

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

The Honorable John C. Hayes, III, Presiding in Union County

C.A. No.: 2011-GS-44-0345, 2011-GS-44-0346,
and 2011-GS-44-0347

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SC Court of Appeals

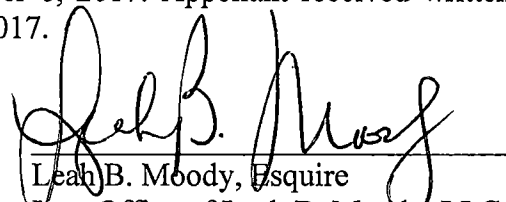
State of South Carolina, Respondent.

v.

Anthony Derone Richardson, Appellant,

NOTICE OF APPEAL

Anthony Derone Richardson appeals the sentencing of the Honorable John C. Hayes, III dated December 5, 2011 pursuant to the Honorable Letitia Verdin's Order dated September 22, 2017 and mailed on October 6, 2017. Appellant received written notice of entry of the final order on October 10, 2017.



Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

Other Counsel of record:
John Anthony, Deputy Solicitor
Kevin Brackett, Solicitor, Union County
16th Circuit Solicitor's Office
P.O. Box
Union, South Carolina 29379-0060

luc

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM UNION COUNTY
Court of General Sessions

The Honorable John C. Hayes, Presiding in Union County

C.A. No.: 2011-GS-44-0345, 2011-GS-44-0346,
and 2011-GS-44-0347

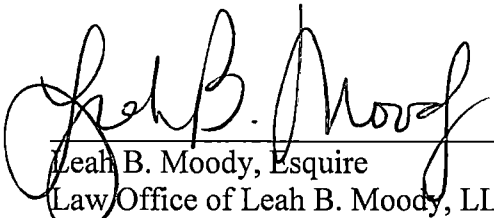
State of South Carolina, Respondent.

v.

Anthony Derone Richardson, Appellant,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on John Anthony, Esquire by depositing a copy of it in the United States Mail, postage prepaid, on November 9, 2017 addressed to its attorney of record, Justin Hunter, Post Office Box 11549, Columbia, South Carolina, 29211-1549.


Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

November 9, 2017

cc Anthony Derone Richardson
Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals
Iris B. Whisnant, Clerk of Court, Union County
Sharon A. Graham, SCCID

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NOV 16 2017
SC Court of Appeals

Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

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November 9, 2017

NOV 16 2017

The Honorable Iris B. Whisnant
Union County Clerk of Court
Post Office Box 703
Union, South Carolina 29379

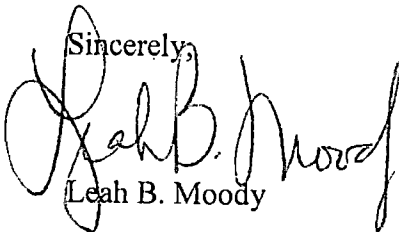
SC Court of Appeals

RE: The State of South Carolina, Respondent v. Anthony D. Richardson
C.A. No.: 2011-GS-44-0345, 2011-GS-44-0346, and 2011-GS-44-0347

Dear Mrs. Whisnant:

Please find enclosed the Notice of Appeal and the Proof of Service in the above-referenced matter.

Sincerely,



Leah B. Moody

LBM/ab

Enclosures

cc Anthony D. Richardson
John Anthony, Deputy Solicitor
Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

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Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

November 9, 2017

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NOV 16 2017

SC Court of Appeals

John Anthony, Deputy Solicitor
Kevin Brackett, Solicitor,
16th Circuit Solicitor's Office
P.O. Box 60
Union, South Carolina 29379-0060

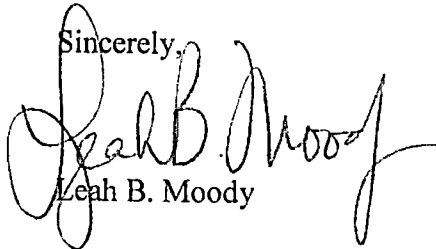
RE: The State of South Carolina, Respondent v. Anthony D. Richardson
C.A. No.: 2011-GS-44-0345, 2011-GS-44-0346, and 2011-GS-44-0347

Dear Mr. Anthony and Mr. Brackett:

The York County Court of Common Pleas appointed my office to represent Anthony D. Richardson in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in his criminal matter.

