

## Lowcountry Law Office

4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
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**March 10, 2018**

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

RECEIVED

MAR 14 2018

S.C. SUPREME COURT

RE: William Seabrook v. State of SC; Case #: 2016-CP-10-2908  
Darryl Mungin v. State of SC; Case #: 2016-CP-10-6560  
Gerald Edwards v State of SC; Case #: 2016-CP-10-2515

Dear Mr. Shearhouse:

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

- (1) Proof of Service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal; and
- (5) A Request for Representation on Appeal.

The Applicant(s) – Appellant(s) were 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 the Applicant(s) – Appellant(s). 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](mailto:Davis@LowcountryLawOffice.com)

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

cc: Justin J. Hunter, Assistant Attorney General  
Paula Murdoch, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MAR 14 2018

S.C. SUPREME COURT

The Honorable Michael G. Nettles

Case #: 2016-CP-10-2515

Gerald Edwards,

Appellant.

v.

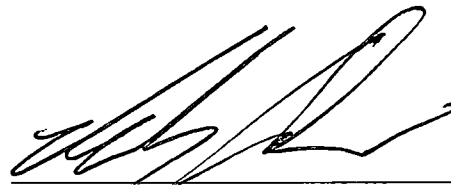
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Gerald Edwards appeals the denial of his Post Conviction Relief (PCR) application and his conviction in this case. On December 5, 2017, the Honorable Michael G. Nettles granted the Respondent's Motion to Dismiss but granted the Applicant a review of direct appeal issues pursuant to White v. State, 208 S.E.2d 35, 263 S.C. 110 (1974). Counsel for the Appellant received a copy of the filed Order of Dismissal and Grant of Appellate Review, on or about February 12, 2018.

March 5, 2018



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

CC:

Justin J. Hunter, Assistant Attorney General  
Paula Murdoch, South Carolina Commission on Indigent Defense

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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The Honorable Michael G. Nettles

S.C. SUPREME COURT

Case #: 2016-CP-10-2515

Gerald Edwards,

Appellant.

v.

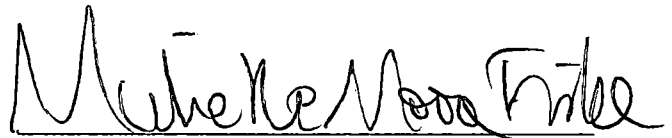
State of South Carolina,

Respondent.

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, Justin J. Hunter, P.O. Box 11549, Columbia, South Carolina 29211-1549, on March 6, 2018.

March 6, 2018



Michelle Moore Trimble  
Paralegal to Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
(843) 323-4353  
Davis@LowcountryLawOffice.com  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles

Case #: 2016-CP-10-2515

Gerald Edwards,

Appellant.

v.

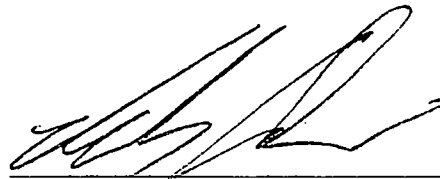
State of South Carolina,

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March 5, 2018



Rodney D. Davis  
Attorney for Appellant  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
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CC:  
Justin J. Hunter, Assistant Attorney General  
Paula Murdoch, South Carolina Commission on Indigent Defense

FILED  
2018 MAR -8 PM 2:22  
JULIE J. AUSTIN  
CLERK OF COURT  
BY \_\_\_\_\_

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles

Case #: 2016-CP-10-2515

Gerald Edwards,

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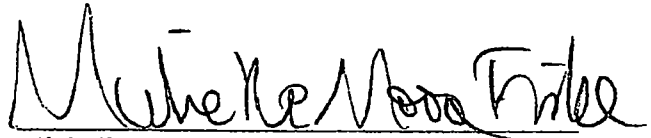
State of South Carolina,

Respondent.

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March 6, 2018



Michelle Moore Trimble  
Paralegal to Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
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Davis@LowcountryLawOffice.com  
Attorney for Appellant

FILED  
2018 MAR -8 PM 2:22  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_



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STATE OF SOUTH CAROLINA )  
)  
COUNTY OF CHARLESTON )  
)  
Gerald Edwards, )  
S.C.D.C. No. 173780, )  
)  
Applicant, )  
)  
v. )  
)  
State of South Carolina, )  
)  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
OF THE NINTH JUDICIAL CIRCUIT

2016-CP-10-2515

**ORDER OF DISMISSAL AND  
GRANT OF APPEAL PURSUANT TO  
WHITE V. STATE<sup>1</sup>**

2018 FEB -1 AM 10:20  
JUDGE J. J. HUNTER  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 13, 2016. An evidentiary hearing into the matter was convened on Tuesday, December 5, 2017, at the Charleston County Courthouse in Charleston, South Carolina before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Michael R. Loignon, Esquire, also testified. This Court also had before it a copy of Applicant's PCR application and amendment, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's appellate records, Respondent's Return, and the plea transcript.

