

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Florence County

S.C. SUPREME COURT

Honorable Paul M. Burch, Circuit Court Judge

\_\_\_\_\_

EDDIE BLASH, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001839

\_\_\_\_\_

APPENDIX

\_\_\_\_\_

LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

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1000 Assembly Street  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2000-GS-21-00839
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Eddie Blash, Jr.	)	)
DEFENDANT	)	

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

A P P E A R A N C E S:

PATRICIA S. PARR, ASSISTANT SOLICITOR  
Attorney for the Plaintiff

HANK ANDERSON, ESQ.  
Attorney for the Defendant

KESHIA REED  
Official Court Reporter

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1           THE COURT: This is -- let's see. All right.  
2 This is a case that was remitted back to court on an  
3 opinion from the Supreme Court, which was heard March the  
4 6th of this year 2012 and was filed March the 28th of  
5 2012. Mr. Blash had made a request from writ of  
6 certiorari to the Supreme Court to review his direct  
7 appeal. The Court indicated that he, in that direct  
8 appeal, Mr. Blash challenged his sentence alleging it was  
9 imposed in violation of his Constitutional Rights. And  
10 the Supreme Court agreed with that and accordingly his  
11 sentence was reversed and it was remanded back to this  
12 court for resentencing. And so that's what we are here  
13 for today. So obviously this case was -- and I'm going to  
14 get anyone who was involved and can correct me if I'm  
15 wrong about anything, but this is a case that was tried  
16 back in 2001 is my understanding based on the information  
17 that I have in the file. And there were -- Mr. Blash was  
18 a defendant as well as a Mr. Mumphries?

19           MRS. PARR: That's correct, Your Honor.

20           THE COURT: Mr. Mumphries did not show.

21           MRS. PARR: He appeared for the jury draw and  
22 then when we got ready to -- or he may not even stayed for  
23 the jury draw I can't remember, but then he left. But he  
24 was here on that morning.

25           THE COURT: On the trial though, the trial went

1 forward it was just on Mr. Blash. Mr. Mumphries was not  
2 part of that.

3 MRS. PARR: We tried him in his absence. He was  
4 part of it as well. He was represented by Debbie Jackson  
5 and Bill Nettles.

6 THE COURT: And I apologize give me a second as  
7 I look real quick at this. I think this case was then  
8 before the Court. And in 2007, Mr. Blash had made a  
9 motion through PCR for a direct appeal and I granted that  
10 motion to give him his right to direct appeal, which is  
11 I'm assuming where this case then went to the Supreme  
12 Court.

13 (WHEREUPON, a pause in the proceedings.)

14 THE COURT: All right. I'm just reviewing the  
15 PCR file where the -- where Mr. Blash was heard on his PCR  
16 case. And in that case, I denied the PCR application.  
17 However, I did indicate in the order that he was entitled  
18 to his direct appeal pursuant to White vs. State. And as  
19 I indicated earlier, the Supreme Court then remanded the  
20 case back to this court for resentencing.

21 I have the documentation regarding the sentence  
22 from August the 16th of 2001. I don't have really any  
23 other information other than Mr. Blash was convicted in  
24 that case of trafficking in cocaine over 400 grams. And  
25 according to the verdict form, he was convicted of

1 trafficking 997.27 grams of cocaine. And if I'm not  
2 mistaken in 2001, the law provided that the sentence range  
3 of not less than 25 years no more than 30 years and a fine  
4 of up to \$200,000, no part of which could be suspended nor  
5 probation granted also was classified as a violent and a  
6 serious offense in 2001. Is that correct, Mr. Anderson,  
7 you agree with that?

8 MR. ANDERSON: Yes, sir, Your Honor.

9 THE COURT: Okay. Obviously, if it was, I was  
10 not at that trial nor did I hear any of the evidence was  
11 not part of the proceedings then. So, Mrs. Parr, I'm  
12 going to ask you if you would, ma'am, to give me some  
13 factual background. Of course, Mr. Anderson, anything you  
14 wish to add or discuss, I'll hear from you as well. But  
15 give me some factual background and any prior history or  
16 any other relevant information that the State wants to  
17 give.

18 MRS. PARR: May it please the Court. On  
19 April 10, 2000, at approximately 10:40 p.m. Agent Glenn  
20 Kirby of the Florence County Sheriff's Office Narcotics  
21 Division at the time received a phone call from central  
22 dispatch in reference to a Crime Stoppers' tip that three  
23 black male subjects, one male driving a green sport  
24 vehicle with California plates and the other with two  
25 black males occupying a white sports utility vehicle with

1 Florida plates, were on the north side of State Mobile  
2 Home Park in Florence County and that they were in  
3 possession of a large quantity of cocaine. And they were  
4 trying to locate someone to cook it for them in order to  
5 make crack.

6 They gave -- they advised the officers where  
7 they thought they possibly were staying. The Florence  
8 County Sheriff's Narcotics Unit started patrolling that  
9 particular area until they saw vehicles matching that  
10 description. They did find the vehicles. They approached  
11 one and it was in the area of the Holiday Inn Express. At  
12 that time, the subject was attempting to exit the parking  
13 lot. Then they saw the Cherokee with the California  
14 plates in it with the one black male as the tip indicated.

15 They began talking to him and they told them  
16 what they had heard and then they ask for permission to  
17 search and they did not find anything at that time. They  
18 saw the other vehicle. They were able to find out where  
19 which -- which room they were staying in. They asked  
20 permission to search their person as well as the room and  
21 their luggage. They were granted permission and nothing  
22 was found. Then they were given permission to search the  
23 vehicle. They do not find anything on the inside of the  
24 vehicle, but up under the vehicle taped in brown tape  
25 under the vehicle, they found a large quantity of what

1 appeared to be cocaine, that was taken. They took  
2 photographs; that was taken to SLED.

3 They also talked to a person who they were  
4 trying get to cook the cocaine for them in order to make  
5 crack. He -- and I think his name Lowman. He testified  
6 at trial and some other people testify at trial as well.  
7 They told them that they took him to, I believe, it was  
8 K-Mart the kind of pans and items they purchased. They  
9 also went to, I believe, it was Ray's on South Irby to  
10 purchase scales and things of that nature and all of those  
11 items were entered into evidence.

12 The narcotics if I recall right was tested. I  
13 want to say by Melissa Horn, who was with SLED at the time  
14 and the results indicate cocaine 997.22 grams.

15 In terms of a prior record for this defendant,  
16 he had a prior conviction for a trafficking in cocaine  
17 that was pending in the State of Florida. The date of  
18 that incident was February 5th, 2000. Now, it shows on  
19 his criminal record that he has been convicted of that  
20 offense and so I don't know at what point they did that,  
21 but it is now showing as a conviction out the State of  
22 Florida.

23 THE COURT: Does it have a date of conviction?

24 MRS. PARR: Yes, it does. It has February 26th  
25 2002 and it's a conviction 28 to 150 grams of cocaine and

1 that's out of Miami Police Department.

2 MR. ANDERSON: I think ---

3 THE COURT: Tried in his absence.

4 MR. ANDERSON: He was in South Carolina.

5 THE COURT: That's what I'm saying he must have  
6 been tried in his absence because clearly he was in the  
7 department of corrections here.

8 MRS. PARR: Yes. There are other drug arrests.  
9 There numerous drug arrests on his criminal history, but I  
10 do not have the dispositions.

11 THE COURT: All right. Mr. Anderson and or  
12 Mr. Blash, I'll be happy to hear from you.

13 MR. ANDERSON: Judge, please the Court this was  
14 a week long trial, Your Honor. We made several motions  
15 during the trial right before we tried this case. There  
16 was a Supreme Court decision came out and we argued that  
17 this was an illegal search and seizure. Judge Harwell  
18 denied that. I think it was the State of Florida vs.  
19 Michael L. or something like that. I can't remember the  
20 exact name of the case, Your Honor. But, Judge, also the  
21 individual that she mentioned that gave a statement to law  
22 enforcement, he also gave three statements. He gave one  
23 to law enforcement and he gladly came by my office, he  
24 gave one to me. And then later he met with Bill Nettles  
25 and Debra Jackson and gave one to him or one to them.

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Your Honor, I think she's talking about Michael

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THE COURT: Timmy Lowman.

MR. ANDERSON: Timmy Lowman, I'm sorry. Your Honor, he actually gave three statements. Judge, during the trial, I objected to information coming in about the pots and pans. Judge Harwell did sustain that objection, did not let any evidence come in. Judge, my client was from the State of Florida. He got out on bond. He always came to roll call. He came to several roll calls that was long before case management. But, Your Honor, he did show up for several roll calls. Eventually, I was able to get Mrs. Parr just let him stay in the State of Florida, so that he wouldn't have to keep traveling back and forth.

Your Honor, as you've already heard, he came to jury selection participated in that stayed for his trial. Your Honor, the first I say three or four days Judge Harwell actually allowed Eddie to stay out on bond. Mrs. Parr, of course, objected and ask that he be, you know, place in detention. Judge Harwell said, you know, he's here, he's remained here I'm not going to penalize him for co-defendant running. Eddie came back every single day, came back to court Tuesday, Wednesday, Thursday. Thursday Judge Harwell actually put him in custody, Your Honor.

1           When it came time for sentencing -- Your Honor,  
2 I will say this the jury was out an extended period of  
3 time. I think they were out over three hours. I think  
4 may be four hours something like that. Your Honor,  
5 they -- a couple of the jurors were visibly upset when the  
6 verdict was read. I think two or three of them were  
7 crying. If I remember correctly, Your Honor, we, of  
8 course, polled the jury and they did agree with the  
9 verdict. But, Judge, the problem at that point in time  
10 with this case was that the minimum was 25. Even if it  
11 was, I think, 200 to 400 grams the minimum of 25, the  
12 maximum was 30. Mrs. Jackson and I walked, so to speak,  
13 across the street and asked the federal government if they  
14 had any interest in this case because we thought we could  
15 probably get a better deal for our clients over in federal  
16 court than we could here in state court based upon the  
17 minimum 25.

18           Your Honor, they were not interested in the  
19 case. You know, sometimes they will swallow the elephant  
20 and strain a gnat, but that's the federal government for  
21 you. But, Judge, they showed no interest in this case.  
22 Judge, I would also like to add that the car was  
23 registered in the co-defendant's name. The room was  
24 booked in the co-defendant's name Mr. Mumphries. My  
25 client, Eddie, didn't have a key to the room. He wasn't

1 driving the car. It wasn't his car.

2 Your Honor, obviously, the jury convicted him  
3 so, I mean, I'm not going to say he was in the wrong place  
4 at the wrong time. All ownership belong to his  
5 co-defendant, Mr. Mumphries. The room, the car, the keys  
6 to the room everything was on Mr. Mumphries.

7 Judge, at sentencing, I guess, this is why the  
8 Supreme Court sent it back. Judge Harwell as he has been  
9 known to do in the past got a little carried away and  
10 started yelling at Mr. Blash and why shouldn't I give you  
11 the max. And I said, Your Honor, one thing he stayed  
12 here. He didn't run. He started asking Mr. Blash  
13 questions about other incidents. And I told Eddie, Eddie,  
14 you know, I wouldn't answer that if I were you. Your  
15 Honor, he still maintains his innocence. We don't want to  
16 say anything based on what may or may not happen in the  
17 future.

18 Judge Harwell -- Judge, I don't remember exactly  
19 what Judge Harwell stated, but I do remember that Eddie  
20 was about to pass out. I think Nicole was actually  
21 sitting where she's sitting right now. And Eddie, Your  
22 Honor, was basically leaning over on me while Judge  
23 Harwell was yelling at him. But, Judge, 25 years as  
24 you've already said is the minimum. It's no parole. It's  
25 a most serious offense or a serious offense. It's

1 violent, 30 was the max.

2 Of course, I asked Judge Harwell to give him the  
3 minimum. He choose not to. I don't know if that was  
4 because a co-defendant had fled. I don't know why Judge  
5 Harwell gave him the max. He may have said, well, I'm  
6 going to punish you because you went to trial. I know  
7 they're not suppose to do that, Your Honor, but sometimes  
8 that does happen. But, Your Honor, Eddie was a good  
9 client to work with. He came when he was suppose to. He  
10 showed up. He was working at the time this incident  
11 happened, he continued to work throughout while he was in  
12 Florida. Your Honor, I know you've got to give him at  
13 least 25 and I would just ask you to consider giving him  
14 the minimal.

15 THE COURT: All right. Thank you, Mr. Anderson.

16 MR. ANDERSON: Judge, would you ---

17 THE COURT: I'll be happy to hear from  
18 Mr. Blash.

19 Mr. Blash, be happy to hear from you, sir.

20 THE DEFENDANT: I ask the Court to have leniency  
21 and understanding of my situation. It's been a long time.  
22 I ask that you give me an opportunity to get this out the  
23 way and start a new life.

24 THE COURT: All right, sir. All right. Well,  
25 you know, this is again Mr. Anderson pointed it out

1 earlier, it was a difficult situation for defense counsel  
2 and defendants when the legislature had the law set where  
3 the range was 25 to 30. They didn't give much leeway  
4 there. I always say when the legislature gives a range it  
5 gives the Court some leeway to take into account the facts  
6 and circumstances surrounding the situation. Often times,  
7 I've said for example someone who has a horrible prior  
8 record, has numerous burglaries, grand larcenies, thefts  
9 and is found guilty, should may be not be treated the same  
10 as someone who has been convicted for the first time but  
11 falls under that range. And so you would sentence that  
12 person to the lower end of that range and someone else to  
13 the higher end. Not much of a range here to deal with.

14           There were right at a kilo of cocaine and this  
15 trafficking statute he was -- Mr. Blash was convicted on  
16 the charge -- he was convicted under was 400 grams or  
17 more. Well, clearly we're not 400 gram end, we're vastly  
18 at the other end. The other evidence equipment and folks  
19 to cook it up and prepare it and provide it, again seem to  
20 indicate that this is quite an operation. So I'm not real  
21 clear on what the Court found improper about Judge  
22 Harwell's sentence, but they did agree with Mr. Blash's  
23 appeal.

