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December 16, 2016

RECEIVED

DEC 22 2016

S.C. SUPREME COURT

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

RE: Samuel Brown v. State of South Carolina; Case #: 2014-CP-08-2566

Dear Mr. Shearhouse:

Enclosed for filing is the Notice of Appeal (original and clocked copy) in the above Post Conviction Relief (PCR) case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent;
- (2) The Order of Dismissal &
- (3) A Request for Representation on Appeal.

The Applicant-Appellant was represented by me as an indigent pursuant to my contract with the South Carolina Commission on Indigent Defense (SCCID) to handle PCR cases. By copy of this letter, I am forwarding a duplicate set of documents to the SCCID.

The Request for Representation on Appeal and the Affidavit in Support thereof are signed by me as attorney for Applicant-Appellant. If you need anything further, do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

Rodney D. Davis
South Carolina Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 323-4353
Davis@LowcountryLawOffice.com

✓ Enclosure(s). As stated above.
RDD/mmt

cc: Alicia A. Olive, Assistant Attorney General
Kimberly McCall, Appellate Division, SCCID

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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DEC 22 2016

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Jean H. Toal

Case #: 2014-CP-08-2566

Samuel Brown,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Samuel Brown appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable Jean H. Toal on September 16, 2016.

December 2, 2016.


Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

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DEC 22 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Jean H. Toal

Case #: 2014-CP-08-2566

Samuel Brown,

Appellant,

v.

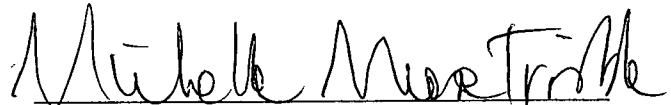
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Alicia A. Olive, P.O. Box 11549, Columbia, South Carolina 29211-1549, on December 5, 2016.

December 5, 2016.



Michelle Moore Trimble
Paralegal to Rodney D. Davis
Lowcountry Law Office
400 Faber Place Drive, Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
Alicia A. Olive, Assistant Attorney General
J. Rutledge Johnson, Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

RECEIVED

DEC 22 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Jean H. Toal

Case #: 2014-CP-08-2566

FILED
2016 DEC -8 PM 1:16
CLERK OF COURT
BERKELEY COUNTY, SC

Samuel Brown,

Appellant,

v.


State of South Carolina,

Respondent.

NOTICE OF APPEAL

Samuel Brown appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied following an evidentiary hearing before the Honorable Jean H. Toal on September 16, 2016.

December 2, 2016.


Rodney D. Davis
400 Faber Place Drive, Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
J. Rutledge Johnson, Assistant Attorney General
Office of the Attorney General, State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Jean H. Toal

Case #: 2014-CP-08-2566

FILED
2016 DEC -8 PM 1:11
SAMUEL P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Samuel Brown,

Appellant,

v.

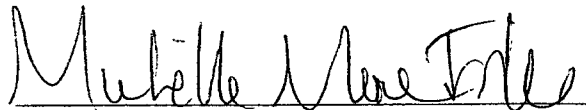
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, Alicia A. Olive, P.O. Box 11549, Columbia, South Carolina 29211-1549, on December 5, 2016.

December 5, 2016.



Michelle Moore Trimble
Paralegal to Rodney D. Davis
Lowcountry Law Office
400 Faber Place Drive, Suite 300
Charleston, SC 29405
Attorney for Appellant

Other Counsel of Record:
Alicia A. Olive, Assistant Attorney General
J. Rutledge Johnson, Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)

Samuel Brown, #254907,)

2014-CP-08-2566)

Applicant,)

ORDER OF DISMISSAL)

v)

State of South Carolina,)

Respondent.)

16 NOV 15 PM 2:02
CLERK OF COURT
BERKELEY COUNTY, S.C.
DW

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 20, 2014. The Respondent made its Return on August 31, 2015. An evidentiary hearing into the matter was convened on September 16, 2016, at the Berkeley County Courthouse. Rodney Davis, Esquire represented the Applicant. Christopher Harrison, a third-year law student at the Charleston School of Law under the South Carolina Supreme Court Rule 401 (Student Practice Rule), supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

This Court had before it a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the Applicant's application, the State's Return and the plea transcript.

#1
8/10/17

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court.¹ The Applicant was

¹ Applicant is currently serving a 10-year cocaine sentence from Charleston County which he pled to prior to

DW

indicted at the September 2013 term of the Berkeley County Grand Jury for Possession with Intent to Distribute Marijuana (PWID) (2013-GS-08-1334). Chad Shelton, Esquire represented the applicant. On May 20, 2014, the Applicant pled guilty as indicted. The Honorable Kristi L. Harrington sentenced the Applicant to terms of confinement for three (3) years.² The Applicant did not appeal his sentence or plea.

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

1. "Ineffective Assistance of Counsel"
 - a. "Failure to persue [sic] a trial"
 - b. "Failure to show competent advice on a plea"
 - c. "Failure to investigate"
 - d. "Failure to suppress evidence"
 - e. "Failure to advise defendant"
2. "Rule 5/Brady Motion"
 - a. Failure to object and preserve Rule 5/Brady violation"
3. "Due Process of Law"
 - a. "Prejudice to show illegal search and seizure"

#2
SST

At the hearing, the State read the procedural history of the case and then made a motion pursuant to Rule 56 (b) & (c) SCRPC for summary judgment because the Applicant had already served the full three (3) year term of his sentence and deemed this PCR action moot.