**I. PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the April 2014 term of the Charleston County Grand Jury for armed robbery (2014-GS-10-01779) and possession of a knife during the commission of a violent crime (2014-GS-10-01780). Applicant represented himself at trial. On February 6, 2015, Applicant appeared before the

<sup>1</sup> 263 S.C. 110, 108 S.E.2d 35 (1974)

Honorable Kristi Harrington and moved to relieve Shirene Hansotia, Esquire, as his counsel. On February 10, 2015, Applicant appeared pro se and proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced Applicant to confinement for concurrent terms of twenty years' imprisonment for armed robbery and five years' imprisonment for possession of a knife during the commission of a violent crime.

Applicant filed a pro se notice of appeal. The South Carolina Court of Appeals sent a letter to Ms. Hansotia, on February 27, 2015 notifying her that it understood her to be counsel of record and Applicant had filed an appeal. The Court of Appeals sent a deficiency letter to Ms. Hansotia informing her that certain deficiencies with Applicant's appeal must be corrected or the appeal will be dismissed. The Court of Appeals dismissed Applicant's appeal as a result of his failure to serve timely notice of appeal. State v. Edwards, S.C. Ct. App. Order dated March 11, 2015. On April 9, 2015, Applicant made a motion to reinstate the appeal. The South Carolina Court of Appeals denied Applicant's motion, stating that he failed to provide a basis for granting a rehearing, specifically that his notice of appeal was timely. The Remittitur was issued on October 22, 2015.

### **Allegations**

In his application for post-conviction relief, and the amendment filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel at trial and appeal."
  - a. "Attorney Ms. Hansotia was ineffective for failing to secure a court order relieving her as counsel appointed to represent Edwards at trial and on direct appeal which denied him of his 6<sup>th</sup> and 14<sup>th</sup> Amendment right to the effective assistance of counsel."
  - b. "Attorney Ms. Hansotia was ineffective for failing to consult with Edwards about perfecting an appeal after the court of appeals instructed her to correct deficiencies within ten (10) days of correspondence to comply within state procedural rules which denied Edwards his 6<sup>th</sup> and 14<sup>th</sup> Amendment right."
  - c. "Ms. Hansotia was ineffective for failing to assist Edwards as stand by

counsel at trial where Edwards who is not skilled in the science of the law failed to make timely motions and objections at critical stages of the trial that may have changed the outcome of the trial when there exists no order relieving Ms. Hansotia as counsel of record.”

2. “Denial of Direct Appeal”

a. “Edwards was deprived of his 6<sup>th</sup> and 14<sup>th</sup> Amendment right to effective assistance of counsel and direct appeal when Ms. Hansotia failed to correct deficiencies in Edwards’ pro-se direct appeal notice as instructed by the court of appeals which violated rules prohibiting conduct tending to pollute the administration of justice and bring the legal profession into disrepute.”

b. “Ms. Hansotia was ineffective for refusing to comply with an obligation imposed by the court of appeals upon “good faith” belief that no valid obligation exists to correct the deficiencies in Edwards’ pro-se notice of appeal when the application of legal regulations by the court of appeals went unchallenged by Ms. Hansotia.”

3. “Conviction and sentence is in violation of U.S. Constitution and state law.”

a. “Edwards conviction and sentence is a result of fundamentally unfair procedure in that he was without the benefit of counsel at trial and post-trial when the circuit court never issued any orders relieving Ms. Hansotia as counsel of record which violated the constitutional provisions and state law where the judicial machinery broke down when Edwards’ request to be appointed another counsel was denied and no assistance was given to him during trial and direct appeal.”

## II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Ineffective Assistance of Counsel**

At the PCR hearing, Applicant's counsel alleged that Applicant unlawfully proceeded pro se at trial because Counsel was ineffective for failing to ensure that a full Faretta hearing was conducted before Counsel was relieved. The State made a Motion to Dismiss, arguing that Applicant any allegation of ineffective assistance of counsel should be dismissed, as Applicant proceeded pro se after receiving Faretta warnings from Judge Harrington on February 6, 2015. This Court grants Respondent's motion to dismiss.

