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DEC 11 2017

SC Court of Appeals

The State of South Carolina
In The Court of Appeals
Appeal from Greenville County
Court of Common Pleas

2016-CP-23-5239

Robin B. Stilwell, Chief Administrative Judge

Harold Watts, 127180
Appellant

v.

State of South Carolina
Respondent

Notice of Appeal

Harold Watts, Appeal the Order of Dismissal
of the Honorable Robin B. Stilwell, dated November
7, 2017, and received by the Appellant on Nov. 16
2017, Denying and Dismissing Appellant's Austin/
Odum Petition, which the Court Classified as a 2nd
P.C.R. Application.

Dated: 12-6-17



Harold Watts, Pro-se
Broad River Cour. Inst
4460 Broad River Rd
Columbia, S.C. 29210

The State of South Carolina
In The Court of Appeals
Appeal From Greenville County
Hon. Robin B. Stilwell, Judge.
2016 - CP - 23 - 5239

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S.C. Court of Appeals

Harold Watts, 127180
Appellant

v.

Certificate of Service

State of South Carolina
Respondent

I Certify that I have served the Notice of Appeal
on the below listed person, by placing a copy in
the U.S. Mail.

Clerk of the Court
S.C. Court of Appeal
P.O. Box 11629
Columbia, S.C. 29211

Office of the Attorney
General, State of South
Carolina.
P.O. Box 11549
Columbia, S.C. 29211-11549

Clerk of the Court
Greenville County
305 E. North St.
Greenville, S.C. 29601

Thank you
Harold Watts.
12-6-17 Harold Watts

Honorable Kenneth A. Rickstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

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SC Court of Appeals

RE: Watts v. State Case No. 2016-CP-23-5287

Dear Mr. Rickstad:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order of dismissal which is to be challenged on appeal

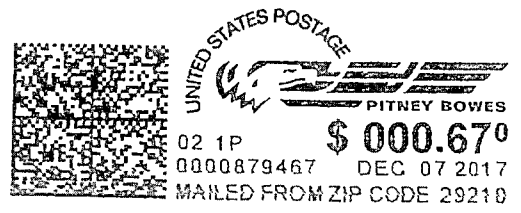
Sincerely,


DATED: 12-6-17

Harold Watts, 127180
Broad River Comm. Inst
4460 Broad River Rd
Columbia, S.C. 29210

Hars...
BRCI Mont 150
Broad River Rd
Columbia SC 29210

29210 6291811262



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SC Court of Appeals

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Clerk S.C. Court of Appeals
P.O. Box 11629
Columbia SC 29211

Legal Mail

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Harold Watts, #127180)

2016-CP-23-5239

Applicant)

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FINAL ORDER OF DISMISSAL

v.

DEC 11 2017

State of South Carolina,)

SC Court of Appeals

Respondent.)

ENTERED COMPUTER

FILED
PAUL WICKSTROM
GREENVILLE
2017 NOV - 8 PM 4:38

This matter comes before the Court by way of the application captioned "Austin/Odom Petition¹" filed September 12, 2016 by Harold Watts (Applicant). Respondent made its Return requesting that the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed January 30, 2017 and filed February 3, 2017 provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated February 22, 2017 serving the above-mentioned Conditional Order of Dismissal on Applicant.

Applicant filed a document captioned "Motion in Opposition to Motion to Dismiss" on January 9, 2017, and April 5, 2017 in which he argues that the Application he filed should be construed as an Austin/Odom petition. First, the Applicant asserts "he did not waive his right to direct appeal". Secondly, the Applicant argues "he was prevented from seeking appellate review of the denial of his PCR application" and that amounted to ineffective assistance of PCR counsel.

¹ Respondent construes application as a successive application for post-conviction relief, claiming PCR counsel failed to appeal the denial of his prior PCR application.


Handwritten signature/initials

This Court reasserts its holding contained in the Conditional Order of Dismissal. Additionally, this Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal

AND IT IS SO ORDERED this 7 day of ra, 2017.