24           I don't disagree with the Court, but the  
25 sentence based on the facts that are before me. And on

1 indictment 2000-GS-21-839 trafficking in cocaine 400 or  
2 more, sentence of the Court is that you be committed to  
3 the state department of corrections for a period 28 years  
4 and pay a fine of \$200,000. You are to be given credit  
5 for any time that you have served at all on this sentence  
6 from the beginning until today. Good luck to you, sir.

7 END OF REQUESTED TRANSCRIPT

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FORM 5

STATE OF SOUTH CAROLINA )  
County of FLORENCE )

IN THE COURT OF COMMON PLEAS  
APPELLATE  
CASE No. # 2012-213140

EDDIE BLASH JR. # 277603 )  
Full name and prison number (if any) of Applicant )

~~LOWER COURT CASE No. # 2002-CP-21-04473~~  
CASE NO. # 2000-GS-21-839

v.

APPLICATION FOR

POST-CONVICTION RELIEF

2014 CP 21 850

State of South Carolina

FILED  
2014 APR -3 PM 2:34  
CONNIE REEL, CLERK  
C.C.P. & G.S.  
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY  
Connie Reel-Jagaria  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- Place of detention RIEBER CORRECTIONAL INSTITUTION AB-34  
P.O. BOX 205 RIDGEVILLE, SC 29472
- Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS  
FLORENCE COUNTY (TWELFTH JUDICIAL CIRCUIT) FLORENCE, SC 29501
- Name(s) of co-defendant(s) (if any) MICHAEL MONFRIES GEORGE MONFRIES
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
~~2002-CP-21-1473 CASE No. # E.B.~~  
~~2012-213140 APPELLATE CASE~~  
(a) 2000-GS-21-839 LOWER COURT NO. # TRAFFICKING IN  
(WARRANT NO. G355641) COCAINE

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) August 16, 2001 S
- (b) MAY 8, 2012 SENTENCE TO 28 YEARS.
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty \_\_\_\_\_
- (b)  after a plea of not guilty
- (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (c) the date of each such result:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) MY COUNSEL DENIED MY RIGHT TO A DIRECT APPEAL

(b) \_\_\_\_\_  
(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) My Counsel failed to file a timely appeal after he was  
(b) requested to do so.  
(c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) My Counsel failed to file appeal within the (10) days after  
(b) we had discussion about appealing my sentence after  
(c) the sentencing. (see attached copy notice of appeal)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO  
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO  
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO  
(d) any other petitions, motions or applications in this or any other Court? YES  
U.S. District Court R.A.

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:  
i. IN RESPONSE TO RESPONDENT'S MOTION FOR  
ii. SUMMARY JUDGEMENT.  
iii. FILE NOTICE OF APPEAL TO FLORENCE CLERK OF COURT  
iv. AND SOUTH CAROLINA APPELLATE DEFENSE OFFICE

(b) the name and location of the Court in which each was filed:  
i. 2. U.S. UNITED STATES DISTRICT COURT  
CLERK'S OFFICE  
300 E. WASHINGTON STREET, Rm. 239  
GREENVILLE, SC 29601  
ii. 1. FLORENCE CLERK OF COURT, 180 N. IRBY ST. MSC-E Rm. B-11  
CONNIEREE-SAHRIN AND SOUTH CAROLINA APPELLATE DEFENSE,  
3 Columbia, SC 29201

iv. \_\_\_\_\_

(c) the disposition thereof: \_\_\_\_\_

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition: \_\_\_\_\_

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? *YES*

*E.B. YES NO*

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented: *NONE*

i. ~~my Counsel Has Denied my Right to a Direct Appeal~~

ii. ~~Challenging the Board of Appeals Claims my Appeal was Unlawfully Filed, E.B.~~

(b) the proceedings in which each ground was raised: *NONE*

i. ~~In a PCR Hearing~~

ii. ~~United States District Court~~ *E.B.*

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) THIS IS THE APPROPRIATE FORUM TO PRESENT THE GROUNDS
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?  
\_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. HENRY M. ANDERSON JR. FLORENCE, SC 265 WEST EVANS ST.  
SCOTT P. FLOYD P.O. BOX 1405 LAKE CITY, SC 29560
  - ii. KATHRINE H. HUGGINS 1330 LADY STREET Suite 401  
Columbia, SC. 29201
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. TRIAL AND Post TRIAL Motions
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

VACANT SENTENCE AND AN APPEAL

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of DORCHESTER )

VERIFICATION

I, EDDIE BLASH JR. #277603, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Eddie Blash Jr.

SWORN to and subscribed before me this 11<sup>th</sup> day of March, 2014.

Gudrun Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

2014 APR -3 PM 2:34  
CONNIE REEL-SHEARER  
CLERK & GS  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
Connie Reel-Shearer  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, EDDIE BLASH JR. #277603, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Eddie Blash Jr. 3/31/14  
Applicant

SWORN or affirmed to and subscribed before me this  
31<sup>st</sup> day of March, 2014.

Ludeman Bryant  
Notary Public

My Commission Expires: May 26, 2020

2014 APR -3 PM 2:34  
CONNIE REEL-SHEARER  
COP & GS  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
Connie Reel-Shearer  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA  
 County of Florence  
 EDIE BLASH JR. #277603  
 Petitioner,  
 vs  
 STATE OF SOUTH CAROLINA  
 Respondent.

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT  
 CASE NO. ~~LOWER~~ APPELLATE CASE NO. #  
 NO. # 2012-213140  
 LOWER COURT CASE NO. # 2000-GS-21-00839  
 (WARRANT NO. # G 355641)

POST-CONVICTION RELIEF APPLICATION

NOW COMES THE PETITIONER EDIE BLASH #277603, FILES HIS FOR POST-CONVICTION RELIEF WITH THE FLORENCE CLERK OF COURT OFFICE. AS DIRECTED BY THE SOUTH CAROLINA STATE ATTORNEY GENERAL, THAT PETITIONER MAY STILL HAS SOME PCR REMEDIES AVAILABLE. AND COULD ARGUABLY BE ALLOWED (SEE ATTACHED DOCUMENTS) BY SOUTH CAROLINA STATE ATTORNEY GENERAL AND (SEE ATTACHED NOTICE OF APPEAL) PETITIONER TIMELY FILE NOTICE OF APPEAL WITHIN THE (10) DAYS OF HIS RESENTENCING, WHICH WERE CLOCKED STAMPED + DATED MAY 11, 2012 AND MAY 15, 2012.

POST-CONVICTION RELIEF ARGUMENT CONTINUES ON THESE PAGES OF

- 10. STATE CONCISELY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOU ARE BEING HELD IN CUSTODY UNLAWFUL:
- 11. STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (9):

B) MY RESENTENCING COUNSEL HENRY M. ANDERSON JR., INEFFECTIVE FAILED TO INVESTIGATE AND CHALLENGE THE FACT THAT THE IMPOSITION OF THE TRUTH-IN-SENTENCING PROVISION TO PETITIONER SENTENCE IS UNCONSTITUTIONAL, VIOLATING THE SINGLE SUBJECT CLAUSE OF THE SOUTH CAROLINA CONSTITUTION, ARTICLE III § 17. PETITIONER CLAIMS COUNSEL DUTIES TO THE CLIENT ARE NOT LIMITED TO SENTENCING PROCESS, AND WAS REASONABLY AVAILABLE TO COUNSEL. THEREFORE, SHOULD HAVE BEEN BROUGHT TO THE ATTENTION OF THE SENTENCING JUDGE.

B.) HAD MY COUNSEL INVESTIGATE HE WOULD HAVE DISCOVERED THE FACTS THAT THE GENERAL ASSEMBLY VIOLATED THE SINGLE SUBJECT CLAUSE OF SOUTH CAROLINA CONSTITUTION, ARTICLE 22 § 17. WHEN IT ENACTED BILL # 3096, WHICH WAS INITIALLY DESIGNED TO ADDRESS THE SINGULAR SUBJECT OF TRUTH-IN-SENTENCING LAW. FURTHERMORE, CHALLENGE THAT BILL # 3096, ACT 83 WHICH WAS SUBSEQUENTLY PASSED INTO LAW ABSENT THE SIGNATURE OF THEN GOVERNOR DAVID BEASLEY ON JUNE 7, 1995, AND IS COMPRISED OF A MULTITUDE OF SECTIONS ADDRESSING A NUMBER OF TOPICS. SEE CASE: PEOPLE OF THE STATE OF ILLINOIS V REEDY & WILSON, NO. # 85191. THE SUPREME COURT HELD THAT: PETITIONER SENTENCE UNDER THE TRUTH-IN-SENTENCING PROVISION COULD CHALLENGE THE CONSTITUTIONALITY OF THE PROVISION ON DIRECT APPEAL.

C.) MY COUNSEL FAILED TO FILE A SEVERANCE MOTION FOR PETITIONER AT TRIAL. THAT WOULD'VE CHANGE THE OUTCOME OF TRIAL.

C.) MY COUNSEL WAS INEFFECTIVE FAILURE TO FILE THE SEVERANCE MOTION ON HIS FIRST DAY OF TRIAL. SEE TRANSCRIPT: PAGE 49 LINE 22-25; PAGE 50 LINE 1-25; Pg. 51 LINE 1-25; Pg. 52 LINE 1-10 Pg. 315 LINE 22-25; Pg. 316 LINE 1-10. U.S. V DAVIDSON, 936 F.2d 856, 861 (6th CIR. 1991) U.S. V DELL'PAOLI, 352 U.S. 232, 243, 773. CT. 294, 303 (1957) U.S. V TARANGO, — F.3d. — (5th CIR. 2004) (NO. # 03-50810)

D.) MY COUNSEL FAILURE TO FILE MOTION FOR A NEW TRIAL, ON THE GROUNDS THAT PETITIONER HAD BEEN PREJUDICED AS A CONSEQUENCE OF BEING JOINTLY TRIED WITH CO-DEFENDANT, AND THAT IT BECAME APPARENT AS THE TRIAL PROGRESSED BY THE TRIAL JUDGE, THAT THE PARTIES SHOULD HAVE BEEN SEVERED. SEE TRANSCRIPT: Pg. 315 LINE 22-25; Pg. 316 LINE 1-10. THE TRIAL JUDGE ABUSE OF DISCRETION BY OBSERVING THE DISPARITY OF EVIDENCE AGAINST PETITIONER VERSUS THAT ALL THE MORE CULPABLE EVIDENCE WAS HEADING IN CO-DEFENDANT <sup>NAME</sup> HAD RUN AND WAS ABSENT FROM THE TRIAL.

- CONTINUE POST-CONVICTION RELIEF

DATE FILE 03/11/14

D.) SEE TRANSCRIPT: PAGE 232 LINE 1-16; Pg. 244 LINE 1-5; Pg 256 LINE 18-25; Pg. 257 LINE 1-20. SEE CASE: U.S. V DAVIDSON, 936 F. 2d. 856, 861 (6th Cir. 1991) CASE: U.S. V DELLI PROLI, 352 U.S. 232, 243, 77 S. Ct. 294, 303 (1957) U.S. V. TARANGO, — F. 3d. — (5th Cir. 2004) NO. # 03-50810; ZAFIRO V U.S. (91-6824) 506 U.S. 534, 537 (1993) CASE: KOTTEAKAS V. U.S., 328 U.S. 750, 774-775 (1946) CASE: BRUTON V U.S. 391 U.S. 123 (1968) CASE: TIFFORD V WAINWRIGHT, 588 F. 2d 954 (CA5 1979)

E.) MY COUNSEL FAILED TO PROPERLY APPLY LAW MANDATES TO HIS MOTION TO SUPPRESS THE EVIDENCE, WHILE REFERRING TO THE COURT.

E.) MY COUNSEL FAILED TO ALLEGE ON THE RECORD TO THE TRIAL JUDGE WHAT AMENDMENT WAS VIOLATED IN HIS SUPPRESS OF EVIDENCE PRIOR TO PETITIONER ARREST. 2. AND ALLEGE THE STOP AND CHALLENGE THE SEIZURE WERE BOTH VIOLATION OF THE FOURTH AMENDMENT, 3. AND CHALLENGE THE OFFICER HAD REASONABLE SUSPICION BASED ONLY ON UNCORROBORATED ANONYMOUS TIP. SEE TRANSCRIPT: Pg. 52 LINE 7-25; Pg. 53 LINE 1-25; Pg. 54 LINE 1-25 Pg 55 LINE 8-25 Pg 56 LINE 1-25; Pg 59 LINE 1-25 Pg. 60 LINE 1-25; Pg 74 LINE 11-25; Pg. 75 LINE 1-25 Pg 76 LINE 8-25. SEE TRANSCRIPT CASE: STATE V GREEN, 532 S.E. 2d. 896 (S.C. APP 2000) AND SEE: FLORIDA V. J.L., 120 S. Ct 1375 (2000) 529 U.S. 266 U.S. V. THOMAS, 211 F. 3d 1186 (9th Cir. 2000)

F.) PETITIONER CLAIMS HIS PRESERVE MOTION UNDER FLORIDA V J.L., 120 S. Ct. 1375 (2000) 529 U.S. 266. WHICH WERE PRESERVED BY COUNSEL HENRY M. ANDERSON JR. SEE TRANSCRIPT: PAGE 90 LINE 22-25. SHOULD BE REVIEWED BY THE COURTS.

DATE FILE 03/11/14

## - CONTINUE POST-CONVICTION RELIEF

G.) PETITIONER CLAIMS HIS COUNSEL FAILED TO FILE A PRESERVE ADEQUATE MOTION FOR THE RECORD AND PURPOSE TO HAVE REVIEWED, THE INTEREST OF FUNDAMENTAL FAIRNESS AND EQUAL PROTECTION WERE BOTH IN VIOLATION UNDER STATE AND FEDERAL CONSTITUTION SEE TRANSCRIPT: PAGE 682 LINE 4-25; Pg 683 LINE 1-25; Pg. 654 LINE 1-25

H.) ~~MY COUNSEL~~ PETITIONER CLAIMS HIS DIRECT VERDICT IN ~~TRAF~~ TRAFFICKING IN COCAINE, THE TRIAL JUDGE ERRED IN FINDING THERE WAS SUFFICIENT EVIDENCE OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE THAT PETITIONER CONSTRUCTIVELY POSSESSED THE DRUGS TO SUPPORT THE TRIAL COURT'S DENIAL OF DIRECT VERDICT MOTION. SEE TRANSCRIPT: Pg. 546 LINE 17-25; Pg. 547 LINE 1-25; Pg. 548 LINE 1-8; Pg. 606 LINE 24-25; Pg. 607 LINE 1-25 Pg. 608 LINE 1-25. SEE CASE: STATE V MITCHELL, 341 S.C. 406, 409 535 S.E. 2d 126, 127 (2000) STATE V BUTLER, 353 S.C. 383, 577 S.E. 2d 498 (CT. APP. 2003) STATE V BALLENGER, 454 S.E. 335 (S.E. APP. 1995) SEE CASE: GREGORY WRIGHT (# 166553) 2008-GS-43-00927.