If you have any questions or concerns, please feel free to contact my office. Thank you.

Sincerely,


Leah B. Moody

Enclosures

Cc: Anthony Derone Richardson
Jenny Abbot Kitchings, Clerk of Court, South Carolina Court of Appeals
Iris Whisnant, Clerk of Court, Union County
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

November 9, 2017

Ms. Sharon A. Graham
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11433
Columbia, South Carolina 29211-1433

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NOV 16 2017

SC Court of Appeals

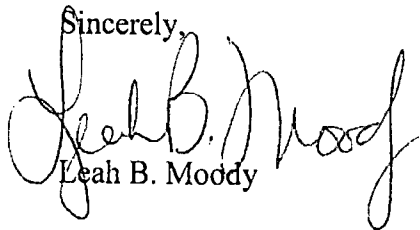
RE: The State of South Carolina, Respondent v. Anthony D. Richardson
C.A. No.: 2011-GS-44-0345, 2011-GS-44-0346, and 2011-GS-44-0347

Dear Ms. Graham:

The Union County Court of Common Pleas appointed my office to represent Anthony Derone Richardson in his Post-Conviction Relief action. Please find enclosed the Notice of Appeal and Proof of Service in the above-referenced matter.

Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/ab
Enclosures

cc Anthony Derone Richardson
John Anthony, Deputy Solicitor
Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals
Iris B. Whisnant, Clerk of Court, Union County

Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

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NOV 16 2017
SC Court of Appeals

November 9, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

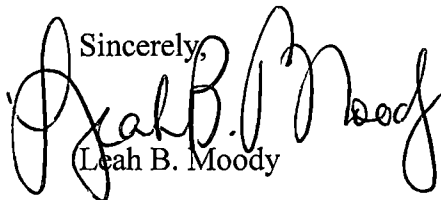
RE: The State of South Carolina, Respondent v. Anthony D. Richardson
C.A. No.: 2011-GS-44-0345, 2011-GS-44-0346, and 2011-GS-44-0347

Dear Mrs. Kitchings:

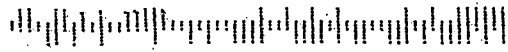
Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s];
- (2) A copy of the orders, which are to be challenged on appeal;
- (3) Under Rule 203(d)(2), SCACR, a filing fee is not required if the appeal is from a criminal case; and
- (4) Sentencing sheet.

Sincerely,


Leah B. Moody

Cc: John Anthony, Assistant Solicitor
Kevin Brackett, Solicitor
POB 60
Union, SC 29379
(864) 429-1639
Attorney for Respondent



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Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, South Carolina 29730

TO:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Clerk of Court Office
PO Box 11629
Columbia SC 29211-1629

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NOV 16 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Union

INDICTMENT/CASE#: 2011-GS-44 - 0344

STATE

A/W#: M-675009

vs. Anthony Derone Richardson

Date of Offense: 08/18/2010

AKA: Race: B Sex: M Age:

S.C. Code §: 16-11-0830

DOB: SS#: Address: 821 Brantley Street

CDR Code #: 1 1 7 2

City, State, Zip: Newberry, SC 29108

SENTENCE SHEET #3

DL# SID# SC00780043

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Title: Violation of § 16-11-0830 of the S.C. Code of Laws, bearing CDR Code # 0725

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSO w/minor 1st or Lewd Act) \$17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (Def.'s initials) Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: 7116 Anthony D. Richardson 76122

WHEREFORE, the Defendant is committed to the State Department of Corrections or County Detention Center, for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code §24-18-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered FTUP days/hours Public Service Employment

Payment Terms: Set by SCOPPPS

Recipient: NOV 16 2017

Table with 4 columns: Description, Amount, Tax, Total. Includes items like §14-1-205 (Assessments 107.5%), §14-1-211 (A)(1) (Conv. Surcharge) \$100, §14-1-211 (A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, §14-1-212 (Law Enforce, Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (BUI Breath Test Fee) \$50, §56-6-2942(J) (Vehicle Assessment) \$40/lea, Proviso 90.5 (SCJA Surcharge) \$5, §44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments), TOTAL \$2475.00.

