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ATTORNEYS AT LAW

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November 29, 2017

**RECEIVED**

DEC 04 2017

S.C. SUPREME COURT

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

Re: Jamarcus Foster vs. The State of South Carolina  
Case No: 2017-CP-11-0047

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please file the copies and return them to me. I have enclosed a self-addressed stamped envelope.

Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,

  
\_\_\_\_\_  
Rodney Richey

RWR/tlg  
enclosures  
cc: Valerie Garcia Giovanoli, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

HONORABLE G. THOMAS COOPER, JR.

2017-CP-11-0047

JAMARCUS FOSTER, SCDC#: 335320  
APPELLANT,

against

STATE OF SOUTH CAROLINA,

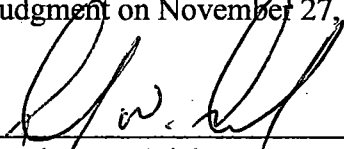
RESPONDENT.

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**NOTICE OF APPEAL**

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Jamarcus Foster appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable G. Thomas Cooper, Jr., Circuit Judge on November 15, 2017 and Order issued on November 16, 2017 and filed on November 27, 2017. The Appellant received notice of the judgment on November 27, 2017.

  
\_\_\_\_\_  
Rodney W. Richey  
Attorney for the Appellant  
Post Office Box 10916  
Greenville, South Carolina 29603  
(864) 467-0503

Other Counsel of Record:  
Valerie Garcia Giovanoli, Esquire  
Office of Attorney General State of SC  
Post Office Box 11549  
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

HONORABLE G. THOMAS COOPER, JR.

2017-CP-11-0047

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA,

RESPONDENT.

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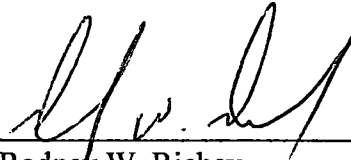
**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on November 29, 2017, addressed to their attorney of record, Valerie Garcia Giovanoli, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: November 29, 2017

RICHEY & RICHEY, P.A.



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Rodney W. Richey  
Attorney for the Appellant  
Post Office Box 10916  
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1. Introduction

2. Methodology

3. Results and Discussion

4. Conclusion

5. References

6. Appendix

7. Acknowledgements

8. Bibliography

9. Contact Information

10. Summary

11. Abstract

12. Keywords

13. Author Biographies

This document is a comprehensive report detailing the findings of a study conducted over a period of six months. The research was designed to explore the impact of various factors on the overall performance of the system. The methodology employed a combination of qualitative and quantitative approaches to ensure a thorough understanding of the subject matter. The results indicate a significant correlation between the variables studied, with the most notable findings being the positive effect of the independent variable on the dependent variable. These findings have important implications for the field and warrant further investigation. The study was supported by the following organizations and individuals, whose contributions are gratefully acknowledged.

14. Declaration of Interest

15. Appendix A

16. Appendix B

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

Jamarcus Foster, #335320,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2017-CP-11-0047

ORDER OF DISMISSAL  
WITH PREJUDICE

BRANDY W. MCBEE

2017 NOV 27 AM 8:45

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Jamarcus Foster (Applicant) on January 17, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on November 15, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. This Court had before it a copy of the Cherokee County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the PCR application, Respondent's return, and Applicant's supplemental application.

#### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. In September 2015, the Cherokee County Grand Jury indicted Applicant for distribution of methamphetamine, 3<sup>rd</sup> or subsequent (2015-GS-11-0832) and distribution of methamphetamine within one-half mile of a school (2015-GS-11-0833). Applicant was later indicted for domestic violence, 2<sup>nd</sup> degree

(2016-GS-11-0769).<sup>1</sup> Michael D. Morin, Esquire represented Applicant on these charges. Assistant Solicitor Kim Leskanic, Esquire prosecuted the case. On July 22, 2016, Applicant pleaded guilty as indicted to distribution of meth, 3<sup>rd</sup> or subsequent, and distribution of meth within one-half mile of a school before the Honorable R. Keith Kelly.<sup>2</sup> Pursuant to a negotiated sentence, Judge Kelly sentenced Applicant to imprisonment for concurrent terms of 18 years for distribution of methamphetamine, 3<sup>rd</sup> or subsequent, and 10 years for distribution of methamphetamine within one-half mile of a school.<sup>3</sup> Applicant did not appeal from his guilty plea.

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

1. Entrapment
  - a. "The informant was a sex offender, and the police sent him to my house where kids live."
2. Ineffective Assistance of Counsel
  - a. "He knew the informant was committing a crime to get me to commit a crime."

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the start of the hearing, the State addressed its partial motion to dismiss raised in its return. Applicant took the stand and testified regarding his complaints that SCDC informed him via letter in February 2017 that he was reclassified from non-violent to violent and was required

<sup>1</sup> While out on bond on the aforementioned charges, Applicant was arrested for distribution of methamphetamine, 3<sup>rd</sup> or subsequent (2016-GS-11-0987) and distribution of methamphetamine within one-half mile of a school (2016-GS-11-0988). Applicant proceeded *pro se* on these charges at the same plea hearing. Pursuant to a negotiated sentence, Applicant waived presentment to the grand jury and pled guilty to these charges. Judge Kelly sentenced Applicant to imprisonment for 18 years for distribution of methamphetamine, 3<sup>rd</sup> or subsequent and 10 years for distribution of methamphetamine within one-half mile of a school. Both sentences were to run concurrent with all other sentences. Applicant does not challenge these convictions or sentences in his PCR application. Only the charges for which he was represented by Mr. Morin are mentioned in his PCR application.

<sup>2</sup> Applicant pled not guilty to domestic violence. The charge was later dismissed.

<sup>3</sup> At the time of his plea, Applicant was on probation for distribution of crack cocaine within a half mile of a school (09-GS-11-1315) and distribution of crack cocaine, 1<sup>st</sup> offense (09-GS-11-1316). Applicant admitted violating probation during the plea hearing. Judge Kelly revoked Applicant's probation in full and sentenced Applicant to his original, suspended sentence of 10 years, concurrent to all other sentences.



to serve 85% of his sentence. The State objected to the testimony based on relevance because the issue was outside the scope of the allegations pled in his application. The objection was overruled. Applicant indicated the issue with SCDC was the only issue he wished to pursue in his PCR. This Court granted the State's motion to dismiss on the basis that Applicant failed to present any issues proper for PCR. The State noted that an ineffective assistance of counsel claim alleging Counsel had misadvised him regarding the amount of time he was required to serve was proper for PCR, but this Court notes Applicant neither pled such a claim in his application nor alleged such in his testimony. Applicant merely complained about SCDC's actions affecting his sentence. This issue is not proper for PCR.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any claims that would warrant post-conviction relief. Therefore, the application for PCR is dismissed with prejudice.

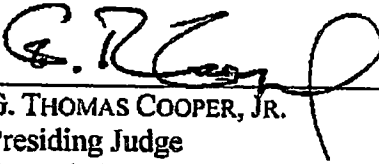
This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

CR-23

**IT IS THEREFORE ORDERED THAT:**

1. The application for Post-Conviction Relief is dismissed with prejudice;  
and
2. Applicant shall remain in the custody of the South Carolina  
Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16 day of November, 2017.



G. THOMAS COOPER, JR.  
Presiding Judge  
Seventh Judicial Circuit

SPARTANBURG, South Carolina

RICHEY AND RICHEY, P.A.  
POST OFFICE BOX 10916  
GREENVILLE, SC 29603



The Honorable Daniel E. Shearouse  
Clerk of Court  
The Supreme Court of South Carolina  
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