DATED 1<sup>st</sup> DAY OF MARCH, 2014.

Eddie Blach Jr. 3/11/14  
EDDIE BLACH JR. #277603

CONNIE REEL-SHEARIN  
CLERK OF COURT  
CITY-COUNTY COMPLEX  
180 N. IRBY STREET WASC-E RM. 8-11  
FLORENCE, SC 29501



NOTICE OF APPEAL OF SENTENCE

RE: REVERSE AND REMAND FOR  
RESENTENCING BY SUPREME COURT

MAY 8, 2012

WV-6  
EDDIE BLO  
(Applicant)  
-VS-  
STATE OF S  
CAROLINA  
(Respondent)

FILED  
2012 MAY 11 AM 11:32

CONNIE KEELE-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

FILE TO THE  
CLERK OF COURT  
CONNIE KEELE  
180 N. IRBY STREET  
FLORENCE, SC 29501

APPLICANT ARGUE JUDGE RUSSO ERRED IN IMPOSING SIMILAR HARSH LENGTH IN SENTENCE OVER THE MANDATORY MINIMUM SENTENCE WHICH THE SUPREME COURT ACCORDINGLY WE REVERSE AND REMAND FOR RESENTENCING. ALSO STATED IT WAS UNCONSTITUTIONAL FOR SUCH IMPOSED SENTENCE IN WHICH THE CIRCUIT COURT HAS IGNORED THE FACT THAT THE SUPREME COURT HAS APPLIED FOR THEM THROUGH A COURT'S FAITHFUL COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS OF A SENTENCE REDUCTION. SEE CASE: APPENDIX V NEW JERSEY, 530 U.S. 466 (2000) AND U.S. V HUNT F.3d (9th Cir. SEPT. 1, 2011).

No. 09-30334. FURTHER JUDGE RUSSO WAS NOT IMPROBABLE INFLUENCE BY IMPROPER FACTORS IN IMPOSING SENTENCE AND JUDGE RUSSO ERRED IN FAILING TO MAKE THIS NECESSARY FINDING NOT TO GIVE DEFENDANT THE MANDATORY MINIMUM SENTENCE OF 25 YEARS. SEE: U.S. V DURHAM, F.3d (7th Cir. JUNE 28, 2011) No. 10-1308. (THE TRANSCRIPT RECORD WILL REFLECT) JUDGE RUSSO COMMENTS DURING HIS RESENTENCING HEARING ON MAY 8, 2012. HE STATED THAT HE'S IN BETWEEN ON HIS DECISION TO MAKE". FURTHER DEFENDANT COUNSEL HANK ANDERSON HAD PRESENTED ALL HIS NECESSARY FACTS OF THE CASE ON DEFENDANT BEHALF TO THE COURT, WHICH JUDGE RUSSO UNDERMINED THE FACTORS THAT WERE PRESENTED BY COUNSEL, THEN COUNSEL STATED THAT HE FEELS IN THIS CASE THAT AT-LEAST I SHOULD GET 25 YEARS. SEE: U.S. V DURHAM F.3d (7th Cir. JUNE 28, 2011) No. 10-1308. HOWEVER, JUDGE RUSSO COMMITTED PLAIN ERROR BY FAILING TO ADEQUATELY CITE ITS REASON FOR IMPOSING THE UPWARD VARIANCE SENTENCE.

Mailed  
5/11/12

CERTIFIED - A TRUE COPY  
Connie Keele-Shearin  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

DUE TO ALL THE EVIDENCE THAT MY COUNSEL HANK ANDERSON PRESENTED IN THE RESENTENCING HEARING WHICH WAS HEADING IN CO-DEFENDANT NAME. (REQUEST TO SEE THE EVIDENCE LOG SHEET) FURTHERMORE, AFTER THE RESENTENCING HEARING COUNSEL HANK ANDERSON ASK THEN BAILIFF SCOTT WHO IS 41 YEARS OF AGE CAN HE HAVE A FEW MINUTES WITH ME. THEN ~~THE~~ COUNSEL ADVISE ME TO CONSIDER APPELLING THIS, BECAUSE HE'S NOT BEING FAIR TO ME IN HIS DECISION, THEN WENT ON TO TELL ME THAT JUDGE RUSSO IS USING HIS DAUGHTER'S SITUATION FROM A PAST (COCAINE DRUG OVER-DOSE) WHICH RESULTED IN HER DEATH, AS A PERSONAL VENDETTA AGAINST CASES THAT COME BEFORE HIM INVOLVING DRUG CHARGES OR WHO ARE CONVICTED OF DRUGS. THEN BAILIFF SCOTT ESCORTED ME TO THE BACK AREA, THEN STATED TO ME, "WHY YOUR LAWYER LET YOU GO IN FRONT OF HIM HE SHOULD'VE WAITED TO GO IN FRONT OF JUDGE NETTLES, YOU WOULD'VE HAD A BETTER CHANCE WITH THE WAY YOUR CASE IS, THAN THAT JUDGE IN THERE. HE DON'T CARE MUCH FOR DRUGS." REFERRING TO JUDGE THOMAS RUSSO. ALSO, THIS IS THE SAME JUDGE RUSSO THAT WAS PRESIDING JUDGE IN MY P.C.R HEARING IN 2007. WHERE AS THIS SAME JUDGE ASK ME IN THAT HEARING DID I HAVE THOSE OTHER ISSUES IN MY ORIGINAL APPLICATION, I STATED "NO SIR, THEN HE STOP THE P.C.R PROCEEDING, AND ASK THE COURT TO DEFER TO GO DOWN TO THE CLERK OF COURT AND PULL MY FILE. THEN HE CALL FOR ME TO ENTER THE COURT AND THEN STATED "I WANT TELLING THE TRUTH ABOUT THE ISSUES, BUT I'M STILL NOT GOING TO HEAR THEM BUT JUST THAT ONE ISSUE. I THEN WROTE JEAN TONL ABOUT THAT INCIDENT IN MY HEARING. SO AS THE COURT MAY SEE THERE'S A PATTERN WITH THIS JUDGE AND OTHERS WHICH I HAVE SHOWN THROUGHOUT AND THERE MUST BE A PATTERN. MY COUNSEL HANK ANDERSON PASSED ON TO MY ATTENTION.

FLORIDA COUNTY CLERK OF COURT  
JANIE BELSHEN  
ZOLMAN  
MAY 11 2011  
CERTIFIED TRUE COPY  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

Now, I truly feel as though Judge Russo who presided during his resentencing hearing should not have been allowed to sit in the seat of justice of my hearing, due to his personal and emotional attachment to such case. No one should be held accountable for an incident that occurred many years ago, which did not involve me. There is a serious conflict of interest to elaborate, he is being prejudice against any and all convictions dealing with drug related court trials.

Applicant also contends on appeal that Judge Russo of the Circuit Court erred in refusing or considering to apply the new FSA, "Fair Sentencing Act" at his resentencing hearing. He believes that he should benefit from the FSA's provision by the District Courts. Mandatory Minimum Sentence. And that it does apply retroactively among the Circuit Court, as well as District Court, which falls within recognized exception of Congress's Commission that express that the FSA be applied only to criminal conduct occurring after its August 3, 2010 enactment, which is Congress' intent that its new guidelines to control sentencing after Nov. 1, 2012 and did not intend for the new mandatory minimum to be ignored, for the mandatory minimum were it adopted in the same statutes as the directive that new guidelines be adopted, which President Obama signed the FSA into law (18 USC 3553) No. 10-2 U.S. v Douglas F. 3d (1st Cir. May 31, 2011) No. 10-1460 U.S. v Rojas F. 3d (11th Cir. July 6, 2011) No. 10-1460

FILED  
MAY 11 AM 11:32  
CLERK OF COURT, 1ST CIR. & 6th  
JENNIFER G. HANLEY, CLERK

cc: E.B

I pray and ask for mercy of the court to have my resentencing hearing granted without bias, but with good faith.

Eddie [Signature] 5/9/12  
with sincerity  
CLERK OF COURT, 1ST CIR. & 6th  
JENNIFER G. HANLEY, CLERK

File to  
Clerk of Court  
ANNIE REEL  
180 N. IRBY STREET  
FLORENCE, SC 29501

Office of Appeal of Sentence

RE: REVERSE AND REMANDED FOR  
RESENTENCING BY SUPREME COURT.

EDDIE BLASH  
(APPLICANT)  
-VS-  
STATE OF SOUTH  
CAROLINA  
(RESPONDANT)

2012 MAY 15 AM 11:00  
ANNIE REEL-SHEPARD  
CCCP & GS  
FLORENCE COUNTY, SC

1. APPLICANT ARGUES THAT JUDGE RUSSO ERRED IN FAILING TO IMPROPERLY REVIEW, AND TO MAKE PROPER FINDING IN HIS DECISION OF NOT GRANTING DEFENDANT THE MANDATORY MINIMUM SENTENCE OF 25 YEARS. FURTHER, THE EVIDENCE THAT WAS PRESENTED BY THE PROSECUTOR PATRICK PARR AT THE HEARING WHICH CLEARLY DID NOT MAKE ANY SUFFICIENT ARGUMENT AGAINST DEFENDANT TO NOT GRANT THE 25 YEARS MANDATORY MINIMUM SENTENCE. ALL THOUGH APPLICANT COUNSEL HANK ANDERSON PRESENTED ALL HIS NECESSARY FACTS TO THE COURT, THAT PROVES THE EVIDENCE PROSECUTOR PATRICK PARR HAD MENTION IN HER TESTIMONY DID NOT HAVE ANYTHING TO DO WITH HIS DEFENDANT. IN WHICH ALL OF THE STATE EVIDENCE IN THIS CASE WAS HEARD IN THE NAME OF CO-DEFENDANT WHICH HAD RUN ON THE FIRST DAY OF TRIAL. (ASK TO REVIEW THE EVIDENCE LOG IN SHEET WITH EACH ITEM OF EVIDENCE HAS THEIR NAME BY IT.) AND REVIEW THE TRANSCRIPT OF RESENTENCING HEARING.)

2. APPLICANT ARGUES THAT HIS PRESERVE MOTION BY COUNSEL HANK ANDERSON IN TRIAL TRANSCRIPT FOR APPEAL SHOULD BE HEARD FOR DEFENDANT, BY DUE PROCESS. PRESERVE FOR FURTHER REVIEW ON APPEAL. SEE CASE: JL V FLORIDA, U.S 119 THAT WAS PRESERVE AS COUNSEL HANK ANDERSON STATED IN RESENTENCING HEARING, WHICH WAS DENIED BY JUDGE HARWELL AND PRESERVE FOR APPEAL.

C: E.B  
I PRAY AND ASK FOR MERCY  
OF YOUR COURT FOR FAIRNESS  
AND OF GOOD FAITH, TO VACATE SENTENCE

Eddie Blash 5/11/12  
With Sincerest Regards  
FLORENCE COUNTY, S.C.  
FILED: TRUE COPY  
J. J. Jordan  
CLERK OF COURT C.P. & G.S.

EDDIE BLASH  
(APPLICANT)

-VS-

STATE OF SOUTH  
CAROLINA  
(RESPONDENT)

2012 MAY 15 AM 11:06

CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

CERTIFICATE OF SERVICE

DATE: MAY 11, 2012

TO: File to

CLERK OF COURT  
(CONNIE REEL)

180 N. IRBY STREET  
FLORENCE, SC 29501

TO: APPELLATE DEFENSE OFFICE

CLERK OF COURT (Richard Stra

Columbia, SC 292

THEREFORE, THIS NOTICE OF APPEAL OF SENTENCE IS BEING FILE AS AMENDED  
TO THE FIRST NOTICE OF APPEAL OF SENTENCE THAT WAS FILE ON MAY 8, 2012.  
WHICH IS TIMELY FILE WITHIN THE 10 DAYS PERIOD.

cc: E.B

Eddie Blash 5/11/12  
WITH SINCERELY

CERTIFIED: A TRUE COPY  
Connie Reel-Shearin  
CLERK OF COURT, C.P. & G.S.  
FLORENCE COUNTY, S.C.

to accept procedural default analysis where claim based solely on state law). Claims that are not cognizable are not subject to the exhaustion requirement as those claims cannot be reached. Consequently, the instant claim – which is not based upon federal law – is not subject to the exhaustion requirement. Even so, Respondent notes that Petitioner has not exhausted his all of his available state remedies.

The State provides two basic remedies after conviction – direct appeal and post-conviction relief. *See generally* S.C. Code § 14-3-330 (providing for appellate jurisdiction for correction of errors of law); Rule 201 (a), South Carolina Appellate Court Rule (recognizing right to appeal from final judgment); S.C. Code § 17-27-20 (setting out cognizable claims in PCR and providing, for collateral actions, that PCR “comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them”). *See also Stewart v. Warden of Lieber Corr. Inst.*, 701 F. Supp. 2d 785, 790 (D.S.C. 2010), *appeal dismissed*, 412 F. App’x. 633 (4<sup>th</sup> Cir. 2011) (“To exhaust a claim in state court, a person in custody has two primary means of attacking his conviction: filing a direct appeal and/or filing an application for relief under the South Carolina Post Conviction Procedure Act”). Petitioner has no direct appeal remedies available, but may have PCR remedies available, though not for the issue presented.

