

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

*Also admitted in Florida

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March 20, 2018

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

Marlboro County Clerk of Court
P.O. Drawer 996
Bennettsville, SC 29512

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MAR 22 2018

S.C. SUPREME COURT

**RE: Harry James Roller, #276544, v. State of South Carolina
2017-CP-34-75**

Dear Mr. Shearouse and Mr. Funderburk:

Enclosed for filing is a Notice of Appeal pursuant to *White v. State* in the above-referenced case regarding Applicant's trial (2016-GS-34-473). Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Roller in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Roller in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures ^{LSB} Johnny James
cc: Julie Coleman, AAG
Loriene French, OAD
Harry Roller, #276544

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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MAR 22 2018

S.C. SUPREME COURT

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-75

Harry James Roller, #276544,.....Petitioner,

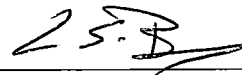
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Now comes the Petitioner, by and through his undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Final Order of the Honorable Roger E. Henderson, which granted a *White* review of the Petitioner's trial held December 12, 2016, (2016-GS-34-473). The Final Order dismissed Petitioner's remaining allegations pursuant to a withdrawal requests. The Petitioner received written notice of the Final Order granting a *White* review and dismissing Petitioner's remaining allegations on March 19, 2018. A copy of the Final Order is attached herewith.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

Case No. 2017-CP-34-75

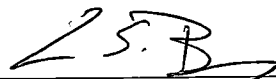
Harry James Roller, #276544,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Johnny E. James, Jr., P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 20th day of March, 2018.



Lance S. Boozer
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| | | |
|--------------------------|---|---|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE FOURTH JUDICIAL CIRCUIT |
| COUNTY OF MARLBORO |) | |
| Harry James Roller, |) | Case No.: 2017-CP-34-00075 |
| S.C.D.C. No. 276544, |) | |
| |) | |
| Applicant, |) | |
| |) | ORDER GRANTING RELIEF |
| v. |) | PURSUANT TO <u>WHITE V. STATE</u>, |
| |) | DISMISSING WITHDRAWN ALLEGATIONS |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| |) | |

This matter comes before the Court by way of an application for post-conviction relief filed by Harry James Roller (“Applicant”) on March 15, 2017. Respondent made its return and motion to dismiss on or about July 15, 2017. Applicant, by and through counsel, amended his application by filing on August 24, 2017. The Court convened an evidentiary hearing into the matter on Tuesday, January 16, 2017, at the Dillon County Courthouse in Dillon, South Carolina. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented Respondent.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted at the November 2016 term of the Marlboro County Grand Jury for shoplifting, value \$2,000 or less, third or subsequent offense (2016-GS-34-00473). A.C. Michael Stephens represented Applicant, and Elizabeth R. Munnerlyn, of the Fifteenth Circuit Solicitor’s Office, prosecuted the case. Applicant proceeded to trial before the Honorable D. Craig Brown and a jury. The jury found

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 CLERK OF COURT
 MARLBORO COUNTY, S.C.

MARLBORO COUNTY, S.C.

Applicant guilty as indicted on December 12, 2016. Judge Brown sentenced Applicant to imprisonment for a term of seven years. Applicant did not appeal his conviction or sentence.

Present Application

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

1. "There's absolutely no evidence in this case."
 - a. "No pictures or receipts of the items I'm accused of, and there's no one what so ever can say I was even at Dollar General."
2. "My warrant '2016 A34 20300095' clearly states that the R/o was a eyewitness along with manager statement, that I took several items from Dollar General in McCall, S.C. by running out of the store with items in Arms, and that's not true, I'll explain the facts shortly."
 - a. "[Trial] 'sworn in' and said she never seen me, she wasn't gone say me Because she didn't know and that she got the T-shirts back 2 months later after the crime occurred that [they're] Blaming me for, and she said she got back 14 or 15 when my Rule 5 says 22 T-shirt's 'where's the other ones' (LOL) And the R/o oFc. got on stand and said He never seen me go in or come out of Dollar General, so my warrant is base on Hearsay."
3. "The [solicitor] in [opening] argument told the jury I had prior convictions to the same charge I'm on trial for today."
 - a. "To do that unless I took the stand and I was told by my lawyer 10 min prior this wouldn't happen."

