON, Appellant,

vs.

STATE OF SOUTH CAROLINA, Respondent.

PROOF OF SERVICE

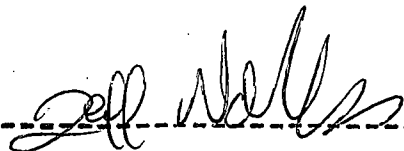
I certify that I have served the 'Notice of Appeal' on the State by depositing a copy of it in the mail, postage prepaid, to the attorney of record and lower court's clerk:

Megan H. Jameson
POB 11549
Columbia, SC 29211

Clerk of Court
Richland County
POB 2766
Columbia, SC 29202

This 26th day of September 2017.

s/



STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SEP 27 2017

Diane S. Goodstein, Circuit Court Judge

S.C. SUPREME COURT

Case no.: 2012-CP-40-05497

JEFFREY DOUGLAS WALKER-WILSON, Appellant,

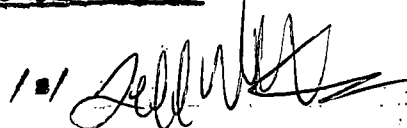
vs.

STATE OF SOUTH CAROLINA, Respondent.

NOTICE OF APPEAL

Jeffrey Douglas Walker-Wilson appeals the 'Order Granting Post-Conviction Relief of 9-22-14 and 'Order' of 7-15-16 of the Honorable Diane S. Goodstein; he received written notice of the 7-20-16 filed order on August.

This 25th day of September 2017

121 
Jeffrey D. Walker-Wilson
314301, G61, B4 20B
45556 Broad River Road
Columbia, SC 29210

Other Counsel of Record:

Megan M. Jameson
POB 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DIANE S. GOODTEIN, CIRCUIT COURT JUDGE

Case No.: 2012-CP-40-05497

Jeffrey Douglas Walker-Wilson, Appellant,

vs.

State of South Carolina, Respondent.

TO: Megan H. Jameson
POB 11549
Columbia, SC 29211

PETITION FOR BELATED APPEAL AND/OR
ALTERNATIVE REINSTATEMENT OF
STATE APPEAL OF 2-3-15

Appellant Walker-Wilson asks the Court to grant the belated appeal herein and/or alternative reinstatement of the State 2.3.15 appeal from the 9-22-14 Order Granting Post-Conviction Relief (OGPCR).

Appellant points:

1. OGPCR granted "equitable tolling" (p. 4 of 5) and the government filed a timely appeal which was "dismissed pursuant to Hudson v. Hudson, 290 S.C. 315" "without prejudice" (see attachment);
2. When the Court ruled on appellant's 59(c) motion, PCR counsel did not file a notice of appeal but gave SC Office of Appellate Defense notice of Walker-Wilson's desire to appeal and appellate counsel(s)

were found at fault concerning direct appeal preceeding(s) that resulted in equitable telling ruling;

3. Appellate Defender's office failed to timely file the appeal of the 59(e) motion decision and/or failed to advise anyone of in action;

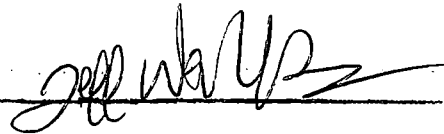
Wherefore, the petition and etc, should be granted. This 25th day of September 2017.

1s/ 

Jeffrey Douglas Walker-Wilson
314361, GCI, B4 26B
4556 Broad River Road
Columbia, SC 29210

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the government's attorney by mail, postage prepaid, at the address set forth above herein with the petition etc. and attachment(s) this 26th day of September 2017.

s/  _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) C/A NO. 2012-CP-40-05497

Jeffrey Walker-Wilson, #314361,

Applicant,

vs.

State of South Carolina,

Respondent.

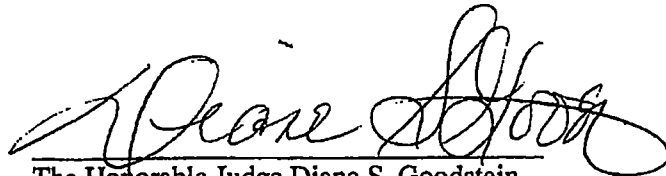
ORDER

RICHLAND COUNTY
FILED
2016 JUL 20 PM 12:33
JEANETTE W. ROBINETTE
C.C.P. & G.S.