Petitioner failed to timely pursue and properly exhaust his direct appeal remedies. *See generally* Rule 203 (b)(2), *South Carolina Appellate Court Rules* (ten (10) day limit in which to appeal after sentence). *See State v. Lawrence*, 266 S.C. 423, 427, 223 S.E.2d 856, 858 (S.C. 1976) (“... we have no jurisdiction over ... an appeal in the absence of notice of appeal having been given and timely served”); *White v. State*, 263 S.C. 110, 119, 208 S.E.2d 35, 39- 40 (S.C. 1974) (“it is well settled that in the absence of a notice of appeal having been given and timely

served this Court has no jurisdiction over such an appeal”).<sup>6</sup> He has no direct appeal remedies still available to him. Further, Petitioner has not filed a PCR action following the May 8, 2012 re-sentencing. See <http://publicindex.sccourts.org/Florence/PublicIndex> (last visited December 31, 2013). In South Carolina, there is a one-year statute of limitations in which to file for post-conviction relief. The limitations period generally runs from the judgment if not appealed, or the latter of the remittitur or final decision of the appeal. S.C. Code § 17-27-45 (A). While arguably Petitioner should not be given the benefit of the additional appeal time since he failed to follow procedural requirements, see *State v. Lawrence*, 266 S.C. 423, 427, 223 S.E.2d 856, 858 (S.C. 1976) (“... we have no jurisdiction over ... an appeal in the absence of notice of appeal having been given and timely served”); *White v. State*, *supra*, the South Carolina Court of Appeals did issue a remittitur on March 20, 2013 from the attempt to appeal. Thus, Petitioner may still have some PCR remedies available. See generally *Wade v. State*, 348 S.C. 255, 264, 559 S.E.2d 843, 847 (S.C. 2002) (“An individual under PCR effectively is granted one chance to argue for relief and must do so within a year of his final appeal”); *Gibson v. State*, 329 S.C. 37,42, 495 S.E.2d 426, 428 (S.C. 1998) (exhaustion of state PCR remedies requires “filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review”). But again, the entire action is barred by the statute of limitations and the one ground raised is not cognizable; therefore, this petition should not be dismissed in order to pursue available state remedies.

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<sup>6</sup> Petitioner may claim in a PCR action that he was denied his right to a direct appeal in order to seek late review of any direct appeal issues from the plea. See generally *White v. State*, *supra* (direct appeal cannot be granted where notice not timely filed, but allowing belated review of direct appeal issues by way of collateral action); Rule 243 (i), *South Carolina Appellate Court Rules* (procedure to seek review of direct appeal issues within appeal from post-conviction relief action). However, that is a collateral action remedy that does not revive the direct appeal. *White v. State*.

*Rules* (ten (10) day limit in which to appeal after sentencing). *See also Gonzalez v. Thaler*, 565 U.S. \_\_\_, \_\_\_, 132 S.Ct. 641, 653-654 (2012) (rejecting use of remittitur dates in applying Section (d)(1)(A), finding conviction final “when [petitioner’s] time for pursuing direct review... in state court [] expires.”)<sup>8</sup> His federal time limitations period began to run thereafter. Petitioner did not file the instant action until August 19, 2013,<sup>9</sup> some four hundred and fifty-eight (458) days later. Subtracting the one year Petitioner had in which to timely file, it appears that Petitioner’s action is ninety-three (93) days late.

Though Petitioner may still seek (and could arguably be allowed) to file a state post-conviction relief action, such subsequent action, if any, would not restart the federal time limitation period. *See Smith v. McGinnis*, 208 F.3d 13, 17 (2<sup>nd</sup> Cir. 2000) (AEDPA time period does not re-start at conclusion of collateral litigation); *Haney v. Addison*, 175 F.3d 1217, 1220-21 (10<sup>th</sup> Cir. 1999) (same). *See also Harris v. Hutchinson*, 209 F.3d 325, 327 (4<sup>th</sup> Cir. 2000) (“the AEDPA provides that upon conclusion of direct review of a judgment of conviction, the one-year period within which to file a federal habeas petition commences, but the running of the

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sentence is the judgment.”) (quoting *Berman v. United States*, 302 U.S. 211, 212, 58 S.Ct. 164, 82 L.Ed. 204 (1937)). *Cf. Magwood v. Patterson*, 561 U.S. 320, \_\_\_, 130 S.Ct. 2788, 2802 (2010) (finding resentencing constituted new judgment and habeas petition “not ‘second or successive’ at all”).

<sup>8</sup> Respondent notes *McCleary v. Smith*, 2012 WL 3598765, \*6 (D.S.C. 2012) where the Magistrate Judge allowed additional time for a failed attempt to appeal where a remittitur issued. However, that was apparently conditioned on a state court also allowing the additional for purposes of Section 17-27-45(A) in a subsequent PCR action. There has been no like determination by a state court here. Respondent further notes that the petition in *McCleary* was untimely even if the later date was used; thus, the additional time determination was not dispositive. At any rate, the Magistrate Judge also found the conviction became final ten days after sentencing, as Respondent here has argues. *Id.* Thus, Respondent submits *Gonzalez v. Thaler* controls and the issuance of the remittitur following a late attempt to appeal is of no moment.

<sup>9</sup> Pursuant to *Houston v. Lack*, 487 U.S. 266 (1988), and the correctional facility mailroom stamp on the petition envelope. (ECF #1, envelope attachment).

is not now, a necessary element of due process of law. It is wholly within the discretion of the state to allow or not to allow such a review. A citation of authorities upon the point is unnecessary.

It is therefore clear that the right of appeal may be accorded by the state to the accused upon such terms as in its wisdom may be deemed proper.

*McKane v. Durston*, 153 U.S. 684, 687-688 (1894). See also *Halbert v. Michigan*, 545 U.S. 605, 610 (2005) (“The Federal Constitution imposes on the States no obligation to provide appellate review of criminal convictions.”).

The only restriction is that “a State may not ‘bold the door to equal justice’ to indigent defendants.” *Halbert v. Michigan*, 545 U.S. at 610. That is not at issue here. Petitioner had counsel at re-sentencing<sup>10</sup> and counsel was obligated to serve a timely notice if Petitioner chose to pursue direct appeal. See also *Matter of Anonymous Member of the Bar*, 303 S.C. 306, 307, 400 S.E.2d 483, 483 (S.C. 1991) (“If the client wishes to appeal and is indigent or claims at the end of trial to be indigent, trial counsel (whether appointed or retained) must serve and file a Notice of Appeal as required by Rule 203, SCACR, and request a determination of indigency by the Office of Appellate Defense.”); Rule 264(a), *South Carolina Appellate Court Rules* (“The attorneys and/or guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule”); Rule 602, *South Carolina Appellate Court Rules* (e) (“Trial counsel, whether retained, appointed, or Public Defender, shall continue representation of an accused until final judgment, including any proceeding on direct appeal”

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<sup>10</sup> See Habeas Petition, p. 12, noting sentencing counsel as “Henry Anderson, Jr.” See also <http://publicindex.sccourts.org/Florence/PublicIndex> (for GS355641) (reflecting Anderson, Henry Morris Jr. as Defendant’s Attorney).

until otherwise relieved by statute or order).<sup>11</sup> Cf. *Maples v. Thomas*, \_\_\_ U.S. \_\_\_, \_\_\_, 132 S.Ct. 912, 922 -923 (2012) (reiterating general rule that when counsel “misses a filing deadline, the petitioner is bound by the oversight”). Consequently, Petitioner’s claim is solely one that is not cognizable—whether the state court erred in dismissing his notice of appeal for lack of timely service according to state procedural rules. See, e.g., *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (“it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States.”); *McCleary v. Smith*, 2012 WL 3598759, 3 (D.S.C. 2012) (“How South Carolina courts interpret South Carolina statutes of limitation or rules of appellate procedure are beyond federal habeas review.”); *Hunter v. Bodison*, 2009 WL 2588499, \*13 (D.S.C. 2009) (rejecting issue “that the Court of Appeals did not consider the whole record on appeal” finding the issue “not proper on federal habeas review”). See also generally *Reed v. Ross*, 468 U.S. 1, 10 (1984) (recognizing “the State’s interest in the integrity of its rules and proceedings and the finality of its judgments”). As Petitioner fails to present a federal issue, this claim is not cognizable.

However, the entire action is barred by the statute of limitations. Thus, the action should be summarily dismissed as untimely filed.

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<sup>11</sup> To the extent Petitioner could prove counsel error in properly secure an appeal, he would have an additional remedy in state court to attempt to secure belated review of any direct appeal issues. *White v. State, supra*. This would, however, be a separate claims which, in turn, would have be properly exhausted before being available for review in a federal habeas action. Further, as noted above, see n. 6, such action would be collateral in nature and would not allow Petitioner to restart the limitations period, even if granted. See *Smith v. McGinnis, supra*.



**South Carolina Court of Appeals**

JENNY ABBOTT KITCHINGS, CLERK  
POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211

*SENT OUT FROM  
THEM BY MARCH 26, 2013*

*AB16*

**RECEIVED**

MAR 25 2013  
MAIL ROOM  
LIEBER C.I.

EDDIE BLASH, JR., 00277603  
LEIBER CORRECTIONAL INSTITUTION  
P.O. BOX 205  
RIDGEVILLE SC 29472

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03/21/2013  
**US POSTAGE** \$00.4



ZIP 292  
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TO: CONNIE REEL-SHEARIN  
CLERK OF COURT  
City County Complex  
180 N. IRLBY STREET, MSC-E Rm. B-11  
FLORENCE, SC 29501

APPELLATE CASE No. #  
2012-213140  
LOWER COURT CASE No. #  
2000-CS-21-00839

2014 APR -3 PM 2:31  
CONNIE REEL-SHEARIN  
CCJP & CS  
FLORENCE COURT

FILED

MARCH 20, 2014.

RE: POST-CONVICTION RELIEF Application

DEAR MRS. SHEARIN, I'M EDDIE BLASH #277603 WRITING TO  
INFORM YOU THAT I DID SEND BACK PAGE 7 TO YOUR OFFICE THE NEXT  
DAY ON MARCH 12, 2014, FROM LIEBER MAILROOM IN A REGULAR STAMP  
ENVELOP WHICH WAS NOTORIZE BY THE SAME MAILROOM PERSON, THAT  
PREVIOUSLY SENT OUT MY PCR APPLICATION ON MARCH 11, 2014.  
MRS. SHEARIN, IF YOU WILL PLEASE CHECK YOUR RECORD FILES TO VERIFY,  
AND WILL YOU PLEASE ATTACHE THAT COPY WITH THIS PCR APPLICATION.  
ANYWAY I'M ENCLOSEING THE BACK PAGE 7 AGAIN WITH MY POST-CONVICTION  
RELIEF APPLICATION, AS I WAS TOLD TO DO COMPLETE PAGE 7 AND RETURN.  
MRS. SHEARIN, BY THE WAY JUST DUE TO THE LIEBER INSTITUTION LOCKDOWN  
THIS PASS WEEK FOR TB TESTING ON MONDAY MARCH 24, 2014, AND FOR THE  
ELECTRICAL PROBLEMS THAT BECAME A SECURITY RISK. INMATES WAS NOT  
ALLOWED TO LEAVE THE DORM OF ASHLEY UNIT, INWHICH ENABLED ME  
FROM RETURNING MY PCR APPLICATION BACK AS SOON AS I WOULD'VE  
LIKE TO FROM THE DATE OF MARCH 19, 2014. OF ME RECEIVING IT BACK  
FROM THE FLORENCE CLERK OF COURT OFFICE. (SEE ATTACHED DOCUMENT)  
IF YOU MAY PLEASE SEND ME A COPY BACK CHECKED STAMPED &  
DATED OF ALL DOCUMENTS.

CC: E.B.

Respectfully Submitted  
Eddie Blash Jr. 3/20/14  
EDDIE BLASH JR. 277603  
LIEBER CORRECTIONAL INST. AB-34  
P.O. BOX 205  
RIDGEVILLE, SC 29472

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
Eddie Blash, Jr., #277603,	)	Case No. 2014-CP-21-0850
Applicant,	)	
v.	)	<b>RETURN AND MOTION TO DISMISS</b>
	)	<b>ALL CLAIMS BUT <u>WHITE v. STATE</u></b>
State of South Carolina,	)	
Respondent.	)	

---

In response to the Application for post-conviction relief (PCR) filed April 3, 2014, Respondent would show this Court:

**I.**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2000 term of the Florence County Grand Jury for trafficking cocaine over 400 grams (2000-GS-21-839). He was represented by Henry M. Anderson, Jr., Esquire. On August 16, 2001, Applicant proceeded to trial after which he was found guilty as charged. He was sentenced by the Honorable B. Hicks Harwell to confinement for a period of thirty (30) years. Applicant did not file a direct appeal of his conviction or sentence.

**2002-CP-21-1473**

Applicant filed a pro se application for post-conviction relief on August 16, 2002. Applicant alleged he was being held unlawfully based on ineffective assistance of counsel because counsel failed to file a timely notice of appeal. Applicant requested a belated appeal pursuant to White v. State, 208 S.E.3d 35 (S.C. 1974). An evidentiary hearing was held in Florence County on October 14, 2004, before the Honorable James E. Brogdon Jr. By Order

dated December 15, 2004, the PCR court found that Applicant had been denied his right to a direct appeal and granted him the ability pursue a direct appeal pursuant to White v. State and thirty days to file an amended PCR application, which Applicant did through his attorney Scott P. Floyd, Esquire. Two grounds were alleged in his amended application:

1. "My lawyer failed to file an appeal after he was requested to do so."
2. "My lawyer failed to object to the testimony of the witness Lowman Timmy Arush, III."

On December 12, 2007, a hearing was held before the Honorable Thomas A. Russo on Applicant's PCR application. Applicant and his trial counsel both testified at the hearing. On January 8, 2008, the PCR court issued an order denying and dismissing Applicant's application with prejudice, but also noting that Applicant was still entitled to his belated direct appeal.

#### **White Appeal**

On July 23, 2010, represented by Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense, Applicant filed a writ of certiorari with the South Carolina Supreme Court. The State did not object to the writ being granted, and the South Carolina Supreme Court granted the writ pursuant to White v. State on December 1, 2011. Applicant presented one issue on appeal: "did the trial judge abuse his discretion in imposing the maximum sentence because Applicant would not admit guilt following a jury trial." The Supreme Court held oral arguments and determined that Applicant's sentence was imposed in violation of his constitutional rights. The case was reversed and remanded for re-sentencing. The Remittitur was issued April 16, 2012.

