

Lowcountry Law Office

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November 3, 2017

RECEIVED

NOV 06 2017

S.C. SUPREME COURT

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

RE: Chavis Aikman v. State of South Carolina; Case #: 2015-CP-08-0522

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post-Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent;
- (2) The Consent Order of Dismissal & Grant of White Appeal Pursuant to White v State; and
- (3) A Request for Representation on Appeal.

The Applicant - Appellant was represented by me as indigent, pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support, thereof, are signed by me as attorney for Applicant - Appellant. Should you need anything further, do not hesitate to contact me.

Thank you for your time and attention to this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

~~Enclosures: As stated above.~~

RDD/mmt

cc: Megan H. Jameson, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

RECEIVED

NOV 06 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles

Case #: 2015-CP-08-0522

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17 NOV -3 AM 10:17
HENRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Chavis Aikman,

Appellant.

v.

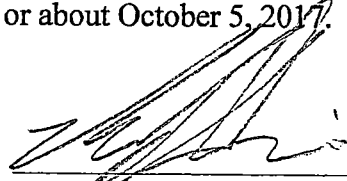
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Chavis Aikman appeals the denial of his Post Conviction Relief (PCR) application and his conviction in this case. The Honorable Michael G. Nettles heard the Respondent's Motion to Dismiss on July 31, 2017 and granted the Applicant a review of direct appeal issues pursuant to White v. State. Counsel for the Appellant received a copy of the filed Consent Order of Dismissal and Grant of Appeal Pursuant to White v. State, on or about October 5, 2017.

November 3, 2017



Rodney D. Davis
Attorney for Appellant
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Davis@LowcountryLawOffice.com

Other Counsel of Record:
Judah VanSyckel, Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

RECEIVED

NOV 06 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles

Case #: 2015-CP-08-0522

Chavis Aikman,

Appellant.

v.

State of South Carolina,

Respondent.

HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

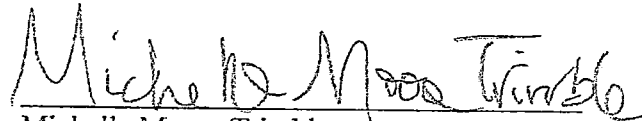
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FILED

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy, via US Mail, to the address of record, Megan H. Jameson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on November 3, 2017.

November 3, 2017



Michelle Moore Trimble
Paralegal to Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com
Attorney for Appellant

Other Counsel of Record:
Judah VanSyckel, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2015-CP-08-0522

Chavis Aikman, #359767,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**CONSENT ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT TO
WHITE V. STATE¹**

MAINTENANCE
CLERK OF COURT
BERKELEY COUNTY, S.C.

17 AUG 28 PM 1:06

FILED

This matter comes before the Court by way of an Application for post-conviction relief filed February 26, 2015. Respondent filed its Return on June 28, 2016. A hearing on the Respondent's Motion to Dismiss was held on July 31, 2017 at the Berkeley County Courthouse. Applicant was present and represented by Rodney Davis, Esquire. Assistant Attorney General Judah N. VanSyckel of the South Carolina Attorney General's Office represented Respondent.

I.

Chavis Aikman (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. On November 29, 2012, Applicant waived presentment to the Berkeley County Grand Jury and pled guilty to first-degree Assault and Battery (2012-GS-09-2210) before the Honorable R. Markley Dennis, Jr. Judge Dennis sentenced Applicant to confinement period of ten years' suspended upon the service of five years' probation. Applicant did not appeal his guilty plea or sentence.

On April 25, 2014, Applicant appeared before Judge Dennis for a probation revocation hearing. Judge Dennis revoked Applicant's probation for a year.

¹ White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

Thereafter, on October 31, 2014, Applicant appeared before the Honorable W. Jeffrey Young for another probation revocation hearing. Applicant was not represented by counsel at this hearing and proceeded *pro se*. A probation agent appeared on behalf of the State. After a discussion between Judge Young, Applicant, and the probation agent, Judge Young concluded Applicant had fired previous attorneys, had ample notice of the hearing and that he needed to retain counsel if he did not want to go forward *pro se*, and determined Applicant would proceed *pro se*. After a short hearing, Judge Young revoked Applicant's probation in full.

In his application, Applicant alleges that he is being held in custody unlawfully pursuant to a revocation of his probation for the following reasons:

1. "Applicant was denied counsel in violation of 6th Amendment"
 - a. "Applicant requested counsel but was denied by court"
2. "Probation was revoked due to inability to pay civil fine"
 - a. "Applicant probation was revoked because of family court"

II.