ROBIN B. STILWELL
Chief Administrative Judge
Thirteenth Judicial Circuit

COLUMBIA, South Carolina

10/5/2017

The State of South Carolina
In The Court of Appeals
Appeal from Greenville County
Court of Common Pleas
Hon. Robin B. Stilwell
2016-CP-23-5239

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SC Court of Appeals

Harold Watts 127180

Appellant

Explanation PER. S.C.A.C.R.

v.

243 (c).

State of South Carolina
Respondent.

The Appellant is entitled to an Austin Review of a
Prison Order, if there is an affirmative finding that
the Appellant either (1) requested and was denied an
opportunity to seek Appellate Review of the
Prison P.C.R. Order (2) did not knowingly and
intelligently waive the right to Appellate re-
view of the Prison P.C.R. Order. See King v. State
417 S.E2d 868. Under the Post Conviction Relief
Rules the Appellant is entitled to a Full Ad-
judication on the Merits of the Original Petition
or "one bite at the apple", this bite includes

AN Applicant's Right to Appeal the Denial of A Post Conviction Relief Application. Appellant requested that his P.C.R. Counsel file a 59(c) Motion to preserve all of the issues for review. Counsel agreed to file the motion (see attached exhibit) but did not file the 59(c) Motion.

The Respondents in their Return and Memo/Motion for Summary Judgment Concede that Petitioner's grounds alleging ineffective assistance of counsel for allowing Petitioner to enter a conditional guilty plea and failing to request a change of venue, were waived and abandoned by Petitioner. They were not addressed in the Order of Dismissal and Petitioner did not file a Rule 59(c) see pages 26 and 29 of Respondents Motion for Summary Judgment, see also attached exhibit.

The Court must take judicial notice of these facts, In South Carolina a guilty plea are not accepted and with any attempt to condition a plea the Court must not accept the plea see Edwards v. State 2004 WL 6396036, the Court is without jurisdiction to accept a plea where defendant denies and element of the offense charged. By the facts present by the Respondents all of the issues

raised by the Appellant were not addressed in the P.C.R. Court's Order. S.C. Code Ann. 17-27-80 (2014) "The Court shall make specific finding of fact and state expressly its conclusion of law relating to each issue presented. This order is a final judgment"; S.C. Code Ann. 17-27-100 (2014) ("A final judgment entered under this Chapter may be reviewed by writ of certiorari as provided by the S.C.A.C.R.

Rule 243(a), S.C.A.C.R.; Rule 71, 1(g) Lewis v. State 368 S.C. 630, 630 S.E2d 464. The Respondents admit that there are issues that were raised on P.C.R. that were not addressed by the P.C.R. Court. According to S.C. Statute 17-27-80 and 17-27-100 no final order or decision was given because the Court failed to follow statute and since no final order was given then the Court cannot entertain this appeal until the P.C.R. Court makes a ruling according to the statutes on all the issues raised. This appeal must be remanded back to the P.C.R. Court for the issuance of a final judgment.

State of South Carolina
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Appeal from Greenville County
2016-CP-23-5239

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Watts,
Appellant
v.
State, Respondent

Certificate of Service

I, Harold Watts, declare under the penalty of perjury that I mailed a copy of my Explanation to the parties listed below by placing them in the U.S. Mail.

Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

~~Harold Watts~~
Harold Watts
Broad River Court, INST
4460 Broad River Rd
Columbia, S.C. 29210

Attorney General, State of S.C.
P.O. Box 11549
Columbia, S.C. 29211-11549

cc: file

Dated: 12-6-17

CAROLINE M. HORLBECK
ATTORNEY AT LAW

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601
horlbecklawfirm@gmail.com

Exhibit

"A"

(864) 315-9111
Fax(864) 232-4777

June 29, 2015

Mr. Harold Watts (SCDC ID# 127180)
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

Re: Your Letter

Dear Mr. Watts,

I have received your letter and I want to assure you that all issues were preserved for your appeal so the 59E Motion was not necessary. If you have any more questions please feel free to contact my office anytime.

Yours truly,

Caroline Horlbeck
Caroline Horlbeck

CMH: aaf