#### **Re-sentencing and Attempted Appeal**

Applicant was re-sentenced before the Honorable Thomas Russo on May 8, 2012, to twenty-eight (28) years of imprisonment. Applicant attempted to file a notice of appeal of his

new sentence on May 11, 2012, complaining that the Judge Russo erred in imposing a similar sentence that was above the mandatory minimum. On October 12, 2012, the South Carolina Court of Appeals notified Applicant that his notice of appeal was deficient because he did not provide a proof of service on the state's counsel. Applicant submitted proof of service, dated October 18, 2012; thereafter, on November 1, 2012, the South Carolina Court of Appeals dismissed the appeal as untimely. Applicant filed a petition for rehearing and on February 11, 2013, the Court of Appeals denied the petition. The Remittitur was issued on March 20, 2013. Applicant appealed the Court of Appeals' dismissal to the South Carolina Supreme Court, which was dismissed as untimely on April 12, 2013.

**8:13-1892-RMG-JDA**

On July 2, 2013, Applicant filed a petition for writ of habeas corpus in the United States District Court under 28 U.S.C. § 2254. On December 31, 2013, Respondent filed a motion for summary judgment and a return and memorandum. On January 2, 2014, the Court filed an Order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir.1975). Applicant filed a response on March 6, 2014. Applicant raised one ground: "Dismissal of notice of appeal, dismissal reconsideration motion by the Court of Appeals. Petition for rehearing is denied by the Supreme Court of South Carolina and Court of Appeals." On April 25, 2014, the Honorable Jacquelyn D. Austin issued a Report and Recommendation, recommending that Respondent's motion for summary judgment be granted and the petition be denied. On May 22, 2014, the Honorable Richard Gergel issued an Order adopting the Report and Recommendation and granting Respondent's motion for summary judgment.

II.

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

1. Ineffective Assistance of Re-sentencing Counsel

a. "My counsel failed to file appeal within the (10) days, after we had discussion about appealing my sentence after the sentencing."

b. Failure to Investigate.

2. Ineffective Assistance of Trial Counsel

Attached herewith and incorporated herein are the Florence County Clerk of Court Records, Applicant's re-sentencing transcript, and Applicant's prior PCR and appellate records. Respondent reserves the right to amend this return upon receipt of relevant material.

**III.**

**Successive Application**

The Respondent submits that all allegations except the allegation regarding a direct appeal should be summarily dismissed for being successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392,

394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. The applicant bears the burden of showing that the allegations could not have been raised previously. Id.

Applicant could have raised the "new" grounds for relief in his prior post-conviction relief applications. Applicant has failed to present any reasons why he should be allowed to proceed with a successive application. Accordingly, Respondent moves for a summary dismissal of the Application because it is successive.

Applicant claims that he was denied effective assistance of counsel because his trial attorney failed to file a timely notice of appeal. The one-year statute of limitations does not apply to a claim that an applicant was denied his direct appeal. Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002).

White v. State

Respondent submits that trial counsel for the Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). In Strickland, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Respondent submits that trial counsel's performance was not deficient nor was the Applicant prejudiced in any way by such performance. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35

(1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

#### IV.

Respondent denies each allegation that is not expressly admitted, qualified, or explained herein.

#### V.

WHEREFORE, Respondent moves to summarily dismiss the application as successive.


Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. CROOM HUNTER  
Assistant Attorney General  
S.C. Bar No. 101253

By:   
~~ATTORNEYS FOR RESPONDENT~~  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

9/9, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2014-CP-21-0850

EDDIE BLASH, JR., #277603

Applicant,

vs


AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,  
Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return And Partial Motion To Dismiss All Claims But White v. State** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire  
1720 Main St., Suite 104  
Columbia, SC 29201

DATED this 11<sup>th</sup> day of September, 2015 .

  
Norma Bigbee, Legal Assistant

State of South Carolina)
County of Florence )

In the Circuit Court
Twelfth Judicial Circuit
2014-CP-21-0850

EDDIE BLASH, JR.,
Plaintiff,
vs.
THE STATE,
Defendant.

Transcript of Record

Florence, South Carolina
March 14, 2017

B E F O R E:

The Honorable Paul M. Burch

A P P E A R A N C E S:

Mr. Johnathan D. Waller, Esquire
Attorney for Plaintiff

Ms. Lindsey A. McCallister, Esquire
Attorney for Defendant

LISA CARTER
CIRCUIT COURT REPORTER

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## I N D E X

WITNESSESPAGE

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
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(NO EXHIBITS WERE INTRODUCED DURING THIS HEARING)

1 MS. McCALLISTER: Your Honor, the next case is Eddie  
2 Blash, Jr. versus the State of South Carolina, 2014-CP-21-  
3 0850. If he can come around.

4 Your Honor, we're here today on Mr. Blash's  
5 application for post-conviction relief which was filed on  
6 April 3, 2014. He is confined in the South Carolina  
7 Department of Corrections. He was indicted at the June,  
8 2000 term of the Florence County grand jury for trafficking  
9 cocaine over 400 grams. He was represented by Hank  
10 Anderson on those charges. He proceeded to trial on August  
11 16, 2001 and was found guilty as charged and he was  
12 sentenced by Judge Harwell to confinement for thirty (30)  
13 years. He did not appeal that, filed a direct appeal of  
14 that conviction sentence. He did file a motion for PCR or  
15 an application for PCR in 2002, in August of 2002 and he  
16 alleged ineffective assistance of counsel based on that  
17 failure to file a notice of appeal and he was granted a  
18 belated appeal pursuant to White v. State.

19 At that time, Your Honor, the judge also gave Mr.  
20 Blash thirty (30) days in which to amend his application  
21 and to allege any additional grounds that he wanted to  
22 allege. The amended application containing two grounds,  
23 the failure to file an appeal and that his attorney failed  
24 to object to the testimony of a particular witness.

25 A hearing on those issue was held on December 12, 2007

1 before Judge Russo. Judge Russo denied all relief except  
2 for the belated appeal pursuant to White v. State. OAD did  
3 pursue that appeal for him and they presented one issue on  
4 appeal which was an issue as to whether Judge Harwell had  
5 abused his discretion in sentencing. The Supreme Court  
6 held oral arguments and they, ultimately, reversed and  
7 remanded for re-sentencing. So Mr. Blash was re-sentenced  
8 before Judge Russo on May 8, 2012 to twenty-eight (28)  
9 years of imprisonment. He attempted to file a notice of  
10 appeal of that new sentence but that appeal was,  
11 ultimately, dismissed as being untimely in April of 2013.  
12 He then filed a federal habeas petition on July 12, 2013  
13 which was, ultimately, dismissed and then he filed this  
14 second PCR application in 2014, Your Honor. And in the  
15 State's response, Your Honor, the State made its return.  
16 And a partial motion to dismiss, Mr. Blash is raising the  
17 issue of a failure to appeal from the re-sentencing hearing  
18 but he is also raising additional issues of ineffective  
19 assistance regarding counsel's conduct at the original  
20 trial. And so, Your Honor, the State would renew our  
21 motion to dismiss those allegations, everything except for  
22 the issue of the appeal. We believe that those allegations  
23 are successive. He had a full evidentiary PCR hearing and  
24 he did not raise those issues at that time. So we would  
25 ask, Your Honor, to rule on that motion before we go

1 forward today and I'll let Mr. Waller be heard on that.

2 MR. WALLER: Your Honor, this application that is  
3 successive on those issues, the only thing I can say is  
4 that they were not raised. He had, what it seems two  
5 evidentiary hearings, and whoever his attorney was at the  
6 time, did not raise those issues and I want to proceed  
7 forward on the belated appeal and one other issue. Your  
8 Honor, I guess he did, technically, have his bite at the  
9 apple at that time as to the guilt portion. But these  
10 issues have never been before the court, so we would ask  
11 that you deny the State's motion dismiss and let him have  
12 his day in court.

13 THE COURT: Nah, I don't agree with that. Now, on  
14 the issue of the belated appeal, if you've got something  
15 there, you know, we can proceed with that but were not  
16 reopening all of this after, as you say, he's already had a  
17 bite at the apple.

18 MR. WALLER: Yes, Your Honor. We do have some  
19 issues with the belated appeal, Your Honor.

20 THE COURT: Okay.

21 MR. WALLER: I would call Eddie Blash.

22 THE CLERK: Mr. Blash, if you'll raise your right  
23 hand as best you can. Do you swear or affirm that the  
24 testimony you give will be the truth, the whole truth, and  
25 nothing but the truth so help you God?

Eddie Blash- Direct Examination by Mr. Waller

7

1 MR. BLASH: Yes, ma'am.

2 THE CLERK: Thank you.

3 EDDIE BLASH, first being  
4 duly sworn, testified as follows:

5 Direct Examination by Mr. Waller:

6 Q. Good morning, Mr. Blash, how are you today?

7 A. Okay. [

8 Q. Mr. Blash, I want, you heard the judge's ruling, so I  
9 want to kind of jump to the end. You were convicted  
10 originally in 2001 and you got sentenced and then you got  
11 re-sentenced in 2012, is that right?

12 A. Yes.

13 Q. Okay. When you found out that your original thirty  
14 (30) year conviction was going to be overturned, did you  
15 and Hank Anderson, at a time, were y'all able to discuss  
16 that?

17 A. No.

18 Q. Okay. And, I guess, let me back up, how did Hank  
19 Anderson come to be your attorney?

20 A. From my trial.

21 Q. Okay. Was he appointed to represent you?

22 A. No.

23 Q. You hired him?

24 A. I hired him.

25 Q. And that was back in 2001 ---

Eddie Blash- Direct Examination by Mr. Waller

8

1 A. Yes.

2 Q. --- or whenever you hired him?

3 A. Right.

4 Q. Okay. So he was still your attorney from the original  
5 case? You had him for both parts?

6 A. Yes.

7 Q. Okay. When you found out that you were going to get  
8 re-sentenced, did you and Hank Anderson have any  
9 discussions about getting re-sentenced?

10 A. No. We didn't get a chance to do that.

11 Q. Okay. Did y'all, it had been what, 11 years ---

12 A. Yes.

13 Q. --- since you were originally sentenced?

14 A. Yes.

15 Q. Okay. Did y'all have a chance to meet and discuss any  
16 mitigation or anything like that regarding your sentence?

17 MS. MCCALLISTER: Objection, Your Honor. Just to  
18 clarify, my understanding of Your Honor's ruling from a  
19 minute ago was that we were here on the issue of an appeal,  
20 is this going -- I'm objecting to relevance as to the  
21 mitigation.

22 MR. WALLER: I'm just asking a background question  
23 but I'll move on.

24 Q. All right. Mr. Blash, you were, ultimately, sentence  
25 by Judge Russo to twenty-eight (28) years, is that right?

1 A. Yes, sir.

2 Q. And was it your understanding that you had to be  
3 sentenced from twenty (25) to thirty (30), that was the  
4 range it carried?

5 A. Yes.

6 Q. Okay. After you were sentenced by Judge Russo, were  
7 you and Hank Anderson able to have any conversations after  
8 you got sentenced?

9 A. Yes.

10 Q. Okay. What did y'all talk about?

11 A. Well, he asked the bailiff can he speak with me and me  
12 and him discussed -- he say he was, you know, wasn't  
13 satisfied with the sentencing from Judge Russo and that we  
14 would try to appeal it. And I told him that's what I was  
15 wanted to do and we discussed it and he said that's what  
16 we'll do.

17 Q. Okay. Were y'all -- y'all were in this courthouse?

18 A. Yes.

19 Q. Were y'all in this courtroom or upstairs?

20 A. I don't remember what floor.

21 Q. Okay. But you got to talk to him afterwards ---

22 A. Oh, yeah, yeah, yeah, he ask to speak ---

23 Q. Y'all discussed ---

24 A. Yeah, he ask to speak to me, yeah, after -- he wasn't  
25 satisfied with the sentencing from Judge Russo and, you

1 know, we discussed that.

2 Q. Okay. And you ask him to file an appeal on your  
3 behalf?

4 A. I asked him to file an appeal.

5 Q. Okay. Did y'all talk about any post-trial motions or  
6 post sentencing motions other than the appeal?

7 A. No. He just said that he wasn't satisfied. He  
8 thought the judge would've, you know, given me the twenty-  
9 five (25) year sentence after he had the discussion with  
10 the solicitor, Clements and Clements said it wasn't a  
11 problem for the twenty-five (25) years but he didn't have,  
12 he didn't have the case and we went on from there.

13 Q. Okay. After you and Mr. Anderson had that  
14 conversation, where did you go?

15 A. I went to R&E, Kirkland.

16 Q. Okay. So you were -- I'm trying to just make sure the  
17 judge understands, you were in SCDC custody when you got  
18 re-sentenced or in Florence County custody?

19 A. I was in Florence County custody.

20 Q. Okay. So you had to go back to the whole reception  
21 and evaluation process in Kirkland?

22 A. Yes. At R&E at Kirkland.

23 Q. Okay. What -- describe that for me, if you can? What  
24 do you have access to?

25 A. Over there they just lock you down and, you know, you

1 have to wait until they transfer you to the Department of  
2 Corrections.

3 Q. Okay. Do you have access to writing letters and  
4 things like that, telephone, any of that stuff?

5 A. Yeah. They give you a pin number for a telephone and,  
6 you know, they give you pencil and stuff like that to  
7 write.

8 Q. Did you -- did you talk to Hank Anderson the first  
9 little bit when you got there?

10 A. No.

11 Q. Okay. Did you attempt to file an appeal?

12 A. I wrote the Court of Appeals and ask was an appeal  
13 filed on my behalf and they wrote me a letter back saying  
14 they don't see any where an appeal been filed.

15 Q. Okay. What did you do then?

16 A. And then I ask to go to the library and they said I  
17 have to wait until I get to the institution to where I'm  
18 going to be able to go to the library to file any appeal.