This Court finds the record below shows that Judge Harrington conducted a proper Faretta hearing in allowing Applicant to represent himself. See February 6, 2015 Transcript. At the hearing, Applicant informed the Court that he wished to proceed pro se. February 6, 2015 Transcript, p. 3. The court then went over Applicant's education, work history, law background, and age. February 6, 2015 Transcript, pp. 3-4. The court ensured Applicant was aware of the possible punishment he was facing on his charges. February 6, 2015 Transcript, p. 4. The court informed Applicant that Ms. Hansotia went to law school and practices law every day, but Applicant replied that he did not want Ms. Hansotia to represent him. February 6, 2015

Transcript, p. 5. The court informed Applicant that it does not advise defendants to represent themselves, and Applicant stated that he has tried to relieve Ms. Hansotia on three separate occasions. February 6, 2015 Transcript, pp. 5-6. This Court finds Judge Harrington conducted a full and proper Faretta hearing and Applicant knowingly and intelligently waived his right to counsel. As Applicant waived his right to counsel, his claims of ineffective assistance of counsel against Ms. Hansotia are dismissed as she did not represent him at trial or on appeal. Accordingly, Applicant's allegations of ineffective assistance of counsel are dismissed.

### **Waiver of Right to Direct Appeal**

Respondent also represented to the Court that it would agree that Applicant did not knowingly and voluntarily waive his right to a direct appeal. Respondent pointed out the fact that after Applicant filed a pro se notice of appeal, the Court of Appeals sent a deficiency letter to Ms. Hansotia on February 27, 2015 stating she was Applicant's attorney, yet on May 5, 2015 the Court of Appeals sent a letter to Applicant stating that Ms. Hansotia was not his attorney. Respondent agreed that conflicting reports from the Court of Appeals may have contributed to Applicant's appeal being dismissed.

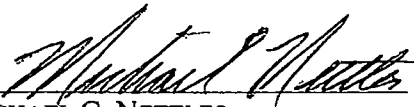
This Court agrees that Applicant did not waive his right to a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), White v. State, 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 Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to White v. State 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 the Applicants' 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 be remanded to the custody of Respondent

AND IT IS SO ORDERED this 23 day of January, 2017.

  
MICHAEL G. NETTLES  
Presiding Judge  
Ninth Judicial Circuit

Florence, South Carolina



ALAN WILSON  
ATTORNEY GENERAL

January 25, 2018

The Honorable Julie J. Armstrong  
Charleston Clerk of Court  
100 Broad St Ste 106  
Charleston, SC 29401-2210

Re: Gerald Edwards, #173780 v. State of South Carolina  
2016-CP-10-2515

Dear Ms. Armstrong:

Enclosed please find the original Order of Dismissal and Grant of Appeal Pursuant to White v. State 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,

*Justin J. Hunter*  
Justin J. Hunter  
Assistant Attorney General

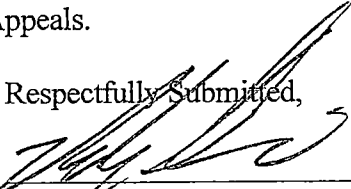
JJH/jaj

STATE OF SOUTH CAROLINA ) IN THE SUPREME COURT OF SOUTH CAROLINA  
 )  
 COUNTY OF CHARLESTON ) Case #: 2016-CP-10-2515  
 )  
 )  
 GERALD EDWARDS, )  
 )  
 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.  
3/5, 2018


STATE OF SOUTH CAROLINA )

CASE #: 2016-CP-10-2515

COUNTY OF CHARLESTON )

VERIFICATION

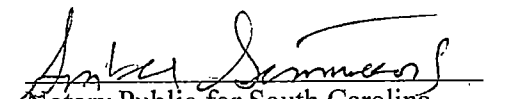
PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **Gerald Edwards**, and the same is true of his knowledge except those matters alleged on information 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  
5<sup>th</sup> day of March, 2018.



---

Notary Public for South Carolina  
My Commission expires 8/16/2026



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**March 10, 2018**

Paula Murdoch  
South Carolina Commission on Indigent Defense  
PO Box 11433  
Columbia, SC 29211-1433

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MAR 14 2018

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Darryl Mungin v. State of SC; Case #: 2016-CP-10-6560  
Gerald Edwards v State of SC; Case #: 2016-CP-10-2515

S.C. SUPREME COURT

Dear Ms. Murdoch:

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) cases. I was appointed to the PCR case pursuant to a contract that I have with your office. I have requested that your office assume the appeal of the cases.

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

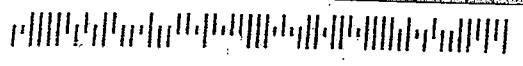
Thank you for your assistance with this matter.

Sincerely,



Rodney D. Davis  
South Carolina Bar # 12396  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405  
[Davis@LowCountryLawOffice.com](mailto:Davis@LowCountryLawOffice.com)

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



*RD*

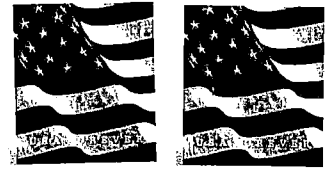
Lowcountry Law Office  
Rodney D. Davis  
4000 Faber Place Drive, Suite 300  
Charleston, SC 29405



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