Random Drug/Alcohol Testing Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ Beginning \$ Paid to Public Defender Fund

Other: Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Judge Code: Sentence Date: 12/5/11

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SC Court of Appeals

STATE OF SOUTH CAROLINA
 COUNTY OF Union
 STATE _____
 VS.
Anthony Derone Richardson
 AKA: _____
 Race: B Sex: M Age: _____
 DOB: _____
 Address: 521 Brantley Street
 City, State, Zip: Northberry, SC 29108
 DL# _____ SID# SC00780043
 *COL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2011-GS-44-0345
 A/W#: M-675008
 Date of Offense: 06/23/2010
 S.C. Code §: 16-11-0330
 CDR Code #: 1 1 7 2

SENTENCE SHEET

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Illegal Distribution of Recordings

In violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0725
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (def.'s initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 7116 [Signature] [Signature] 76122
 Solicitor SC Bar # _____ Defendant Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of _____ days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 12/5/11
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.
 SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCOPPPS

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NOV 16 2017

Recipient: _____ SC Court of Appeals

*Fine:		
§14-1-208 (Assessments 107.5%)		\$ 100
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 107.50
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 107.50
§55-5-2985 (DUI Assessment)	\$12	\$ 12.00
§56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$ 50.00
§36-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
§44-53-450(C) (Conditional Discharge)	\$350	\$ 350.00
3% to County (if paid in installments)		\$ 10.13
TOTAL		\$ 1,177.13
Clerk of Court/Deputy Clerk	<u>[Signature]</u>	
Court Reporter:	<u>[Signature]</u>	

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning Substance Abuse Counseling

Random Drug/Alcohol Testing
 Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning \$ _____ Paid to Public Defender Fund

Other: _____

Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]
 Judge Code: 2017
 Sentence Date: 12/5/11

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Union

STATE

INDICTMENT/CASE#: 2011-GS-44-0347

VS. Anthony Derone Richardson

A/W#: M-975007

AKA:

Date of Offense: 08/24/2010

Race: B Sex: M Age:

S.C. Code §: 16-11-0330

DOB: SS#

CDR Code #: 1 1 7 2

Address: 521 Branney

City, State, Zip: Newberry, SC 29108

DL# SID# SC00790043

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Illegal Distribution of Alcohol

In violation of § 16-11-030 of the S.C. Code of Laws, bearing CDR Code # 0425

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

Mandatory GPS \$17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser included Offense, Defendant Waives Presentment to Grand Jury, (def.'s initials)

The pleas: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Solicitor SC Bar # 7116 Defendant Attorney for Defendant SC Bar # 76122

WHEREFORE, the Defendant is committed to the State Department of Corrections or County Detention Center,

for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment

of \$ 100.00 ; plus costs and assessments as applicable; the balance is suspended with probation for 1

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State

Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee

Payment Terms:

Set by SCOPPPS

Recipient: SC Court of Appeals

*Fine:

\$14-1-206 (Assessments 107.5%) \$ 100.00

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 107.50

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ 100.00

\$56-5-2995 (DUI Assessment) \$12

\$56-1-286 (DUI Breath Test) \$25

Proviso 47.9 (Public Def/Prob) \$500

\$14-1-212 (Law Enforce. Funding) \$25

\$14-1-213 (Drug Court Surcharge) \$150

\$50-21-114 (BUI Breath Test Fee) \$50

\$56-5-2942(J) (Vehicle Assessment) \$40/ea

Proviso 90.5 (SCJA Surcharge) \$5

\$44-53-450(C) (Conditional Discharge) \$350

3% to County (if paid in installments)

TOTAL \$ 862.50

Clerk of Court/Deputy Clerk

Court Reporter:

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

prmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: Transfer to Newberry County

2) Surrender illegal CDs & DW's

Conditional Discharge, §44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation

Presiding Judge

Judge Code:

Sentence Date

RECEIVED NOV 16 2017

Jah... 2011 12/15/11

STATE OF SOUTH CAROLINA FILED FOR RECORD IN THE COURT OF COMMON PLEAS
COUNTY OF UNION SIXTEENTH JUDICIAL CIRCUIT

2017 OCT 6 PM 1 41

Anthony Derone Richardson, CLERK OF COURT 2013-CP-44-0070
UNION, SC

Applicant,)

v.)

