

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas  
Post-Conviction Relief

RECEIVED

JUN 18 2018

G. THOMAS COOPER, JR., Circuit Court Judge

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S.C. SUPREME COURT

Case No.: 2018-000003

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Brian Lee Davidson #351872,..... Appellant,

vs.

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

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MOTION TO DISMISS APPEAL  
AND REMAND

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This matter is currently before the court on a Petition for Writ of Certiorari from a Post-Conviction Relief.

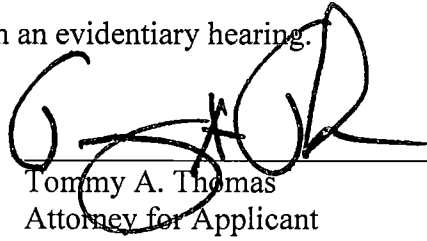
That the Post-Conviction Relief Applicant was filed in Cherokee County, in which the Appellant was alleging ineffective assistance of counsel. The Appellant (App. p. 26) stated that part of his grounds for relief were that he was improperly advised when he entered into the plea. That he was told that he was receiving a non-violent sentence, eligible for parole, good time, work credit and work release. Appellant alleged that all of this was correct until February, 2017, when the South Carolina Department of Corrections changed his sentence. This was a year after his plea agreement. Applicant states further that he did not have an issue with his sentence until the South Carolina Department of Corrections changed his max out and eligibility date pursuant to Bolin v. State of South Carolina. 415 S.C. 276, 781 SE 2d 914 (2016).

An evidentiary hearing was convened on November 16, 2017, in which the Appellant was represented by Ronald W. Ritchey. The state was represented by Valerie Giovanoli. The Court found that the Appellant had not established any violation that would require the Court to grant his application and failed to prove any deficiencies on the part of counsel. It was pointed out by the State at the Post-Conviction Relief hearing that the Applicant was alleging that the South Carolina Department of Corrections changed his status based upon a misinterpretation of Bolin. That he was convicted of a third or subsequent offense and therefore he has to serve a minimum of 85%. The Court inquired if this was a classification issue and was advised by the State that it was. A Motion to Dismiss was granted. (App. pp. 39-40)

In review of the transcript of the Plea and Post-Conviction Relief, counsel believes that there are two viable issues. 1) The Appellant was improperly advised by plea counsel in regarding whether he would be 85% and parole eligible; and 2) That there appears to have been a plea offer to a distribution Methamphetamine, third offense or trafficking 10 to 28 grams. That Applicant was misadvised by plea counsel to take the drug 3<sup>rd</sup> as it was a non-violent offense over the trafficking which was a violent offense. However, Counsel either failed to advise, or did not know that the trafficking, while violent, would be eligible for parole and is a 65% sentence.

Counsel has thoroughly reviewed the transcripts of the Plea and Post-Conviction Relief hearings. In addition, Counsel has reviewed the Appellant's rap sheet, Court records and discussed this matter with the Appellant. Counsel is informed and believes that there is an inability to properly appeal the Lower Court's decision. These issues are not persevered in the Court's Order nor are they preserved in the transcript of the PCR hearing. That the Court dismissed the case based upon a Motion to by the State for directed verdict.

Therefore, based upon the foregoing, Counsel for the Applicant would respectfully move before the Court that the Appeal be dismissed and that this case be remanded back to the PCR Court so that the Appellant's issues can be heard in an evidentiary hearing.



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June 15, 2018

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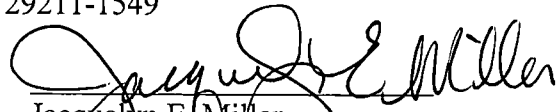
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CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant, hereby certify that I placed in the United States Mail, a copy of an Motion to Accept filing out of Time and Motion to Dismiss Appeal and Remand, with postage prepaid and the return address clearly shown on said envelope to the Attorney General's Office, at:

Megan Harrigan Jameson, Esq.  
Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211-1549



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June 15, 2018