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March 12, 2018

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

MAR 16 2018

S.C. SUPREME COURT


Re: Michael Bellamy 351656 v State, 2015-CP-26-2172

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Horry County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,


James K Falk

Thank you for your assistance.

Cc: Johnny James Esq., Michael Bellamy 351656.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR 16 2018

APPEAL FROM Horry COUNTY
Court of Common Pleas
Honorable William H Seals, Jr. Circuit Judge

S.C. SUPREME COURT

Case No.: 2015-CP-26-02172

Michael Bellamy 351656.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Michael Bellamy appeals the Honorable William H. Seals Jr's February 15, 2018 Order of Dismissal. Undersigned counsel received notice of entry of the order on March 12, 2018. A copy of the order on appeal is attached hereto.


James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

March 12, 2018

Johnny James Jr., Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable William H Seals, Jr., Circuit Judge

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S.C. SUPREME COURT

Case No.: 2015-CP-26-2172

Michael Bellamy 351656.....PETITIONER

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State of South Carolina.....RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Johnny James, Jr. Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this March 12, 2018.



James K Falk
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PO Box 1058
Charleston, SC 29402

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY)
)
 Michael De'Vonte Bellamy,)
 S.C.D.C. No. 351656,) Case No.: 2016-CP-26-02172
)
 Applicant,)
)
 v.) **ORDER OF DISMISSAL**
)
 State of South Carolina,)
)
 Respondent.)

Horry County
 2018 FEB 28 PM 12:44
 RENE E. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Michael De'Vonte Bellamy ("Applicant") on March 30, 2016. Respondent made its return on or about July 24, 2017. The Court convened an evidentiary hearing into the matter on Tuesday, November 28, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Barbara W. Pratt, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

CERTIFIED COPY
 RENE E. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Horry County. Applicant was indicted by the July 2014 term of the Grand Jury for Horry County for murder (2014-GS-26-2700), attempted

murder (2014-GS-26-2701), and armed robbery (2014-GS-26-2702). Applicant was represented by Barbara Wilson Pratt, Esquire. Nancy R. Livesay, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 26, 2015, Applicant pled guilty to the lesser included offense of voluntary manslaughter and was sentenced by the Honorable Larry B. Hyman, Jr. to twenty-five (25) years imprisonment. Applicant's indictments for attempted murder and armed robbery were dismissed *nolle prosequi*. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective Assistance of Counsel
 - a. "Lawyer didn't give sufficient information."
 - b. "Failure to make adequate pretrial investigation and preparation."
2. Seeking Belated Appeal
 - a. "I am seeking belated appeal. I told attorney to file appeal, but attorney did not do it. Therefore, I am seeking a belated appeal pursuant to Austin v. State."¹

At the evidentiary hearing, Respondent informed the Court that a motion to dismiss the non-White claims remained pending for consideration.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

¹ Applicant clearly intended to cite to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

A. Respondent's Partial Motion to Dismiss

Respondent argues Applicant's first two allegations of ineffective assistance of counsel should be summarily dismissed for failing to meet the statute of limitations in the Uniform Post-Conviction Procedure Act. The Act provides that:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A). Respondent argues that Applicant had until Monday, February 29, 2016, to file an application for post-conviction relief, but did not file the current application until March 30, 2016—a month after the one-year statutory filing period expired. Applicant did not offer any explanation for the delay. Accordingly, this Court affirms its ruling at the evidentiary hearing, Respondent's motion to dismiss Applicant's non-White claims is **GRANTED**, and Applicant's first two allegations restated above are **DISMISSED**.

B. White Claim

Applicant alleges that he was denied the right to a direct appeal of his conviction and sentence. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted).

Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839

(1995)). Where a defendant does indicate his desire to appeal, or where nonfrivolous grounds for appeal exist, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. Where Counsel fails to either initiate that appeal or comply with Anders procedure, “White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served.” Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

At the evidentiary hearing, Applicant testified he found out about his right to an appeal about a month after the guilty plea proceeding and wrote Counsel a letter inquiring as to his rights. Counsel testified that she did discuss and inform Applicant of his right to an appeal, but that Applicant never asked for an appeal. Counsel denied that she ever received a letter from Applicant inquiring as to an appeal.

The Court finds no deficiency on the part of Counsel regarding Applicant’s appellate rights. No evidence was introduced to support Applicant’s claim that he sent a letter to Counsel inquiring about an appeal; with that, and based upon this Court’s observations of the witnesses at the hearing, the Court finds Counsel’s testimony credible and Applicant’s testimony to the contrary not credible. Furthermore, even if the Court were to find Applicant’s testimony credible, it defeats his claim—Counsel was under no obligation to discuss appeal rights with Applicant prior to, during, or after his guilty plea and Applicant claims he did not ask about an appeal until after the time to file a Notice of Appeal had run. Applicant’s claim fails either way. Accordingly, Applicant’s request for relief is **DENIED**.

III. CONCLUSION


Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:


1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15 day of Feb.


 WILLIAM H. SEALS, JR.
 Presiding Judge
 Fifteenth Judicial Circuit

2018
 JENNIFER BELVIS
 CLERK OF COURT
 HOBBS COUNTY, SC

CERTIFIED COPY

, South Carolina

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