The Court was mailed a courtesy copy of Defendant's Motion to Alter or Amend Judgment. It does not appear that the motion was served on the Court but the Certificate of Service by mail indicates it was mailed to an address not applicable to the Dorchester County Courthouse in excess of four years prior to mailing. The service was not made to the Court's published address.

If however notice to the court is not required to be more precise the Court has reviewed Applicant's Motion to Alter or Amend and the State's return and it's Order and after consideration finds no new persuasive argument or evidence. Therefore Applicant's Motion to Alter or Amend is DENIED.

AND IT IS SO ORDERED.



The Honorable Judge Diane S. Goodstein
First Judicial Circuit, Court of Common Pleas

July 15, 2016

St. George, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Jeffrey Douglas Walker-Wilson,)
#314361,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-40-05497

**ORDER GRANTING
POST CONVICTION RELIEF**

This matter was heard before me on August 5, 2013.

At the hearing were Applicant, Jeffrey Douglas Walker-Wilson (Wilson), his counsel, Louis H. Lang, Esq., and counsel for the State of South Carolina, Assistant Attorney General Megan E. Harrigan, Esq.

After considering the testimony, exhibits, and arguments of counsel, I conclude Wilson should be granted relief as set forth below.

Wilson was indicted in January, March and July 2007 on two counts of armed robbery, two counts of possession of a pistol by a person under the age of twenty-one, and one count each of use of a firearm during the commission of a violent crime and unlawful carrying of a pistol. Wilson went to trial on these charges and was found guilty of all of them on July 25, 2007. Wilson was sentenced to fifteen years imprisonment on each of the armed robberies, the sentences to run concurrently; five years imprisonment on the use of a firearm during the commission of a violent crime to run concurrent with the armed robbery sentences; one year on the unlawful carrying of a pistol to run concurrently with the armed robbery sentences; and two years each on the possession of a pistol by a person under the age of twenty-one, these sentences

to run concurrent to one another, but consecutive to the armed robbery sentences; for a total custodial sentence of seventeen years.

Following his conviction and sentence, Wilson's trial defense counsel timely filed a notice of appeal. On August 4, 2008, Wilson's appellate defense counsel filed a brief under *Anders v. California*, 386 U.S. 738 (1967). By unpublished opinion filed November 23, 2009, Wilson's appeal was dismissed.

Wilson's application for post-conviction relief was filed August 13, 2012.

The State asserts Wilson's application should be dismissed as untimely under S.C. Code Ann. §17-27-45(a). I disagree.

Wilson was in pre-trial custody prior to his trial. Very shortly after his conviction and sentence, Wilson was transported to the South Carolina Department of Corrections (SCDC) reception and evaluation center. When initially processed at SCDC, Wilson was issued a picture identification card under the name Wilson, the name by which he had been indicted and convicted. Approximately 30 days into his stay at the reception and evaluation center, Wilson was issued a new identification card under the name of Walker, the name under which he has been known at SCDC since.

Wilson's appellate defense counsel testified she mailed Wilson copies of various appellate pleadings but under the name Wilson, not Walker. No copies of these forwarding letters were presented. Wilson's appellate counsel testified there was no record in her office of Wilson actually receiving a copy of the *Ander's* brief, copies of the trial transcripts, or a copy of the order dismissing Wilson's direct appeal. It is standard operating procedure for appellate defense counsel's office to forward such documents to clients, however, in this case those

documents would have been forwarded under the name of Wilson, not Walker. Copies of letters from the South Carolina Court of Appeals Clerk of Court were entered into evidence. Each was addressed, however, to Jeffrey Douglas Wilson, not Walker and each listed Wilson's home address, rather than his SCDC address. Wilson testified he did not receive notice of the *Anders* brief filing or the dismissal of his appeal until shortly before filing his application for post-conviction relief.

In *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002), our Supreme Court reversed the summary dismissal of a post-conviction application on timeliness grounds. The applicant in *Wilson* argued he instructed his trial defense counsel to file an appeal, which, unknown to the applicant, defense counsel failed to do. By the time the applicant discovered this failure, more than a year's time had passed following his conviction.

The Court said "every defendant has a right to file a direct appeal and one PCR application." *Id.* at 281, 559 S.E.2d, 582. Citing *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), the *Wilson* Court said the policy adopted in *Austin* would be frustrated if the applicant was denied his direct appeal due to counsel's failure to timely file a notice of appeal and then denied his right to a post-conviction relief application because the one year limitation period had run as a consequence of trial defense counsel's failure to notice his appeal.

