

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

May 21, 2018

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

RECEIVED

MAY 25 2018

S.C. SUPREME COURT

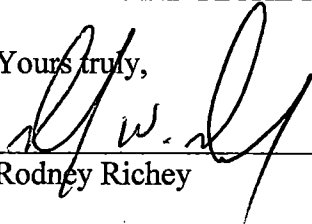
Re: Billy Ray Boyd v. State of South Carolina
Case No: 2015-CP-23-3678

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please clock and file the copies and return them to me. Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/
enclosures

cc: DeShawn Mitchell, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE LETITIA H. VERDIN

2015-CP-23-3678

BILLY RAY BOYD, SCDC# 349065,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

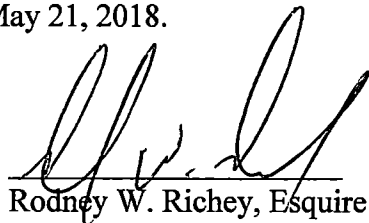
RECEIVED

MAY 25 2018

S.C. SUPREME COURT

NOTICE OF APPEAL

Billy Ray Boyd appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable Letitia H. Verdin, Circuit Judge on October 24, 2017 an Order issued on May 15, 2018 and filed on May 17, 2018. The Appellant received notice of the judgment on May 21, 2018.



Rodney W. Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503
Attorney for Applicant

Other Counsel of Record:
DeShawn H. Mitchell, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

HONORABLE LETITIA H. VERDIN

2015-CP-23-3678

BILLY RAY BOYD, SCDC# 349065,

APPELLANT,

against

STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED

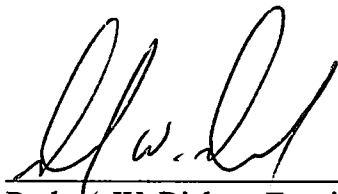
MAY 25 2018

S.C. SUPREME COURT

AFFIDAVIT OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on May 21, 2018, addressed to their attorney of record, DeShawn Mitchell, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: May 21, 2018



Rodney W. Richey, Esquire
Attorney for the Appellant
33 Market Point Drive
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503
Attorney for Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
)
Billy Ray Boyd, # 349065)
)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2015-CP-23-3678

ORDER OF DISMISSAL

ENTERED COMPUTER

18 MAY 17 PM 3:08
Paul Wickensimer CDC GUIL SC

This matter comes before the Court by way of an application for post-conviction relief filed on June 11, 2015, by Billy Ray Boyd (Applicant). Respondent made its Return on or about December 22, 2015. An evidentiary hearing into the matter was convened on October 24, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General’s Office.

At the hearing, Applicant testified on his own behalf. Applicant’s Standby Trial Counsel Scott D. Robinson, Esquire testified as did Assistant Solicitor Allen O. Fretwell, Esquire. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant’s convictions, the transcript from Applicant’s trial, the PCR application, Respondent’s Return, Applicant’s records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court's orders of commitment. The

Greenville County Grand Jury indicted the Applicant at the February 2011 term of General Sessions for two counts of armed robbery (2010-GS-23-3487, -3488) and two counts of kidnapping (2010-GS-23- 3489, -3490). After the State called the case to trial, the Applicant proceeded pro se (with Scott D. Robinson, Esquire as standby counsel). The Applicant was found guilty. On December 14, 2011, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of 20 years for each count of armed robbery and 10 year for each count of kidnapping.

Applicant filed a timely notice of appeal. Benjamin J. Tripp, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal after review pursuant to Anders v. California¹. State v. Boyd, Op. No. 2014-UP-220 (S.C. Ct. App. filed June 11, 2014). The Remittitur was sent on June 27, 2014.

ALLEGATIONS

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

1. "Did not knowingly, intelligently and voluntarily waive right to counsel."
 - a. No order of self-representation in the record.
 - b. No record of a Faretta² hearing.
2. Appellate counsel failed to raise the Faretta issue.
3. "Ineffective assistance of paid counsel."
 - a. Conspired with die State to withhold evidence and for the Applicant to plead guilty.
 - b. Failed to investigate case.
 - c. Failed to call witnesses.
4. "Delayed indictment."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

¹ 386 U.S. 738 (1967).