At the outset of the hearing, Respondent made a Motion to Dismiss all claims as being improper claims for a post-conviction relief action as they could have been heard on direct appeal. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975); Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant argued that he was denied the right to counsel at his probation revocation hearing, that he was effectively denied the right to appeal, and that he was entitled to belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). After inquiry from the Court, Respondent consented to Applicant's request for a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

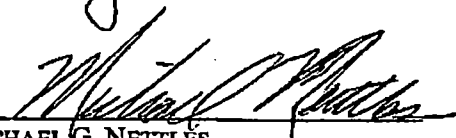
This Court agrees that Applicant did not waive his right to a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

This Court affirmatively finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to White can remedy Applicant's lack of a direct appeal.

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 review of direct appeal issues 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 Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's 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 227(g) for the appropriate procedure for securing belated appellate review.
3. That Applicant remain in custody of the South Carolina Department of Corrections.

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


MICHAEL G. NETTLES
Presiding Judge
Third Judicial Circuit

Florence, South Carolina



ALAN WILSON
ATTORNEY GENERAL

August 23, 2017

The Honorable Mary P. Brown
Clerk of Court, Berkeley County
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

FILED
17 AUG 28 PM 1:06
CLERK OF COURT
BERKELEY COUNTY, S.C.
VB

Re: Chavis Aikman, #359767 v. State of South Carolina
2015-CP-08-0522

Dear Ms. Brown:

Enclosed please find the original Order of Dismissal signed by the Honorable Michael G. Nettles, in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRPC."

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Judah N. VanSyckel
Assistant Attorney General

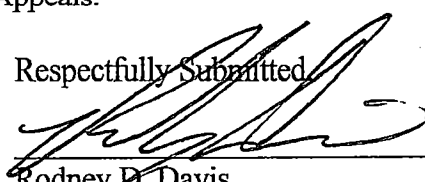
JNV/jaj

STATE OF SOUTH CAROLINA)	IN THE SUPREME COURT OF SOUTH CAROLINA
)	
COUNTY OF BERKELEY)	Case #: 2015-CP-08-0522
)	
CHAVIS AIKMAN,)	
)	
Applicant.)	REQUEST FOR REPRESENTATION ON APPEAL
)	
-versus-)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above-captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,

 Rodney D. Davis
 South Carolina Bar #: 12396


Charleston, South Carolina.
 October 19, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)

CASE #: 2015-CP-08-0522


VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **Chavis Aikman**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.

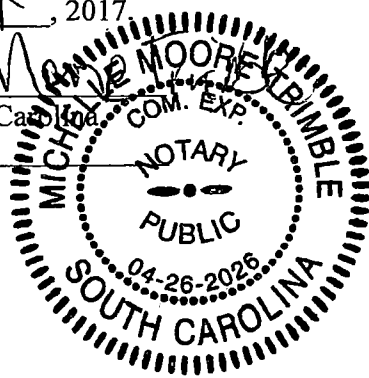


Rodney D. Davis
South Carolina Bar #: 12396

SWORN to and subscribed to me
this 19 day of Oct, 2017.



Notary Public for South Carolina
My Commission expires _____





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4000 Faber Place Drive, Suite 300
Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101
E-Mail: Davis@LowcountryLawOffice.com

November 3, 2017

Kimberly McCall
South Carolina Commission on Indigent Defense
PO Box 11433
Columbia, SC 29211-1433

RE: Chavis Aikman v. State of South Carolina; Case #: 2015-CP-08-0522

Dear Ms. McCall:

Enclosed is a duplicate set of Appeal documents that I have forwarded to the Clerk of the Supreme Court of South Carolina concerning the above-listed Post Conviction Relief (PCR) case. I was appointed to the PCR cases pursuant to a contract that I have with your office. I have requested that your office assume the appeal of this case.

Should you have any questions, please do not hesitate to contact me.

Thank you for your assistance with this matter.

Sincerely,



Rodney D. Davis
South Carolina Bar # 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Davis@LowCountryLawOffice.com

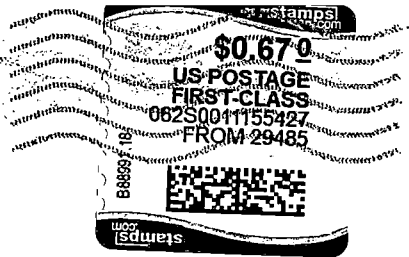
Enclosure(s). As stated above.
RDD/mmt

Lowcountry Law Office

Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

CHARLESTON SC 29405

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

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