

THE LAW OFFICE OF NATHAN J. SHELDON,
LLC
Working on your behalf

331 E. Main St., Suite 200
Rock Hill, SC 29730
www.nathansheldonlaw.com
(803)909-9343

RECEIVED

MAY 31 2018

May 29, 2018

S.C. SUPREME COURT

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

Re.: Darryl O. Dye v. State
2016-CP-12-0220

Dear Clerk:

Please find enclosed the Notice of Appeal, Certificate of Service and Order being appealed on the above referenced case. I have included a copy of each to be clocked and mailed back to me in the also enclosed self-addressed stamped envelope. Please note that I asked Appellate Defense to handle this matter going forward and provided them a copy of everything sent to the Court. Thank you and please contact me with any additional questions or concerns.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2016-CP-12-0220

State of South Carolina,

Respondent,

v.

Darryl Omar Dye,

Appellant.

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NOTICE OF APPEAL

S.C. SUPREME COURT

Darryl Omar Dye appeals the order of the Honorable Roger E. Henderson dated April 21, 2018 denying his request for post-conviction relief and granting review of his case pursuant to White v. State, 263 S.C. 10, 108 S.E.2d 35 (1974). Appellant received written notice of entry of this order on May 6, 2018.

May 29, 2018



Nathan J. Sheldon
334 E. Main St., Suite 200
Rock Hill, South Carolina 29730
(803) 909-9343
Attorney for Appellant

Other Counsel of Record:
Deshawn H. Mitchell, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3970

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2016-CP-12-0220

State of South Carolina,

Respondent,

v.

Darryl O. Dye,

Appellant.

PROOF OF SERVICE

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S.C. SUPREME COURT

I certify that I have served the Notice of Appeal on Deshawn Mitchell with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on May 29, 2018 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

May 29, 2018



Nathan Sheldon
331 E. Main St., Suite 200
Rock Hill, SC 29730
803-909-9343
Attorney for Appellant

STATE OF SOUTH CAROLINA)
 COUNTY OF CHESTER)
)
 Darryl Omar Dye, #185452)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

2016-CP-12-0220

**ORDER OF DISMISSAL AND
 GRANT OF APPEAL PURSUANT
WHITE V. STATE¹**

FILED
 2018 MAY -4 11:00
 CLERK OF COURT
 CHESTER CO S.C.

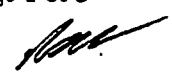
This matter comes before the Court by way of an application for post-conviction relief filed on May 27, 2016 by Darryl Omar Dye (Applicant). Respondent made its Return on or about June 8, 2017. An evidentiary hearing into the matter was convened on January 8, 2018, at the Lancaster County Courthouse in Lancaster, South Carolina. Applicant was present and represented by Nathan J. Sheldon, 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. This Court had before it a copy of the records of the Chester County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records from the Department of Corrections. 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

¹ White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).



to orders of commitment of the Clerk of Court for Chester County. Applicant was indicted by the January 2015 term of the Chester County Grand Jury for shoplifting third degree (2015-GS-12-014). Applicant was represented at trial by Devin Nielson, Esquire, and William Frick, Esquire, of the Public Defender's Office. Assistant Solicitors Julie Hall, Esquire, and Karen Fryar, Esquire, prosecuted the case. On June 9, 2015, Applicant was found guilty by a jury of the charged offense. He was, thereafter, sentenced by the Honorable Daniel D. Hall to eight years imprisonment for shoplifting third which was enhanced under S.C. Code Ann. § 16-1-57. Applicant failed to file a notice of appeal.

ALLEGATIONS

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

1. "Ineffective assistance of Trial counsel"
 - a. "Failure to file a direct appeal."
 - b. "Failure to object to the hands of one hands of all"
 - c. "Failure to seek a plea deal"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the outset of the hearing Applicant attempted to amend his application to go forward on a charge of criminal domestic violence of a high and aggravated nature (CDVAN) that he pled guilty to on June 10, 2015. Respondent opposed allowing Applicant to proceed on this ground as he had not timely filed an application alleging issues related to that charge. This Court reviewed Applicant's current application and does not find Applicant has made any allegations with regard to his CDVAN charge or even referenced this charge. This Court denies Applicant's request to go forward on any allegations with respect to this charge. Applicant then informed this



Court he did not want to pursue any other allegations in his current application with regards to his shoplifting charge.

This Court further finds 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, the State consents to a belated review of Applicant’s trial pursuant to White. Id. 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. Id.

CONCLUSION

Based on all 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.



This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


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IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations.
2. Within **thirty (30) days** of service of this Order, counsel for Applicant must file a notice of appeal to secure the appropriate review of Applicant's conviction. Counsel and 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 appellate review; and
3. Applicant must be remanded to the custody of South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21st day of April, 2018.



ROGER E. HENDERSON
Presiding Judge
Sixth Judicial Circuit

Chesterfield, South Carolina

FILED
2018 MAY -4 1:05
CLERK OF COURT
CHESTER CO S.C.

THE STATE OF SOUTH CAROLINA
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Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

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May 29, 2018

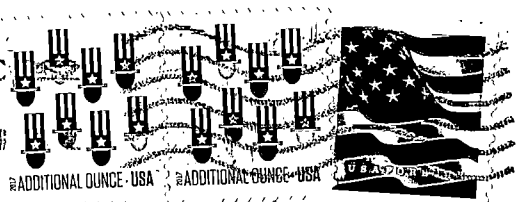


Nathan Sheldon
331 E. Main St., Suite 200
Rock Hill, SC 29730
803-909-9343
Attorney for Appellant

The Law Office of Nathan Sheldon
331 E. Main St., Suite 200
Rock Hill, SC 29730

CHARLOTTE NC

29 MAY 2018 PM



Daniel Shearouse, Clerk
The Supreme Court of South Carolina
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Columbia, SC 29211

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