As a result of Wilson's appellate defense counsel's failure, albeit unintentional, to provide him a copy of his *Anders* Brief, trial transcripts, and a copy of the dismissal of his direct appeal, Wilson was not provided notice of the dismissal of his direct appeal, and, therefore, he did not have notice of the beginning of the one year limitations period in §17-27-45(a). I conclude the holding in *Wilson* applies here and the policy to provide each criminal defendant

with the right to a direct appeal and one post-conviction relief application would be frustrated were I to grant the state's motion to dismiss on timeliness grounds.

Alternatively, I find the doctrine of equitable tolling should apply. "Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it ... [equitable tolling] has been applied where a litigant was prevented from suing because of an extraordinary event beyond his or her control." *Magnolia North Property Owners Asso., Inc., v. Heritage Comm. Inc.*, 397 S.C. 348, 371, 725 S.E.2d 112, 125 (Ct. App. 2012), quoting *Hooper v. Ebenezer Senior Services and Rehab. Center*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009).

Wilson had no control over the name by which he was known at SCDC, no control over SCDC's mail service, and no control over when and by what means his appellate defense counsel and the Court of Appeals' Clerk's Office forwarded him copies of the appeal documents.

I find Wilson's petition is timely.

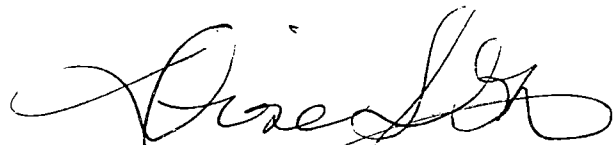
The Court listened to all witnesses and evidence and had an opportunity to judge each witness's credibility. While defense counsel failed to have specific memory of communicating to his client a plea offer and failed to have any writing in his file indicating he had, defense counsel testified it his normal practice to go over all plea offers with his clients. It is difficult to believe that counsel would have chosen to go to trial rather than communicate a plea offer to his client that he would have accepted. What is more plausible is that the offer was communicated and not accepted, the case proceeded to trial and the defendant was convicted and now wishes he had taken the offer. The Court finds it is not extraordinary that busy defense counsel would fail to remember a specific instruction to a particular client. The Court finds the defendant was

informed of the plea offer, and Counsel was not ineffective with regards to failing to communicate a plea offer to the applicant. Therefore, the Court denies the PCR on the basis that he failed to communicate a plea offer that would have been accepted by Applicant.

Wilson also asserted his sentencing was unconstitutional because the statute under which he was convicted, S.C. Code Ann. § 16-11-330, provides a 10 year mandatory minimum sentence in which a defendant is not eligible for parole consideration until he has served at least 7 years whereas S.C. Code Ann. § 24-13-100 declares Wilson's armed robbery charge to be a "no parole offense" the result of which requires him to serve at least 85% of the 15 years to which he was sentenced. Having considered this argument I find it to be without merit.

Wilson also argued the imposition of a term of two years community supervision under S.C. Code Ann. § 24-21-560, in addition to his sentence of incarceration, was unconstitutional. Having also considered this argument, I find it likewise to be without merit. Having fully addressed that matters raised, the Court hereby Grants to applicant his appeal pursuant to *Austin v. State, Supra*. As to the other grounds the applicant's petition is Denied.

AND IT IS SO ORDERED.



Diane S. Goodstein
Presiding Circuit Judge

St. George, South Carolina
September 22, 2014

The Supreme Court of South Carolina

Jeffrey Douglas Walker-Wilson, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2015-000261

Lower Court Case No. 2012-CP-40-05497

ORDER

Petitioner requests that this appeal be dismissed pursuant to *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). Accordingly, this matter is dismissed without prejudice. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY

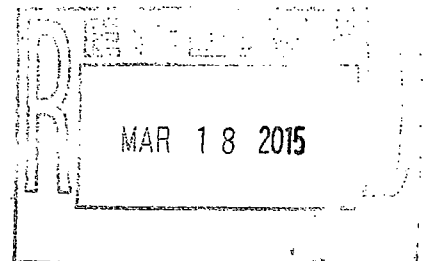


CLERK

Columbia, South Carolina

February 26, 2015

cc: Megan Harrigan Jameson, Esquire
Louis H. Lang, Esquire



Jeffrey D. Walker, 314361
GOODMAN C.I., B4, 28N
4556 Broad River Road
Columbia, SC 29210

SCDC

SEP 26 2017

MAIL ROOM

Legal MAIL

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UNITED STATES POSTAGE



PITNEY BOWES

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