19 Q. Okay. So you weren't able to do it at Kirkland?

20 A. No.

21 Q. Okay. Did you, ultimately, try to file an appeal?

22 A. Yeah. After I got -- after I got to the prison and  
23 that's when I tried to file an appeal.

24 Q. Okay. What did the Court of Appeals tell you?

25 A. The Court of Appeals said it wasn't timely filed.

Eddie Blash- Cross Examination by Ms. McCallister

12

1 Q. Okay. Did you get that appeal because it wasn't  
2 timely filed?

3 A. No. That's why I had to go to a PCR for ineffective  
4 assistance of counsel of not filing an appeal within the  
5 ten days that was required for him to do and ....

6 MR. WALLER: I have no further questions. Please  
7 answer any questions that Ms. McCallister might have.

8 MS. MCCALLISTER: I beg the Court's indulgence, Your  
9 Honor.

10 **Cross Examination by Ms. McCallister:**

11 Q. Mr. Blash, do you recall how soon it was after you  
12 went to R&E that you sent that letter? You said you sent a  
13 letter to the Court of Appeals?

14 A. Yes. I sent a letter to the Court of Appeals.

15 Q. Do you recall how soon after you got to R&E that was?

16 A. How soon they sent me to R&E? Seven to ten days, from  
17 they sent me to the county to R&E.

18 Q. Okay. I'm sorry. So immediately after you were re-  
19 sentenced that day on May 8, 2012 ---

20 A. Right.

21 Q. --- you went back to Florence County ---

22 A. Yes.

23 Q. --- that day ---

24 A. Yes.

25 Q. --- that afternoon?

1 A. Yes.

2 Q. Okay. And so what kind of access to communication,  
3 phone, writing issuance did you have in the Florence County  
4 jail?

5 A. They just gave me pencil and paper, the clip paper to  
6 write on.

7 Q. Okay. And did you have access to a phone to call your  
8 attorney?

9 A. No.

10 Q. Did you ever ask?

11 A. No.

12 Q. Okay.

13 A. I just wrote the court. That's it.

14 Q. Okay. So you wrote the Court of Appeals a letter  
15 immediately after your sentencing hearing when you were  
16 returned to Florence County?

17 A. Yes.

18 Q. Okay. That same day?

19 A. No. A couple of days.

20 Q. A couple of days later?

21 A. Yeah, like, three or four days.

22 Q. Okay. But I thought you said that you, at that time,  
23 you were expecting Mr. Anderson to file an appeal for you?

24 A. Yeah. We had a discussion after I got sentenced in  
25 the courtroom and he said he was unhappy with the sentence

1 and that we could file an appeal and I ask him to go ahead  
2 and file an appeal for me.

3 Q. So you called the Court of Appeals or you wrote the  
4 Court of Appeals to check if that had been done but you  
5 never wrote or called Mr. Anderson to ask if that have been  
6 done?

7 A. No.

8 Q. Why did you not call your attorney and ask him if he  
9 had done what you had ask him to do?

10 A. I didn't have no access to call my attorney.

11 Q. Why didn't you write him a letter like you wrote the  
12 Court of Appeals?

13 A. Because they said I had ten days and I told them my  
14 lawyer was supposed to do that for me and they said what  
15 you can do, they told me -- they gave me the little  
16 information in Florence County saying that you can write  
17 them and they'll let you know if an appeal has been filed  
18 on your behalf and that's why wrote.

19 Q. Okay. So you wrote -- okay. And after you found out  
20 -- after you got the response saying that no appeal had  
21 been file, did you try to contact Mr. Anderson at all?

22 A. Yeah, I wrote a letter.

23 Q. You wrote a letter to him?

24 A. Yeah.

25 Q. Do you have a copy of that letter?

1 A. The only letter I have here is the one I wrote to the  
2 Florence Clerk of Court.

3 Q. Okay. So you don't have a copy of the letter ---

4 A. No.

5 Q. --- that you say you wrote to Mr. Anderson?

6 A. No. I just wrote the clerk of court and they stamped  
7 it.

8 Q. Okay. And then -- do you know the date that the Court  
9 of Appeals told you that no, nothing had been filed on your  
10 behalf? Do you know approximately when that was?

11 A. The date that, that they told me -- I wrote on the 7<sup>th</sup>  
12 or 8<sup>th</sup> and they responded back like the 13<sup>th</sup>.

13 Q. Okay. Of May?

14 A. Of May.

15 Q. Okay. So you received a response on the 13<sup>th</sup> of May?  
16 Did you ---

17 A. No. I got -- no, no, no, no, no. May -- I got  
18 sentenced May 8<sup>th</sup> -- I got sentenced, I think, May 8<sup>th</sup> and I  
19 wrote after that, like, three days after that.

20 Q. Okay.

21 A. And I think I got a letter back from them -- yeah,  
22 around that time ---

23 Q. Okay.

24 A. Thirteenth or 14<sup>th</sup>.

25 Q. You got a letter back from them ---

1 A. Yeah.

2 Q. --- around 13<sup>th</sup> or 14<sup>th</sup> of May saying that nothing had  
3 been filed?

4 A. Right.

5 Q. Okay. And I believe you said earlier you understood  
6 you only had ten days, correct?

7 A. Yes.

8 Q. Okay. So at the time that the Court of Appeals  
9 responded to you saying that nothing had been filed, you  
10 were still within your ten day window, correct?

11 A. And I filed it.

12 Q. But you didn't -- so you attempted to file your own  
13 notice of appeal?

14 A. Yes. I attempted to file my own appeal once they,  
15 once they told me that my lawyer had ten days to file an  
16 appeal and for me to file it, just in case he didn't file  
17 it, and that's why I went on ahead and filed it.

18 Q. Okay. But why did you not -- did you not attempt to  
19 contact Mr. Anderson at that time and say hey, why hasn't  
20 my appeal been filed yet?

21 A. No. Because he told me he was going to do it but they  
22 told me that I can go ahead and do it just in case that  
23 your lawyer don't do it, you'll have it in the 20<sup>th</sup>, within  
24 the ten days.

25 Q. Did you ever, after you did that, did you ever attempt

1 to contact Mr. Anderson and tell him that you had done  
2 that?

3 A. No, I did not. I took his word because, you know, he  
4 been my trial lawyer and so I just took his word on it and  
5 we discussed it and we went from there. That was it.

6 Q. Thank you.

7 MS. McCALLISTER: That's all the questions that I  
8 have for him.

9 MR. WALLER: Just very briefly, Your Honor.

10 **Redirect Examination by Mr. Waller:**

11 Q. Mr. Blash, after your conversations with Mr. Anderson,  
12 you didn't think that you would have to file your own  
13 appeal, did you?

14 A. Nah. That's why I just said he been my lawyer for  
15 trial and for the re-sentencing and he was unsatisfied with  
16 sentence so I ---

17 Q. You assume that he was going to file?

18 A. Oh, yeah, of course.

19 Q. How long did you have to stay at R&E?

20 A. Seven months.

21 Q. Okay.

22 A. After I got re-sentenced.

23 Q. Okay. Had you been to R&E before when you first got  
24 convicted?

25 A. Yeah.

Hank Anderson- Direct Examination by Ms. McCallister 18

1 Q. How long did you stay that time?

2 A. Thirty days.

3 Q. Okay. Is that the normal, thirty days?

4 A. Yeah.

5 Q. Okay. But you were there seven months this time?

6 A. Yeah. The second time, seven months.

7 MR. WALLER: No further questions.

8 MS. McCALLISTER: Nothing further, Your Honor.

9 THE COURT: You may step down. Thank you.

10 MR. WALLER: Nothing further from the applicant,  
11 Your Honor.

12 MS. McCALLISTER: Your Honor, the State would Mr.  
13 Anderson.

14 THE COURT: Come around and be sworn please.

15 THE CLERK: Do you swear or affirm that the  
16 testimony you give will be the truth, the whole truth, and  
17 nothing but the truth help you God?

18 MR. ANDERSON: Yes, ma'am.

19 THE CLERK: Thank you.

20 HANK ANDERSON, first being  
21 duly sworn, testified as follows:

22 Direct Examination by Ms. McCallister:

23 Q. Mr. Anderson, have you had a chance to review your  
24 file in this matter?

25 A. Yes, ma'am.

Hank Anderson- Direct Examination by Ms. McCallister 19

1 Q. Okay. Do you remember the representation of Mr.  
2 Blash?

3 A. Yes, ma'am.

4 Q. Okay. Can you tell me a little bit how you came to be  
5 involved in the case in the first place?

6 A. Yes, ma'am. Eddie and another young man were charged  
7 with trafficking a thousand grams or more of powder  
8 cocaine. He and his family retained me. His co-defendant  
9 retained Debbie Jackson and a former US attorney, Bill  
10 Nettles, and we worked on the case together. It later went  
11 to trial and when we were at trial, right after the jury  
12 selection, the co-defendant went down the elevator and has  
13 never been seen from since.

14 Q. Okay.

15 A. Mr. Blash stayed and we tried his case.

16 Q. Okay. And so you recall you were involved in the  
17 first PCR and the issue of the appeal and re-sentencing, is  
18 that correct?

19 A. Yes, ma'am.

20 Q. Okay. And do you recall the re-sentencing of Mr.  
21 Blash, do you recall that hearing?

22 A. I do.

23 Q. Okay. Do you recall having a conversation with Mr.  
24 Blash that day and him asking you to appeal his re-  
25 sentencing?

1 A. I recall having a conversation with him. I do not  
2 remember him asking me to appeal it.

3 Q. Okay. Is it your understanding -- did you talk about  
4 -- I'm sorry let me stop and rephrase that -- when you  
5 found out that Mr. Blash was going to be re-sentenced, did  
6 you have a chance to meet with him?

7 A. I did. It was very brief. I think the public  
8 defender had filed some motions and I think they were in  
9 the process of going forward and I think Mr. Floyd, Scott  
10 Floyd who is the circuit defender, I told him that I would  
11 be happy to do it because I was a lot more familiar with  
12 the case than I thought he was.

13 Q. Okay. And so after the re-sentencing that day, you do  
14 recall having a conversation with Mr. Blash?

15 A. Yes, ma'am, I do.

16 Q. Do you recall what you talked about?

17 A. I told him again I was sorry that he didn't get the  
18 minimum. I thought that Harwell was giving him the minimum  
19 and then I was hopeful that Judge Russo would have given  
20 him the minimum. And a lot of what I told Judge Russo was  
21 what we originally told Judge Harwell, you know, that, of  
22 course, twenty-five (25), it's non-parolable, you know,  
23 he'd have to max it out and that, you know, unlike his co-  
24 defendant he had stayed and faced, you know, wanted to go  
25 to trial. He didn't run. Always showed up when he was

1 supposed to and those were the same arguments we made.

2 Q. Okay. At that -- at that point in time after the re-  
3 sentencing, did you -- did you have any reason to believe  
4 that Mr. Blash wanted to appeal?

5 A. No, ma'am. And I knew that we were back because that  
6 issue had been raised and he had not appealed or I had not  
7 appealed it the first time so I'm not hundred percent sure  
8 but I am ninety-nine percent sure that if he had asked me  
9 to file an appeal I would've done it. I just don't  
10 remember him asking me that.

11 Q. Okay. Did you ever receive any phone calls or  
12 correspondence from him after the re-sentencing indicating  
13 that he wanted an appeal?

14 A. No, ma'am, I did not.

15 Q. Okay. So you don't recall receiving a letter from him  
16 saying, hey, why haven't you filed my appeal yet?

17 A. No.

18 Q. Okay. Thank you.

19 MS. McCALLISTER: No further questions from me, Your  
20 Honor.

21 MR. WALLER: Just briefly.

22 Cross Examination by Mr. Waller:

23 Mr. Anderson, you, just to clarify, you did not find appeal  
24 from the 2001 trial?

25 A. No, I did not.

1 Q. Okay. Did you and Mr. Blash have a discussion after  
2 that trial about filing an appeal that you recall?

3 A. I don't have that file with me. I think he did and  
4 that he and his mom and I had conversations as well.

5 Q. You have a separate file for ....

6 A. I have a large file from the 2000/2001 case and then  
7 I've got the re-sentencing from 2012.

8 Q. Okay. Ms. McCallister asked you if you had an  
9 opportunity to meet with him prior to re-sentencing, did  
10 y'all discuss how the re-sentencing would go as far as  
11 procedurally and what you would do after the re-sentencing?

12 A. He and I met very briefly before the re-sentencing. I  
13 told him, of course, you know, the only thing we here for  
14 is the number between twenty-five (25) and thirty (30) and  
15 we would ask the judge for the minimum and that, you know,  
16 that's really all we discussed as far as I remember.

17 Q. Okay. Other than your conversation with him, do you  
18 remember where y'all spoke right after he was re-sentenced?

19 A. I think we were here in this courtroom because Nicole  
20 was the clerk and Nicole normally works in this courtroom  
21 and Doris would normally work the one upstairs.

22 Q. Okay. So it was kind of around here where y'all  
23 would've spoken right afterwards?

24 A. Yes, sir.

25 Q. Did y'all -- have you talked to him since?

1 A. Since the re-sentencing?

2 Q. Correct. That day?

3 A. No, sir.

4 MR. WALLER: I beg the Court's indulgence please.

5 Nothing further, Your Honor.

6 THE COURT: Anything else?

7 MS. McCALLISTER: No. Nothing further, Your Honor.

8 THE COURT: You may step down. Thank you.

9 MR. WALLER: Your Honor, I've just got a brief

10 argument if you'll entertainment.

11 THE COURT: All right.

12 MR. WALLER: Your Honor, the testimony from Mr.

13 Blash is that they met and then spoke after the re-  
14 sentencing. He asked Mr. Anderson to file an appeal. Your  
15 Honor, it's clear from the record that you have in front of  
16 you, I believe you have a copy of the clerk's file, that no  
17 appeal was filed by Mr. Anderson and Mr. Blash, ultimately,  
18 did try to file an appeal after he learned that no appeal  
19 had been filed on his behalf. I think that's evidence of  
20 his desire to have an appeal filed. Your Honor, there was  
21 -- he testified that he was in Kirkland for seven months.  
22 That the access there was restricted. He couldn't go to  
23 the law library until he went to the facility he was  
24 permanently housed at. Your Honor, Mr. Anderson didn't  
25 file an appeal from the first one either that's how we wind

1 up back here today. I think all those things, Your Honor,  
2 add up to show that Mr. Blash did express a desire to have  
3 an appeal filed and one was not. So I would ask the Court  
4 to grant the belated appeal from the re-sentencing in 2012.