² Faretta v. California, 422 U.S. 806 (1975)

Applicant's Testimony

Applicant testified he was convicted of two counts of kidnapping and armed robbery. He testified he was forced to represent himself at trial. He testified Scott D. Robinson, Esquire sat at his table during trial as standby counsel. Applicant testified Mr. Robinson was ineffective. He testified his first allegation or issue was that he was forced to represent himself. Applicant testified he believed his conviction was unlawful because there was no order or self-representation in the record. He testified he did not knowingly, intelligently or voluntarily waive his rights to counsel and that there is was no Faretta hearing anywhere in the record. Applicant testified he never wanted to represent himself and that he paid Mr. Robinson money to represent him. He testified Mr. Robinson put in a motion to be relieved on November 30, 2011 and on December 9, 2011 he was transported to the courthouse in the private chambers of Judge Stilwell with Mr. Robinson and Solicitor Jennifer Tessitore present. He testified there was not a court reporter. Applicant testified he believed Mr. Robinson was relieved and that Mr. Robinson was ineffective for the ten months he represented him. He testified Mr. Robinson was retained February 6, 2011. Applicant testified Mr. Robinson had seen him in the courtroom before Judge Stilwell on January 13, of 2011 when Judge Stilwell was reprimanding him because he did not have consistent representation. He testified as he left the courtroom and went back to the detention center, Mr. Robinson and his investigator Paul Silvaggio made an unsolicited visit to come and see him. Applicant testified Mr. Robinson told him that he had saw Applicant in the courtroom earlier and he believed that he could help Applicant. He testified Mr. Robinson pursued him until he was retained on February 6, 2011. Applicant testified the alleged charges supposedly happened at a beauty salon and that he was alleged to have intimidated the victims there to get money and jewelry. He testified he paid Mr. Robinson four thousand five hundred

dollars to represent him, investigate, subpoena his alibi witnesses, pull pawn shop records to see had he ever been there before, and were there any priors of him ever buying anything that was stolen. He testified Mr. Robinson pretty much promised him everything and once Mr. Robinson was retained and received the money he saw Mr. Robinson on February 17, 2011, to go for a preliminary hearing. Applicant testified he found out it was a sham because he had his indictment papers. He testified he was indicted February 15, 2011 and that he never had a preliminary hearing. Applicant testified he did not hear from Mr. Robinson again until almost three months later. He testified his family and his sister Donna Boyd kept meticulous notes and helped him along the journey while keeping him posted on a lot of thing. Applicant testified he did not get notice of his trial and when he finally heard from Mr. Robinson on May 22, 2011, Mr. Robinson told him there was not going to be a trial. He testified Mr. Robinson wanted him to meet with the prosecutors to work out a plea deal but that he was not willing to plead guilty. Applicant testified during the time he was incarcerated he was offered three plea deals. He testified one plea offer included the armed robbery dropped to strong robbery and the kidnapping was reduced. He testified he was not going to plead guilty to anything. Applicant testified had the State or his paid attorney investigated, he believed that he would be vindicated. He testified he never thought that he would be convicted and that he did not have any past severe criminal background. Applicant testified he also had alibi witnesses and there were records that could have been pulled. He testified there was always a chance that he could have been found guilty if he was not represented properly but with him being detained for twenty one months, he was not able to litigate his own case. He testified he did not have a law degree and was dealing with poor health. Applicant testified he was grossly incompetent and ignorant of the law and had never tried to litigate his own case. He testified he was never told there was an offer of five years but

that the only charge he should have received was receiving stolen goods. Applicant testified he should not have even received that if he did not know the merchandise was stolen. He testified when Mr. Robinson came and represented him, Mr. Robinson never had any intention on getting him prepared for trial and that Mr. Robinson wanted him to plead guilty. He testified none of his alibi witnesses were ever subpoenaed but that Mr. Robinson did type up four subpoenas but told his family to deliver the subpoenas. Applicant testified he wanted relief in his post-conviction relief application by having his conviction overturned but not a new trial. He testified he also took issue with the timeliness of the filing of his indictment. Applicant testified he was incarcerated on March 8, 2010 and that his family had retained a total of four paid attorneys within the twenty-one months of him being denied bail in the detention center. He testified the State presented a procedural history of three of those paid attorneys being relieved as though he was stalling and wanted a continuance but he never asked for any continuances.