Applicant then alleged that the collateral consequences of his PWID conviction could be unfairly used against him in unrelated and possibly future proceedings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments at the post-conviction relief hearing. This Court has further had the opportunity to listen

pleading to the charges in this case.

to the State's motion and the Applicant's response. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

State's Motion pursuant to 56 (b) & (c), SCRPC

Pursuant to Rule 56 (b) SCRPC, "A party against whom a claim...is asserted. . .may, at *any time*, move with or without supporting affidavits for summary judgment in his favor as to all or any part thereof" (emphasis added). Rule 56 (c) SCRPC states, in part: "The judgment sought shall be rendered forthwith if the pleadings...show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

In this case, Applicant claims he is suffering the collateral consequences of his conviction despite having already served the full term. First, this claim was not specifically alleged in the Applicant's PCR application. See Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965) ("In an application for post-conviction relief, it is incumbent upon the applicant to make at least a prima facie showing which would entitle him to relief"). Second, this Court grants the State's motion for summary judgment because the Applicant failed to demonstrate any prejudicial effects resulting from the collateral consequences of his conviction. See Jackson v. State, 331 S.C. 486, 489 S.E.2d 915 (1997) (Where petitioner was entitled to evidentiary hearing "*because petitioner alleged in his application and during the hearing he was suffering continuing consequences of his alleged invalid conviction*") (emphasis added). Applicant did not make these allegations in his original application for post conviction relief filed on November 20, 2014, and did not file any subsequent amendments to his original application. The evidence before this Court clearly shows there is no genuine issue as to any material fact and the State, as the moving party is entitled to judgment as a matter of law.

#3
S/S

2 This sentence was satisfied in full not later than June 26, 2016.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.


This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#4

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.



The Honorable Jean H. Toal
Presiding Circuit Court Judge
Ninth Judicial Circuit

Nov. 10, 2016

Columbia South Carolina



ALAN WILSON
ATTORNEY GENERAL

November 8, 2016

The Honorable Jean H. Toal
Presiding Judge, Ninth Circuit
PO Box 12456
Columbia, SC 29211

RECEIVED

NOV 10 2016

Justice (Ret.)
Jean Toal

Re: **Samuel Brown, Jr. v. State of South Carolina**
Appellate Case No.: 2016-002157
Circuit Court Case No.: 2014-CP-08-2566

Dear Justice Toal:

I represent the State in the above matter. A hearing was held in the above post-conviction relief (PCR) matter before Your Honor on September 16, 2016. On the same date, a form order granting the State's motion for summary judgment was filed. The form order did not indicate whether a formal written order was or was not to follow. A Notice of Appeal was filed on Mr. Brown's Behalf on October 3, 2016. Thereafter, by letter dated October 28, 2016, the Supreme Court directed the State to provide information concerning Mr. Brown's PCR action.

Our records reflect that former Assistant Deputy Attorney General, Rutledge Johnson, submitted a full written proposed order via email to opposing counsel, Rodney Davis, for his review on September 27, 2016. In the email, ADAG Johnson indicated he needed to send the proposed order for Your Honor's review on the same date. According to our records, Mr. Davis did not respond. Under these circumstances, it appears that even though it did not specify a formal order was to follow, the form order filed on September 16, 2016, was not intended to be the final order in Mr. Brown's PCR action, and through inadvertence, the proposed written order was never submitted for Your Honor's review. Enclosed is the proposed order and the letter from the Supreme Court dated October 28, 2016.

I thank you, and if you should have any questions or concerns, please contact me at (803) 734-3737.

Sincerely,

for Alicia A. Olive
Assistant Attorney General

cc: Rodney D. Davis, Esquire
The Honorable Daniel E. Shearouse, Clerk of Court, SC Supreme Court

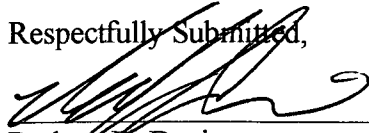
Enclosure

STATE OF SOUTH CAROLINA)	IN THE SUPREME COURT OF SOUTH CAROLINA
)	
COUNTY OF BERKELEY)	Case #: 2014-CP-08-2566
)	
)	
SAMUEL BROWN,)	
)	
Applicant.)	REQUEST FOR REPRESENTATION ON APPEAL
)	
-versus-)	
)	
STATE OF SOUTH CAROLINA,)	
)	
<u>Respondent.</u>)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal,
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,

 Rodney D. Davis
 South Carolina Bar #: 12396


Charleston, South Carolina
 December 2, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)

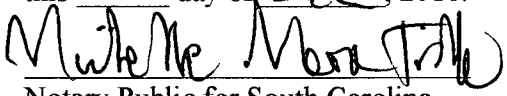
CASE NO: 2014-CP-08-2566

VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **Samuel Brown**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.



Rodney D. Davis
South Carolina Bar #: 12396

SWORN to and subscribed to me
this 2 day of Dec, 2016.

Notary Public for South Carolina
My Commission expires 4/26/2026