5 MS. McCALLISTER: Your Honor, I believe Mr. Blash  
6 testified that after the re-sentencing he was immediately  
7 returned to Florence County and was there for seven to ten  
8 days which would've been the window for the appeal. He  
9 testified he wrote them and got a letter back from them  
10 within that time-frame and that he still did not make any  
11 efforts to contact his attorney and let him know that he  
12 wished for an appeal to be filed. As Mr. Anderson said, he  
13 was back here because of an appeal not being filed the  
14 first time and that's something that he is, I think, he  
15 said ninety-nine percent sure that he would remember if he,  
16 if Mr. Blash had asked him to file that appeal. So we  
17 would argue that, that he has not met his burden on that  
18 issue, Your Honor.

19 MR. WALLER: Your Honor, there is one thing I left  
20 out. As we know the mailbox rule does not apply to appeals  
21 so that ten days, even if you mail it on the tenth day,  
22 it's not valid until it's actually filed.

23 THE COURT: All right. Thank y'all very much. I'm  
24 going to take a look at ---

25 MR. WALLER: Thank you, Your Honor.

1 MS. McCALLISTER: Thank you.

2 THE COURT: --- this matter. I'm going to make a  
3 decision today.

4 MR. WALLER: Thank you, Your Honor.

5 (CONCLUSION OF THE HEARING ON MARCH 14, 2017)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Circuit Court of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Twelfth Circuit Court for Florence County, South Carolina, on the 14th day of March, 2017.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa S. Carter  
Circuit Court Reporter

December 13, 2017

STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 )  
 Eddie Blash, Jr., #277603, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT

Case No. 2014-CP-21-0850

ORDER OF DISMISSAL  
 GRANTING WHITE V. STATE  
 APPEAL

DORIS POULOS O'HARA  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, SC

2017 AUG 17 PM 1:38

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 3, 2014. Respondent made its Return and Motion to Dismiss All Claims but White v. State on September 9, 2015. The Court convened an evidentiary hearing into the matter on March 14, 2017, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent also presented testimony from trial counsel, Henry M. Anderson, Jr., Esquire (Counsel). The Court also had before it a copy of the sentencing transcript, the Florence County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

Prior to the commencement of the evidentiary hearing, the Respondent renewed its motion to dismiss all claims but White v. State, for a belated appeal. While counsel for Applicant argued in opposition to the Respondent's motion, he acknowledged that Applicant had previously had a full PCR hearing and that any claims other than the White v. State claim had

CERTIFIED A TRUE COPY  
*Doris Poulos O'Hara*  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

either been previously ruled upon or Applicant had the opportunity to have them ruled upon. Based on the Respondent's motion and argument from counsel, this Court granted Respondent's Motion to Dismiss All Claims but White v. State.

### **I. PROCEDURAL HISTORY**

The Applicant is presently confined in SCDC pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the June 2000 term of the Florence County Grand Jury for trafficking cocaine over 400 grams (2000-GS-21-839). Henry M. Anderson, Jr., Esquire represented the Applicant.

The State proceeded to trial on August 16, 2001, and the jury found the Applicant guilty as indicted. The Honorable B. Hicks Harwell sentenced the Applicant to a term of thirty (30) years imprisonment. The Applicant did not appeal. Applicant file a pro-se Application for Post Conviction Relief on August 16, 2002 in which he alleged he was being held unlawfully based on ineffective assistance of counsel because Counsel failed to file a timely notice of appeal.

An evidentiary hearing was held in Florence County on October 14, 2004, before the Honorable James E. Brogdon, Jr. By Order dated December 15, 2004, Judge Brogdon found that Applicant had been denied his right to a direct appeal and granted him both the ability to pursue a direct appeal pursuant to White v. State as well as thirty (30) days to file an amended PCR application. Applicant amended his application to include a claim of ineffective assistance of counsel for failure to object to the testimony of a witness.

At a subsequent hearing on December 12, 2007, the Honorable Thomas A. Russo denied and dismissed Applicant's Application with prejudice but noted that Applicant was still entitled to his belated direct appeal. Upon appeal, the South Carolina Supreme Court held that

Applicant's sentence was imposed in violation of his constitutional rights. The sentence was reversed and remanded for re-sentencing, with the Remittitur being issued April 16, 2012.

Applicant was re-sentenced, following a hearing, by the Honorable Thomas A. Russo on May 8, 2012 to a term of twenty-eight (28) years imprisonment. Applicant attempted to file a notice of appeal of his new sentence on May 11, 2012, complaining that Judge Russo erred in imposing a similar sentence that was above the mandatory minimum. On October 12, 2012, the South Carolina Court of Appeals notified Applicant that his notice of appeal was deficient because he did not provide a proof of service on the state's counsel. Applicant submitted proof of service, dated October 18, 2012; thereafter, on November 1, 2012, the South Carolina Court of Appeals dismissed the appeal as untimely. Applicant filed a petition for rehearing and on February 11, 2013, the Court of Appeals denied the petition. The Remittitur was issued on March 20, 2013. Applicant appealed the Court of Appeals' dismissal to the South Carolina Supreme Court, which was dismissed as untimely on April 12, 2013.

On July 2, 2013, Applicant filed a petition for writ of habeas corpus in the United States District Court under 28 U.S.C. § 2254. On December 31, 2013, Respondent filed a motion for summary judgment and a return and memorandum. On January 2, 2014, the Court filed an Order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4<sup>th</sup> Cir. 1975). Applicant filed a response on March 6, 2014. Applicant raised one ground: "Dismissal of notice of appeal, dismissal reconsideration motion by the Court of Appeals. Petition for rehearing is denied by the Supreme Court of South Carolina and Court of Appeals." On April 25, 2014, the Honorable Jacquelyn D. Austin issued a Report and Recommendation, recommending that Respondent's motion for summary judgment be granted and the petition be denied. On May 22, 2014, the Honorable

PMB

Richard Gergel issued an Order adopting the Report and Recommendation and granting Respondent's motion for summary judgment.

## **II. ALLEGATIONS**

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

1. Ineffective assistance of counsel

## **III. SUMMARY OF TESTIMONY**

During the evidentiary hearing, Applicant testified he was resentenced by Judge Russo following the Supreme Court overturning his previous sentence. He testified that he and Counsel met briefly prior to the resentencing but that they did not have much time to discuss the resentencing or prepare for the resentencing. Applicant testified that he did not feel that counsel was prepared for the hearing and that there were no witnesses or anyone to speak on his behalf. Applicant testified that Counsel asked Judge Russo to consider the minimum sentence in his resentencing of Applicant. Applicant also addressed Judge Russo and asked for leniency. Applicant testified that following Judge Russo's sentence, he and Counsel were able to speak briefly before he was transported. He testified that during that meeting with counsel, he asked Counsel to file an appeal of the sentence on his behalf. Applicant testified that following his meeting with Counsel, he was unable to communicate with counsel and did not have any communication with Counsel for a lengthy period of time. However, on cross examination, Applicant acknowledged he did have the ability to send letters and access to mail, as he was able to send his pro se notice of appeal within three days of the resentencing hearing. He testified that

PMB

following his conversation with Counsel, he was under the impression that Counsel would be filing an appeal on his behalf and that he did not contemplate having to file his own appeal. However, Applicant also testified he did not attempt to write or call Counsel after resentencing regarding the status of an appeal, even though he was aware that notice had to be filed within ten days. Applicant testified that he attempted to file an appeal on his own, but that it was late because it was not timely served on the State, and it was dismissed by the Court of Appeals. Applicant testified that Counsel had failed to file an appeal following his conviction at trial as well.

After the conclusion of Applicant's testimony, the State presented testimony from Counsel. Counsel testified he recalled representing Applicant and reviewed his file prior to the PCR hearing. Counsel testified he was retained to represent Applicant. Counsel testified he met with Applicant both prior to the resentencing and immediately after. Counsel testified that he presented mitigation to Judge Russo and asked that the mandatory minimum be considered in light of that mitigation, but also acknowledged that the sentencing range of 25 years to 30 years did not leave much room. Counsel testified that he did not recall Applicant specifically asking him to file an appeal.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. As an initial matter, this Court finds both Counsel's

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testimony and Applicant's testimony credible.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003):

#### A. Appeal

This Court 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, Applicant testified that Counsel was specifically asked to file an appeal on Applicant's behalf following his re-sentencing and that Applicant was under the impression that Counsel would do so. Counsel testified he did not specifically remember Applicant requesting an appeal. Applicant testified that upon learning that Counsel had not filed an appeal on his behalf, Applicant attempted to do so on his own, however it was dismissed as untimely because the State was not served. It does not appear that Applicant knowingly and intelligently waived his right to appeal; therefore, he is entitled to pursue a belated appeal

PMB

pursuant to the procedure outlined in White v. State. 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 can be remedied pursuant to White v. State.

#### **B. All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby deemed to have been abandoned.

#### **V. CONCLUSION**

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice. This Court, however, concludes Applicant is entitled to petition for review of direct appeal issues from the conviction pursuant to White v. State.

#### **IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice;
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. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 18<sup>th</sup> day of July, 2017.



PAUL M. BURCH  
Presiding Circuit Judge  
Twelfth Judicial Circuit

Charleston, South Carolina

2017 AUG 17 PM 1:38  
DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
Doris Poulos O'Hara  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.



WITNESSES

LT. J. LEE FGSO

Kirby

---

PROS: PSP

D/O: 4/11/00

ARREST WARRANT NO. G-355640 (1)

G-355641 (1)

ACTION OF GRAND JURY

**TRUE BILL**

*[Signature]*

Foreman of Grand Jury

VERDICT *more than*

*Guilty of 400 grams*

*Drugging in prison*

*[Signature]* 8/16/01

Foreman of Petit Jury Date:

DOCKET NO. 200 0-GS-21- 839

PARR

**The State of South Carolina,**

County of FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2000

THE STATE

vs.

MICHAEL GEORGE MONFRIES *D Jackson*

EDDIE BLASH *H Anderson*

**Indictment for**

UNLAWFUL DRUGS

CERTIFIED: A TRUE COPY  
*[Signature]*  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

INDICTMENT FOR  
UNLAWFUL DRUGS

At a Court of General Sessions, convened on June 1, 2000,  
the Grand Jurors of FLORENCE County present upon their oath:

That MICHAEL GEORGE MONFRIES and EDDIE BLASH did in FLORENCE County on or about April 11, 2000, violate Section 44-53-370(E) of the Code of Laws of South Carolina (1976), as amended, in that the said MICHAEL GEORGE MONFRIES AND EDDIE BLASH was knowingly in actual or constructive possession of more than 400 grams to wit: 997.27 grams of Cocaine.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
SOLICITOR

COUNTY OF Florence VS. Eddie Blash  
STATE  
AKA:  
Race: B Sex: M Age: 43  
DOB: [REDACTED]  
Address: [REDACTED]  
City, State: [REDACTED]  
DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 00- 839  
A/W#: G355641  
Date of Offense: 4/11/2000  
S.C. Code § : 44-53-0370(e)(2)(e)  
CDR Code #: 0281

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: TRAFFICKING IN COCAINE, 400 G OR MORE

CONVICTED OF or  PLEADS  
25 yr - 36 m

in violation of § 44-53-0370(e)(2)(e) of the S.C. Code of Laws, bearing CDR Code # 0281  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted.  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST Patricia S 4342  
Parr, Patricia S SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 28 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
(and) or to pay a fine of \$ 200,000.00, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_, plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_  
Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing

Recipient: \_\_\_\_\_  
\*Fine: \_\_\_\_\_

§ 14-1-206 (Assessments 107.5 %)		\$ 200,000.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 215,000.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$ 425,230.00

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk [Signature]  
Court Reporter: [Signature]  
SCCA/217 (03/2011)

Presiding Judge [Signature]  
Judge Code: 2141  
Sentence Date: 5/2/2012

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Florence County

Thomas A. Russo, Circuit Court Judge

---

EDDIE BLASH, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION FOR WRIT OF CERTIORARI

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KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

1. Did the PCR judge correctly find that petitioner was entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because he did not knowingly and intelligently waive his right to direct appeal?

STATEMENT

In June of 2000, the Florence County Grand Jury indicted Blash for trafficking cocaine, indictment #2000-GS-21-839.<sup>1</sup> On August 13, 2001, Blash appeared before the Honorable James E. Brogdon and selected a jury. Later on August 13, 2001, Blash and his co-defendant Michael George Monfries proceeded to jury trial before the Honorable B. Hicks Harwell, Jr. On August 16, 2001, the jury returned a verdict of guilty and Judge Harwell sentenced Blash to 30 years. A notice of intent to appeal was not filed.

On August 16, 2002, Blash filed an application for post conviction relief, #2002-CP-21-1473. The State filed a return on February 14, 2003. An evidentiary hearing was held on October 14, 2004, before the Honorable James E. Brogdon. In a written order filed December 14, 2004, Judge Brogdon granted a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), and granted a 30 day continuance to allow Blash to amend his PCR application to include any other allegation of ineffective assistance of counsel. On January 14, 2005, Blash filed an amended application for post conviction relief. On March 11, 2005, before the second evidentiary hearing was scheduled, Blash filed a notice of intent to appeal. On April 7, 2005, the South Carolina Court of Appeals dismissed the notice of intent to appeal as not being timely filed. On April 29, 2005, Blash filed a motion to reconsider the dismissal. In an order dated May 20, 2005, the Court of appeal found that review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) , must be filed in the South Carolina Supreme Court. The appeal was then transferred to the Supreme Court. In an order dated June 14, 2005, the Supreme Court dismissed the appeal as premature.

---

<sup>1</sup> The offense listed on the indictment is "unlawful drugs" but the code section listed is for trafficking, S.C. code §44-53-370((e)).

On December 12, 2007, a second evidentiary hearing was held before the Honorable Thomas A. Russo. In a written order filed January 8, 2008, Judge Russo denied relief and dismissed the application on all grounds except for Judge Brogdon's grant of a belated appeal. This petition for writ of certiorari and a separately filed brief of petitioner follow.