By amendment filed August 24, 2017, Applicant further alleged:

4. "Applicant was denied his right to a direct appeal."

II. RESPONDENT'S CONSENT TO WHITE² CLAIM

At the hearing, Respondent submitted to the Court an affidavit of trial counsel A.C. Michael Stevens, Esq., indicating that Counsel "did not discuss with [Applicant] his right to appeal the verdict and sentence, did not inform Mr. Roller of his right to appeal, and did not appeal the verdict and sentence for Mr. Roller." Respondent thereafter conceded that Applicant

¹ See Tr. 18, l. 8 – p. 20, l. 4; p. 34, l. 12 – p. 35, l. 4.

² White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).



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did not knowingly, intelligently, and voluntarily waive his right to direct appeal of his conviction. Accordingly, this Court grants Applicant relief pursuant to White v. State for appellate review of the conviction and sentence of December 12, 2016 (2016-GS-34-00473).

III. APPLICANT'S WITHDRAWAL OF REMAINING ALLEGATIONS

After conceding the White issue, Respondent reasserted its pending motion to dismiss the allegations raised in the original application. Thereupon, Applicant and his attorney informed this Court that Applicant wished to withdraw his remaining allegations for relief.

At the PCR hearing, Applicant was sworn and questioned by this Court about his withdrawal request to ensure the request was made freely and voluntarily; that Applicant had not been promised anything; and that Applicant had not been threatened, coerced, or induced into requesting withdrawal of the application. The Court also advised Applicant of the consequences of withdrawing the application, including forfeiture of any future collateral attacks on his conviction. Applicant represented he understood the consequences of withdrawing the remaining allegations. He also represented counsel had explained these consequences, and Applicant was satisfied with counsel's advice and needed no further time to consult with counsel.

Following the Court's colloquy with Applicant regarding withdrawal of the remaining allegations, Applicant confirmed he wished the Court to dismiss the allegations. Accordingly, this Court finds Applicant's decision to withdraw the allegations raised in his original application was knowingly, willingly, voluntarily, and intelligently made.

IV. CONCLUSION

This Court finds that Applicant did not knowingly and intelligently waive his right to a direct appeal and, as such, he may petition the Supreme Court of South Carolina pursuant to

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White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See also Davis v. State, 388 S.C. 390, 342 S.E.2d 60 (1986) (setting forth procedures for a White appeal, prohibiting other forms of relief on this basis). This Court further finds Applicant's decision to withdraw the allegations raised in his original application was knowingly, willingly, voluntarily, and intelligently made. Therefore, the Court finds it is appropriate to dismiss those allegations with prejudice.


The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from his attorney's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking appellate review. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, his attorney must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. Applicant petition for appellate review of 2016-GS-34-00473 pursuant to White v. State;
2. All other allegations are denied and dismissed with prejudice; and
3. Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 20th day of February, 2018.

Chesterfield, South Carolina


ROGER E. HENDERSON
Presiding Judge
Fourth Judicial Circuit

ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

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STATE OF SOUTH CAROLINA) IN THE COURT OF (Select one.)
 COUNTY OF MARLBORO) COMMON PLEAS FAMILY COURT
) 4TH JUDICIAL CIRCUIT
 HARRY JAMES ROLLER,) CASE NO.: 2017-CP-34-00075
 Plaintiff(s),) APPOINTMENT OF COUNSEL OR GAL
 -vs-) (Select one.)
 STATE OF SOUTH CAROLINA,) ORDER
 Defendant(s).) AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> SVP case | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change | <input type="checkbox"/> Other: | |

It appears that HARRY JAMES ROLLER, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:

Therefore, it is ordered that LANCE BOOZER, hereby is appointed as (Select one.)

counsel lead counsel (if capital PCR case) guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

CLERK OF
 MARLBORO

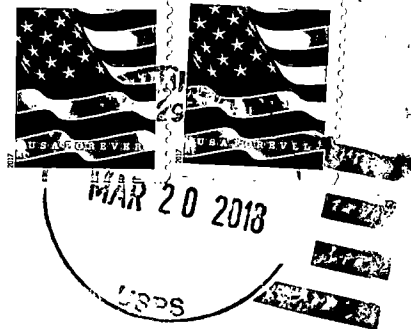
IT IS SO ORDERED THIS 23 DAY OF MARCH, 2017.

Carole M. Williams
 Circuit Judge Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

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