**ORDER OF DISMISSAL
GRANTING A BELATED APPEAL
PURSUANT TO WHITE V. STATE¹**

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 6, 2013. An evidentiary hearing into the matter was convened on November 18, 2014, at the Moss Justice Center in York, South Carolina before the Honorable Alison Lee. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Joseph St. Pierre, Esquire, also testified. At the conclusion of this hearing, the PCR court held the record open to obtain a copy of the plea transcript and other related documents. By an order dated March 1, 2016, Judge Lee ordered that due to the length of time that the record had remained open, the PCR court would no longer retain jurisdiction over the matter.

This matter was rescheduled for a hearing on August 10, 2016 in York County before the Honorable Letitia Verdin. Applicant was represented by Leah Moody, Esquire, and Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, all parties agreed to submit the entire lower court record along with the transcript from the initial PCR hearing to Judge Verdin for her to rule upon. This Court had before it a copy of

¹ 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974)

the records of the Union County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript, and the transcript from the November 18, 2014 PCR hearing.

I. PROCEDURAL HISTORY

Applicant is not presently in custody. Applicant was indicted at the December 2011 term of the Union County Grand Jury for three counts of Illegal Distribution of recordings without names and address (2011-GS-44-0345, -0346, -0347). Joseph St. Pierre, Esquire, represented him. On December 5, 2011, Applicant plead guilty to three counts of Illegal Distribution of recordings (25 or fewer audio, 10 or fewer video), 1st offense. The Honorable John C. Hayes, III, sentenced him to confinement for one year suspended to one year probation AND \$100.00 plus court costs.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to timely serve opposing counsel with the notice of appeal on February 18, 2013.

Allegations

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

1. "Not in custody."

Respondent made a Return and Motion to Dismiss on April 18, 2013. A Conditional Order of Dismissal was signed by the Honorable Lee S. Alford on April 22, 2013, and filed May 9, 2013, provisionally dismissing the action for failing to state a claim upon which relief may be granted in post-conviction relief. At the hearing, Applicant, through his Counsel, amended his Application to proceed on the ground that his Counsel was ineffective for failing to properly file the notice of appeal in his direct appeal action.

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that Counsel agreed to a plea deal that was for court costs and no probation. He testified that Counsel worked out a deal with the State where Applicant would pay a flat rate of \$600 and would not have to serve any probation. Applicant testified that his sentence was ultimately one year probation with a fine and the probation would end upon payment. He testified that the fine and court costs totaled around \$1500. Applicant further testified that he had \$600 with him at the hearing because he thought that the agreement was a flat fee of \$600. He testified that he approached Counsel after the hearing who explained the added court costs and probation.

Applicant testified that Counsel said he would appeal the sentence. He testified that he is not sure who filed the appeal but Counsel advised him on filing it. He testified that he thinks Counsel filed the appeal but it was dismissed as untimely. Applicant further testified that he is asking this Court to allow him to appeal his guilty plea and sentence.

Counsel Joseph St. Pierre's Testimony

Counsel testified that the original plea offer in this case was for a total find of \$300 plus costs and assessments, and if Applicant could pay the fines then he would not have to go on probation. He testified that he told Applicant that the costs and assessments would make the fine more than double, or, over \$600. He testified that he had no idea what the total amount would be prior to the plea hearing. He testified that it was understood by himself, Applicant, and the solicitor in court that day that Applicant would not be able to pay the total amount and that he would have to go on probation. Counsel testified that the probation was to be terminated upon payment (PTUP) of the fines costs, and assessments as part of the plea agreement. Counsel

testified that the ultimate sentence Applicant received was one year suspended to one hundred dollar fine, PTUP after he could pay the fines plus the cost and assessments, and that probation would be transferred to Newberry County. He testified that the plea judge said that he would have to assess the five hundred dollar public defender fee and Applicant acknowledged that he understood that. He further testified that he explained to Applicant what "PTUP" meant.

Counsel testified that Applicant met with the probation officer in Newberry and called Counsel's office complaining about the fees of probation and public defender assessment, claiming that he did not know they would result and wanting Counsel to ask the judge to reconsider. Counsel testified that he told Applicant that his options were an appeal or PCR action.