ARGUMENT

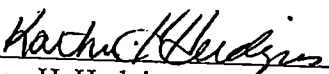
1. The PCR judge correctly found that petitioner was entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because he did not knowingly and intelligently waive his right to direct appeal.

Petitioner did not waive his right to direct appeal. In a letter dated August 17, 2001, petitioner's mother wrote trial counsel and asked him to file the notice of intent to appeal on her son's behalf. (App. p. 720). In a letter dated August 23, 2001, trial counsel informed petitioner's mother that the notice of intent to appeal had to be filed by August 27, 2001 and counsel would need payment in full before he would file the notice of intent to appeal. (App. p. 721). In the order granting the direct appeal, Judge Brogdon wrote, "If a client wishes to appeal and is indigent or claims at the end of trial to be indigent, trial counsel, whether appointed or retained, must serve and file a Notice of Intent to Appeal as required by Rule 203, SCACR, and request a determination of indigency by the Office of Appellate Defense. In the matter of an Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991)." (App. p. 766). The State conceded that petitioner was entitled to a belated appeal. Petitioner is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because he did not knowingly and intelligently waive his right to direct appeal

CONCLUSION

Based on the above argument, the belated appeal should be heard.

Respectfully submitted,

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of July, 2010.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Florence County  
Thomas A. Russo, Circuit Court Judge  
\_\_\_\_\_

EDDIE BLASH, JR.,

PETITIONER,

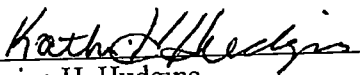
V.

STATE OF SOUTH CAROLINA,

RESPONDENT


\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on David Spencer, Esquire this 23rd day of July, 2010.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day  
of July, 2010.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: August 23, 2010.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Florence County

B. Hicks Harwell, Jr., Circuit Court Judge

---

EDDIE BLASH, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

BRIEF OF PETITIONER PURSUANT TO WHITE V. STATE

---

KATHRINE H. HUDGINS  
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ATTORNEY FOR PETITIONER.

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TABLE OF AUTHORITIES

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ISSUE PRESENTED

Did the trial judge abuse his discretion in imposing the maximum sentence because petitioner would not admit guilt following a jury trial?

STATEMENT

In June of 2000, the Florence County Grand Jury indicted Blash for trafficking cocaine, indictment #2000-GS-21-839.<sup>1</sup> On August 13, 2001, Blash appeared before the Honorable James E. Brogdon and selected a jury. Later on August 13, 2001, Blash and his co-defendant Michael George Monfries proceeded to jury trial before the Honorable B. Hicks Harwell, Jr. On August 16, 2001, the jury returned a verdict of guilty and Judge Harwell sentenced Blash to 30 years. A notice of intent to appeal was not filed.

On August 16, 2002, Blash filed an application for post conviction relief, #2002-CP-21-1473. The State filed a return on February 14, 2003. An evidentiary hearing was held on October 14, 2004, before the Honorable James E. Brogdon. In a written order filed December 14, 2004, Judge Brogdon granted a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), and granted a 30 day continuance to allow Blash to amend his PCR application to include any other allegation of ineffective assistance of counsel. On January 14, 2005, Blash filed an amended application for post conviction relief. On March 11, 2005, before the second evidentiary hearing was scheduled, Blash filed a notice of intent to appeal. On April 7, 2005, the South Carolina Court of Appeals dismissed the notice of intent to appeal as not being timely filed. On April 29, 2005, Blash filed a motion to reconsider the dismissal. In an order dated May 20, 2005, the Court of appeal found that review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), must be filed in the South Carolina Supreme Court. The appeal was then transferred to the Supreme Court. In an order dated June 14, 2005, the Supreme Court dismissed the appeal as premature.

On December 12, 2007, a second evidentiary hearing was held before the Honorable Thomas A. Russo. In a written order filed January 8, 2008, Judge Russo denied relief and

dismissed the application on all grounds except for Judge Brogdon's grant of a belated appeal. This brief of petitioner and a separately filed petition for writ of certiorari follow.

---

<sup>1</sup> The offense listed on the indictment is "unlawful drugs" but the code section listed is for trafficking, S.C. code §44-53-370((e)).

## ARGUMENT

The trial judge abused his discretion in imposing the maximum sentence because petitioner would not admit guilt following a jury trial.

The jury found Blash guilty of trafficking cocaine. The police received an anonymous tip that people in a white sports utility vehicle [SUV] with a Florida license tag and a green SUV with a California license tag had a large amount of drugs. The tip indicated that the people would be in the I-95 and I-20 area of Florence County. (App. p. 81, lines 10-16). Investigator Glenwood Kirby with the Florence County Sheriff's Department went to the area and eventually spotted a white SUV with a Florida tag parked in the parking lot of the Holiday Inn Express. (App. p. 61, lines 14-17; p. 81, lines 17 – p. 82, lines 1-7). The white SUV had not been parked there an hour earlier. Nobody was in the white SUV but as the investigator started to leave, a green SUV with California tags pulled into the parking lot and parked. (App. p. 82, lines 8-12). The investigator questioned the driver of the green SUV, Clayton Anthony Brown. (App. p. 64, lines 25 – p. 65, lines 1-6). Brown consented to a search of his person, the vehicle and his luggage in the vehicle. (App. p. 65, lines 7-24). The investigator did not find any drugs and Brown denied being there to meet anyone.

The investigator then asked the night clerk of the Holiday Inn Express if anyone had just checked in. (App. p. 66, lines 11-13). The clerk told the investigator that someone had just checked into room #243. (App. p. 66, lines 14 – p. 67, lines 1-7). The investigator knocked on the door of room #243 and the co-defendant, Michael Monfries answered the door. Blash was also in the room. (App. p. 67, lines 12-21). Both Blash and Monfries consented to a search of the room and their luggage. The investigator did not find any drugs. (App. p. 67, lines 18 – p. 68, lines 1-3).

The investigator then asked Monfries if he knew anything about the white SUV and Monfries admitted that the car was his. (App. p. 68, lines 4-7). Monfries consented to a search of

the white SUV. (App. p. 68, lines 7-9). The investigator found a package taped to the spare tire under the white SUV. (App. p. 68, lines 25 – p. 69, lines 1-4). The package contained cocaine. The investigator arrested both Monfries and Blash.

After trial, the jury returned verdicts of guilty for both Monfries and Blash. During sentencing the judge stated, “I want to know what redeeming virtue that a dealer, a trafficker, in cocaine has that why he shouldn’t get thirty (30) years. That’s what I want to know, not the fact that he decided he wanted to put the -- the State to strict proof. That doesn’t carry any argument at all with the court. What I want to know - - What redeeming virtue can you tell me about this man who’s been convicted by a jury of trafficking in cocaine who is a resident of Florida and who comes to South Carolina?” (App. p. 693, lines 23 – p. 694, lines 1-6).

When trial counsel attempted to present mitigating evidence on behalf of Blash , the judge stated:

I don’t know that he has ever assumed or accepted the responsibility for his criminal behavior; and I’m gone see if he’s gone accept it here today; and, if he doesn’t tell me and if he chooses not to tell me or if he wants to tell me something and he wants to consult with you, we gone give him every right to do that; and it might be he can say something to me that maybe for the first time shows he’s accepting some responsibilities for criminal behavior. That’s what the jury’s convicted him of; and, if he does that, I’m gone consider it; but, if he does not, I don’t see anything redeeming.

The first step toward rehabilitation of any person is acknowledgement of the behavior. He didn’t do that, and he had a right not to do that. He choose to go to trial, and he’s been convicted. And I must say to the jury I agree. I could not tell you that previously because I’m not entitled to an opinion, but the evidence was overwhelming. Direct and circumstantial. Overwhelming. Now I’ll hear from him.

I understand you went - - You told your lawyer. The jury didn’t buy it, and I tell you now neither do I.

(App. p. 697, lines 13 – p. 698. lines 1-10).

Blash continued to deny knowing what was going on with the cocaine. (App. p. 698, lines 11 – p. 699, lines 1-10). The transcript then reads and the judge stated, “(While Mr. Anderson [ trial counsel] and the defendant were conferring) Denial. I’m not - - I’m deaf as to denial. (While pounding on counter) The jury has convicted you. (WHEREUPON, Mr. Anderson continued conferring with Defendant Blash).” (App. p. 699, lines 11-16). Trial counsel then attempted to explain that if the case was reversed on appeal, anything Blash said could be held against him in a new trial. (App. p. 699, lines 17 – p. 700, lines 1-4). The judge then said, “Every objection you had was sustained. I don’t know where you gone find anything basis for appeal.” (App. p. 700, lines 5-6). Trial counsel then advised his client “to refrain from speaking to the court.” (App. p. 700, lines 13-16). The judge then responded, “I understand that. All right. Ask him if he wants to answer this question: You’re satisfied with the services that your lawyer has rendered in this case. Do you have any complaints with him?” (App. p. 700, lines 19-22). Blash responded, “No.” The judge then said, “None. All right, sir. Sentence - - You finished?” (App. p. 700, lines 24 – 25). The judge then sentenced Blash to thirty years and ordered that he be removed form the courtroom. (App. p. 701, lines 1-10).

The trial judge improperly punished Blash for exercising his constitutional right to a jury trial and connected right to remain silent. “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .” U.S. Const. amend VI. An accused has the right to put the State to its proof. See Griffin v. California, 380 U.S. 609, 85 S.Ct.1229, 14 L.Ed.2d 106 (1965). An accused can not be punished for exercising a constitutional right. See Doyle v. Ohio, 426 U.S. 610,

96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) (comment upon accused's post arrest silence); Griffin v. California, *supra*. (comment upon accused's failure to testify at trial).

In State v. Hazel, 317 S.C. 368, 370 453 S.E.2d 879, 880 (1995), this Court recognized that “[C]ourts have long adhered to the principle forbidding a trial court from improperly considering the defendant’s exercise of his constitutional right to a jury trial as an influential factor in determining the appropriate sentence.” (citation omitted). In Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999), this Court found that Davis was entitled to post conviction relief based on trial counsel’s failure to object when the judge considered Davis’s exercise of his constitutional right to a jury trial in imposing sentence. In State v. Brouwer, 346 S.C. 375, 550 S.E.2d 915 (Ct.App.2001) the South Carolina Court of Appeals found that the trial judge violated Davis by improperly considering the assertion of the right to trial by jury in determining sentence.

In Brouwer, the South Carolina Court of Appeal wrote:

We find the trial court's comments in this instance indistinguishable from those expressly disapproved in Davis. Although the court herein also stated it had never, and never would, “punish someone for exercising their right to a jury trial,” we believe the mere disavowal of wrongful intent cannot remove the taint inherent in the court's commentary, especially since the record fails to reflect an otherwise appropriate basis for Brouwer's disparate sentence. *See id.* at 322, 520 S.E.2d at 802 (finding trial court's sentencing rationale impermissible, despite fact that court concluded comments by stating “and when a fellow wants a trial [- ] which he's entitled to as a matter of law- [ ] that's fine”).

Brouwer 346 S.C. at 388, 550 S.E.2d at 922.

In the present case the judge commented, “I want to know what redeeming virtue that a dealer, a trafficker, in cocaine has that why he shouldn't get thirty (30) years. That's what I want to know, not the fact that he decided he wanted to put the -- the State to strict proof. That doesn't carry any argument at all with the court.” (App. p. 693, lines 23 – p. 694, lines 1-6). As in

Brouwer, this comment cannot remove the taint inherent in the judge's commentary. The judge's commentary clearly reflects that if Blash admitted guilt, the judge would consider that. If Blash did not admit guilt, the judge would find no redeeming qualities justifying less than the maximum. The judge commented:

I don't know that he has ever assumed or accepted the responsibility for his criminal behavior; and I'm gone see if he's gone accept it here today; and, if he doesn't tell me and if he chooses not to tell me or if he wants to tell me something and he wants to consult with you, we gone give him every right to do that; and it might be he can say something to me that maybe for the first time shows he's accepting some responsibilities for criminal behavior. That's what the jury's convicted him of; and, if he does that, I'm gone consider it; but, if he does not, I don't see anything redeeming.

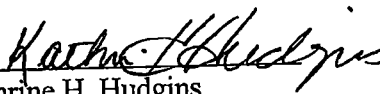
(App. p. 697, lines 13 – p. 698. lines 1-10).

In State v. Follin, 352 S.C. 235, 573 S.E.2d 812 (Ct.App. 2002), the South Carolina Court of Appeals distinguished State v. Brouwer, because the differences in the charges faced by each defendant led to the disparity in sentence rather than the fact that one defendant exercised her constitutional right to trial by jury and the other did not. The court noted, however, "We caution the Bench that a trial judge abuses his or her discretion in sentencing when the judge considers the fact that the defendant exercised the right to a jury trial." The issue in the present case does not involve disparate sentences between two co-defendants. The issue in the present case is the judge's improper consideration of Blash's exercise of his right to trial by jury, right to remain silent and right to refuse to admit guilt in imposing the maximum sentence.

CONCLUSION

Based on the above argument, the sentence should be reversed and the case remanded for a new sentencing hearing.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER.

This 23rd day of July, 2010

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Florence County

B. Hicks Harwell, Jr., Circuit Court Judge  
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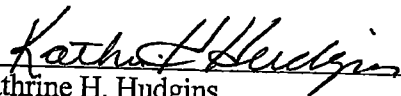
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STATE OF SOUTH CAROLINA,

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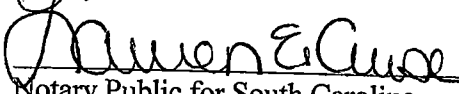
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the brief of petitioner, in this case has been served on David Spencer, Esquire, this 23rd day of July, 2010.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day  
of July, 2010.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: August 23, 2010.



---

**PER CURIAM:** We granted petitioner's request for a writ of certiorari to review his direct appeal. See White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Petitioner challenges his sentence, alleging it was imposed in violation of his constitutional rights. We agree. See Mitchell v. United States, 526 U.S. 314 (1999). Accordingly, appellant's sentence is reversed, and the matter remanded for resentencing.

**REVERSED AND REMANDED.**

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.**