On cross-examination, Applicant testified he had three previous attorneys prior to being representing by Mr. Robinson who included Fletcher Smith, Esquire, Elizabeth Wiygul, Esquire, and Ivan Toney, Esquire. He testified he only asked to have the first two relieved. Applicant testified he had them relieved because they were attorneys who were paid to investigate, to build up a defense for him, to litigate his case and they failed to do so. He testified his third attorney was relieved by Judge Stilwell but he did not ask for it. Applicant testified his first three attorney did not do anything regarding his case. He testified Mr. Robinson did not do anything either. Applicant testified he took no responsibility in having his attorneys relieved as there was never any consistent representation by any of his attorneys. He testified he was forced to represent himself at trial. He testified Mr. Robinson was relieved two days before his trial in the Judge's chambers and that he never received his Faretta warnings or a competency test.

Solicitor Fretwell's Testimony

Assistant Solicitor Allen Fretwell testified he had practiced law for eighteen years and he had been associated with the Greenville County Solicitor's Office for all of those eighteen years. He testified Applicant's case was initially assigned to him and that he did recall that Applicant had a number of attorneys. Solicitor Fretwell testified there were some allegations by Applicant against his previous attorneys of improper conduct. He testified he remembered on at least one occasion, the Office of Disciplinary Counsel contacted him about a complaint that Applicant had made. Solicitor Fretwell testified after this contact Applicant filed a complaint against him. He testified after Applicant filed the complaint his office conflicted him out of the case and another prosecutor Assistant Solicitor Jennifer Tessitore took over prosecution. He testified the allegations in the case against Applicant were that there was two ladies in a beauty shop robbed and basically it was the equivalent of a housebreaking at a business. Solicitor Fretwell testified the door was forced open or entered somehow and an assailant came in, threatened the two ladies and required them to go to a bathroom. He testified the assailant took items of value from the ladies and that there was a large 4x4 type weapon used that was apparently broken on a table.

Standby Trial Counsel's Testimony

Scott D. Robinson testified he had practiced law for twenty five years. He testified he was retained to represent Applicant as Applicant's fourth attorney. Mr. Robinson testified Applicant's trial was in December of 2011 and he was retained about ten months before the trial. He testified he recalled Judge Stilwell had a hearing where he explained to Applicant about his Faretta warnings. Mr. Robinson testified concerning an order introduced by Respondent which relieved him and explained that Applicant had been explained to concerning the dangers of self-representation. He testified Judge Stilwell ordered that he remain as standby counsel for

Applicant's case. Mr. Robinson testified Judge Stilwell was making sure that in case Applicant had any questions, he had someone to speak to as his standby counsel. He testified he and Applicant talked throughout the whole trial and his witnesses in the case were his sisters. He testified he thought Applicant did a pretty good job during trial and had a fair trial but unfortunately the jury found him guilty. Mr. Robinson testified the trial judge gave Applicant a lot of opportunities, was very careful with him and courteous to him.

On cross-examination, Mr. Robinson testified about a letter he sent to Applicant on August 26, 2011 in response to a disparaging letter Applicant had sent to him. He testified the letter went over his work on the case including his investigator, Paul Silvaggio, his investigation, and the number of times we met. Mr. Robinson testified he met with Applicant's sisters and went over the idea of a speedy trial. He testified he put in the letter about filing a proposed motion to dismiss for a delayed indictment but that he never filed it as he did not think it would have been successful. Mr. Robinson testified he thought the process with fair in regard to Applicant representing himself. He testified he was the fourth attorney for Applicant and that he had received all of Applicant's discovery from Applicant's third attorney. Mr. Robinson testified he met with Applicant's sisters a lot of times and had a good investigator. He testified Applicant always took the position he was not guilty and would not take any plea deals.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth

below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel’s 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant proceeded on the following allegations:

Faretta Warning

Applicant alleged there was no order of self-representation in the record or record of a Faretta hearing. Applicant testified he was forced to represent himself and believed his conviction was unlawful because there was no order or self-representation in the record. He testified he did not knowingly, intelligently or voluntarily waive his rights to counsel. According to the United States Supreme Court, in order to waive the right to counsel, the accused must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation: Gardner v. State, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002). The trial judge must determine whether there is a knowing and intelligent waiver by the defendant. Id. If the trial judge fails to address the disadvantages of appearing pro se, as required by the second prong of Faretta, the appellate courts will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source. Id. There is no scripted Faretta hearing a judge must undertake and “if the record demonstrates the defendant’s decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied.” Gardner, 351 S.C. at 411-412, 570 S.E.2d at 186 (2002) (internal citations omitted). In a PCR action, if the record fails to demonstrate the petitioner made an informed choice to proceed *pro se*, with “eyes open,” then the petitioner did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial. See Watts v. State, 347 S.C. 399, 556 S.E.2d 368 (2001). In the present case, Applicant testified his first allegation or issue was that he was forced to represent himself. Applicant testified he never wanted to represent himself and that he was forced to. A defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture. State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App.

1996). A defendant may waive his Sixth Amendment right to counsel. A waiver is an intentional and voluntary relinquishment of a known right. United States v. Goldberg, 67 F.3d 1092, 1099 (3d Cir. 1995); Maxwell v. Genez, 350 S.C. 563, 571, 567 S.E.2d 496, 500 (Ct. App. 2002). The courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights. Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461, 1466 (1938); Pitts v. North Carolina, 395 F.2d 182, 188 (4th Cir. 1968). A defendant may waive his right to counsel through his conduct. United States v. Goldberg, 67 F.3d 1092, 1100 (3d Cir. 1995); State v. Jacobs, 271 S.C. 126, 128, 245 S.E.2d 606, 608 (1978); State v. Boykin, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996). Most courts have held that the defendant must first be warned that his misconduct will thereafter be treated as a waiver. Boykin, 324 S.C. at 556, 478 S.E.2d at 691. “[T]o the extent that the defendant’s actions are examined under the doctrine of ‘waiver,’ there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings.” Goldberg, 67 F.3d at 1100. Any subsequent misconduct will be treated as a “waiver by conduct.” Boykin, 324 S.C. at 556, 478 S.E.2d at 690. A waiver of the right to counsel may be inferred from a defendant’s actions. State v. Cain, 277 S.C. 210, 284 S.E.2d 779 (1981); see also State v. Robertson, 382 S.C. 185, 188, 675 S.E.2d 732, 733 (2009) (finding, based on Respondent’s criminal history, his disregard for the instructions of the court, and inexcusable absence from trial, a waiver of the right to counsel by conduct was inferable). Here after a review of the record and testimony presented, this Court finds Applicant has failed to show there was a violation of Faretta warnings. Introduced at the evidentiary hearing was an order dated December 9, 2011 signed by the Honorable Robin Stilwell. In the detailed order, Judge Stilwell found several things. Among them were:

- (1) Defendant has had three (3) prior attorneys both retained and relieved by the Court;
- (2) Defendant has been warned previously by this Court that failure to have an attorney shall not be the basis for any continuance of his trial;
- (3) Defendant has been advised of his right to have an attorney to represent him as well as the benefits of having counsel and the perils and consequences of proceeding without an attorney;
- (4) Defendant is aware of the benefits of having counsel and the perils and consequences of proceeding without counsel and is choosing to represent himself in this case (see procedural history attached to this Order);
- (5) Defendant has consented to relief of Mr. Robinson and agrees to represent himself in the trial of this matter.

It is clear from the order and testimony presented that Judge Stilwell had multiple interactions with Applicant prior to Applicant proceeding to trial. In his order Judge Stilwell notes that Applicant has been advised of his rights to have an attorney represent him as well as the benefits of having counsel and the perils and consequences of proceeding without an attorney. Judge Stilwell also makes reference to the procedural history attached to the order which no doubt references Applicant's numerous dealing with Judge Stilwell. Based on this order, this Court finds Applicant has failed to prove his allegation concerning Faretta warnings or the lack of an order. Accordingly, this allegation is denied and dismissed with prejudice.