Counsel testified that he filed a notice of appeal with the Clerk of Court's office and asked the clerk's office to put a copy in the solicitor's office's mailbox, but that he did not personally serve the notice on the State. He testified that the appeal was subsequently dismissed. Counsel testified that it is Applicant's right to have an appeal, however he thought that Applicant's issue with the amount of money he had to pay was frivolous. Counsel testified that Applicant told him that wanted to appeal his sentence to correct the costs and assessments and so that he could win a federal lawsuit for millions of dollars for wrongful arrest.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the lower court record and the testimony and arguments presented at the PCR hearing. This Court interprets Applicant's testimony at the PCR hearing to allege that Counsel was ineffective regarding the plea offer. This Court finds that Applicant has failed to show that Counsel's actions were deficient. This Court finds that Counsel provided credible testimony that Applicant's PTUP probationary sentence was understood in

advance by all parties involved. The plea record also reflects Applicant's understanding of the State's plea recommendation. Accordingly, Applicant has failed to meet his burden of proving that Counsel was deficient regarding his plea and any such allegation must be dismissed.

Belated Appeal

This Court finds that Applicant did not knowingly and intelligently waive his right to a direct appeal. Counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). 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 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their 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, 291 n.1, 342 S.E.2d 60, 60 n.1 (1986) ("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.").

In the present case, Applicant testified that Counsel said he would appeal the sentence and informed him that the notice of appeal was filed. This Court finds that Counsel did not properly serve the notice of appeal on the State and the appeal was dismissed because of Counsel's error. This Court finds Applicant did not knowingly and intelligently waive his right to the direct appeal; therefore, he is entitled to a belated appeal. As such, the Court finds Applicant did not knowingly and voluntarily waive his appellate rights and is entitled to an appeal from his conviction. Applicant's lack of an appeal shall be remedied pursuant to White v. State.


CONCLUSION

Based on the foregoing, this Court grants Applicant a belated review of his conviction pursuant to White v. State. With regard to all other claims, this Court finds Applicant has not established any violations that would require this Court to grant further relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

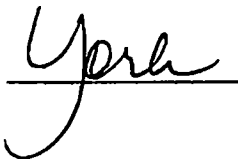
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and Rule 243(i), SCACR for the appropriate procedure for securing belated appellate review; and
3. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29 day of Sept., 2017.



Letitia Verdin
Presiding Judge
Sixteenth Judicial Circuit


_____, South Carolina

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FILED FOR RECORD

STATE OF SOUTH CAROLINA
COUNTY OF UNION

2013 MAY 9 9 12 10 AM
IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC 2013-CP-44-0070

Anthony Derone Richardson,

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 6, 2013. The Respondent made its Return and Motion to Dismiss on April 18, 2013.

PROCEDURAL HISTORY

The records before this Court indicate that The Applicant is not presently in custody. The Applicant was indicted at the December 2011 term of the Union County Grand Jury for three (3) counts of Illegal Distribution of recordings without names and address (2011-GS-44-0345, -0346, -0347). Joseph St. Pierre, Esquire, represented him. On December 5, 2011, the Applicant plead guilty to three (3) counts of Illegal Distribution of recordings (25 or fewer audio, 10 or fewer video), 1st offense. The Honorable John C. Hayes, III sentenced him to confinement for one (1) year suspended to \$100.00 plus court costs and one (1) year probation. A notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to timely serve opposing counsel with the notice of appeal on February 18, 2013.

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

1. "Not in custody"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b) (2003), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20 (1976).

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These facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, this Court summarily dismisses this application for post-conviction relief.

The Applicant fails to allege any grounds for PCR. Pursuant to Rule 12(b)(6), SCRCR, this Court summarily dismisses this allegation because it does not state a claim for which relief may be granted.

CONCLUSION

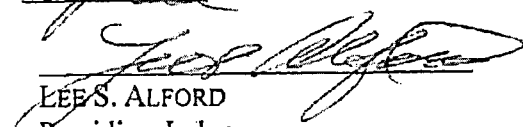
S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Union County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 22nd day of Apr, 2013.


LEE S. ALFORD
Presiding Judge
Sixteenth Judicial Circuit Court

York, South Carolina.

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ATTORNEY GENERAL'S OFFICE

RECEIVED 5/13/13

ADMINISTRATIVE INSTRUCTIONS

JLJ
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Clerk of Court

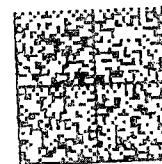
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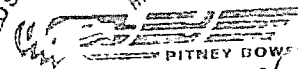
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