Ineffective Assistance of Standby Counsel

Applicant alleged that his Standby Counsel was ineffective in failing to investigate his case, call witnesses, conspiring with the State to withhold evidence and trying to get the Applicant to plead guilty. The United States Court of Appeals for the Fourth Circuit has held

“[t]he Sixth Amendment does not require a court to grant advisory counsel to a criminal defendant who chooses to exercise his right to self-representation by proceeding pro se.” U.S. v. Lawrence, 161 F.3d 250, 253 (4th Cir. 1998); see also Simpson v. Battaglia, 458 F.3d 585, 597 (7th Cir. 2006) (“[T]he inadequacy of standby counsel’s performance, without the defendant’s relinquishment of his Faretta right, cannot give rise to an ineffective assistance of counsel claim under the Sixth Amendment.”); U.S. v. Mikolajczyk, 137 F.3d 237, 246 (5th Cir. 1998) (discussing that the rights to proceed *pro se* or with effective counsel are “disjunctive,” and as the defendant “had no right to standby counsel, it seems unlikely that standby counsel’s failure to assist could be a violation of his Sixth Amendment rights”); U.S. v. Bova, 350 F.3d 224, 226 (1st Cir. 2003) (noting that the defendant did not have the right to both “represent himself and to enjoy the benefit of standby appointed counsel”) (emphasis in original). Therefore, Applicant had no right to effective assistance of standby counsel.

Notwithstanding the lack of a right to effective assistance of standby counsel, Applicant’s Sixth Amendment right to self-representation was not violated by his standby counsel. In determining whether such rights have been respected, the primary focus must be on whether the defendant had a fair chance to present his case in his own way. McKaskle v. Wiggins, 465 U.S. 168 (1984). As was the case in McKaskle, Applicant had the opportunity to select witnesses, cross-examine, speak to the jury, and make his own strategic trial decisions indicative of self-representation. In addition to exercising his right of self-representation, he was given the additional benefit of Counsel to standby and assist if he chose. Moreover, Sixth Amendment rights are not infringed when counsel “merely helps to ensure the defendant’s compliance with basic rules of courtroom protocol and procedure.” McKaskle, 465 U.S. at 183. Applicant cannot insist on self-representation at his trial and then later place the blame of his conviction on the

attorney whose representation he refused. One must accept the assistance of Counsel in order to attack it as ineffective in a later proceeding. Accordingly, after a review of the record this Court finds Applicant's constitutional rights were not violated by having Mr. Robinson as standby counsel. This allegation is denied and dismissed with prejudice.

Delayed Indictment

Applicant also alleged that he was not indicted in a timely manner after being arrested.

Rule 3(c) of the South Carolina Rules of Criminal Procedure states;

Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court. Rule 3(c), SCRCrimP

In State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984) the South Carolina Supreme Court interpreted the rule requiring solicitors to act on a warrant within ninety days of its issue. The court agreed with and affirmed the trial court's holding that such a rule was administrative not jurisdictional. *Id.* Furthermore, the court stated a solicitor's delay does not within itself invalidate a warrant or prevent subsequent prosecution. *Id.* at 40, 316 S.E.2d at 681. In State v. Edwards, the defendant alleged the State violated Rule 3 by allowing over 800 days to elapse between the issue of the arrest warrant and the indicted. The Court of Appeals disagreed finding the trial court was correct in finding Rule 3 was procedural in nature and it did not infer any substantive rights. State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007), rev'd (on unrelated grounds), 384 S.C. 504, 682 S.E.2d 820 (2009). This Court finds that Applicant has failed to show any irregularities with respect to the indictments. Accordingly, this Court denies and dismisses this allegation with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRPC. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

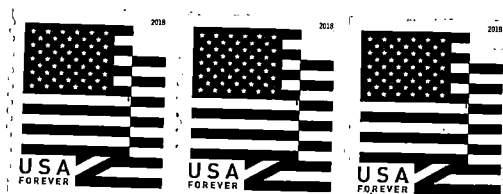
AND IT IS SO ORDERED this 15 day of May, 2018.



LETITIA H. VERDIN
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

RICHEY AND RICHEY, P.A.
POST OFFICE BOX 10916
GREENVILLE, SC 29603



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

