

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

SEP 06 2018

S.C. SUPREME COURT

—————
Certiorari to Union County

Honorable Alison Renee Lee, Circuit Court Judge
—————

ANTHONY DERONE RICHARDSON,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO 2017-002385
—————

APPENDIX
—————

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Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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NO EXHIBITS

1 MR. ANTHONY - Your Honor, the next case is State
2 vs. Anthony Richardson. Mr. Richardson is before the Court
3 on three indictments, 2011-44-344, 345 and 347. All of
4 these are for illegal distribution of recordings. They've
5 all been true billed by the grand jury. At this time Mr.
6 Richardson is entering pleas of guilty of all three
7 indictments, and there's a recommendation by the State for
8 a PTUP sentence for -- with -- one year probation to
9 terminate upon payment of the cost and a hundred dollar
10 fine.

11 THE COURT - What does this carry? I'm not
12 familiar ---

13 MR. ANTHONY - It carries up to a year.

14 THE COURT - How old are you, Mr. Richardson?

15 MR. RICHARDSON - 37.

16 THE COURT - You represented by Mr. St.Pierre?

17 MR. RICHARDSON - Yes, Your Honor.

18 THE COURT - You satisfied with his services?

19 MR. RICHARDSON - Yes, Your Honor.

20 THE COURT - I have in front of me three
21 indictments for illegal distribution of recordings. It's
22 alleged this occurred on June the 24th, 2010, June the 23rd,
23 2010 and August 18th, 2010. It's alleged that what you did
24 is sell, distribute or otherwise use to your advantage both

1 records or tapes or other articles appear to be DVDs in
2 violation of the laws -- also music, compact disc CDs and
3 DVDs. You understanding the charge?

4 MR. RICHARDSON - Yes, Your Honor.

5 THE COURT - How do you plead to these three
6 charges?

7 MR. RICHARDSON - Guilty.

8 THE COURT - Of all three?

9 MR. RICHARDSON - Yes, Your Honor.

10 THE COURT - Other than the recommendation that
11 was given to me a moment ago by the solicitor, has anyone
12 made any other promise or threats to cause you today to
13 enter your plea of guilt?

14 MR. RICHARDSON - No, Your Honor.

15 THE COURT - Are you today under the influence of
16 anything that would cause you to be intoxicated?

17 MR. RICHARDSON - No, Your Honor.

18 THE COURT - Are you today under the influence
19 that would -- I'm sorry -- are you entering your plea today
20 freely and voluntarily?

21 MR. RICHARDSON - Yes, Your Honor.

22 THE COURT - Mr. Richardson, you have a right to a
23 trial by a jury on this charge and you're presumed innocent
24 of the charge until such time as the State is able to prove
25 to a jury your guilt beyond a reasonable doubt. As to the

1 charge you have the right to remain silent, the right to
2 confront the witnesses against you and the right to have
3 your witnesses made to come to Court to testify for you.
4 You understand you have these rights?

5 MR. RICHARDSON - Yes, Your Honor.

6 THE COURT - Do you have any questions about them?

7 MR. RICHARDSON - No, Your Honor.

8 THE COURT - I advise you that by entering pleas
9 of guilt you're giving up these rights; you're also giving
10 up any defenses you might have to the charge. You
11 understand that?

12 MR. RICHARDSON - Yes, Your Honor.

13 THE COURT - Knowing all those things I ask you
14 again, how do you plead to these three charges?

15 MR. RICHARDSON - Guilty, Your Honor.

16 THE COURT - To all three?

17 MR. RICHARDSON - Yes, Your Honor.

18 THE COURT - All right, I want you to listen while
19 I'm given the facts.

20 MR. ANTHONY - Your Honor, on June 23rd of last
21 year and June 24th of last year and August the 18th of last
22 year there were informants who were working with the Union
23 Public Safety Department who went to a location on South
24 Pinckney Street where Mr. Richardson was doing business as
25 Hakeem Records and purchased on the 23rd purchased music CD

1 recordings, on the 24th purchased five movie DVD recordings,
2 and then on the 18th of August purchased DVD recordings from
3 Mr. Richardson, and these -- these were copied -- these
4 were copies of copyrighted material that had been illegally
5 copied and was being offered for resale and resold by Mr.
6 Richardson. He had a 2004 resisting arrest and a DUS and
7 then he had a simple possession of cocaine in 2002. That's
8 the extent of his general sessions history and going back
9 to 2000.

10 THE COURT - Is that -- are those the facts?

11 MR. RICHARDSON - Yes, Your Honor.

12 THE COURT - I accept your pleas, Mr. Richardson.
13 I find they are freely, voluntarily, knowingly and
14 intelligently entered, entered with the advice of competent
15 counsel with whom you're satisfied. I find the facts
16 support your plea and you've signed plea of guilt. Mr. St.
17 Pierre, were you appointed or retained?

18 MR. ST. PIERRE - Appointed, Your Honor.

19 THE COURT - I'll be glad to hear from you and
20 then your client.

21 MR. ST. PIERRE - Thank you, Your Honor. Just very
22 briefly. There's a -- just more to the negotiations or
23 recommendations. He will be surrendering all the DVDs
24 which were -- CDs and DVDs which were confiscated on August
25 the 20th. He will be getting back his table, his tent,

1 chairs and any other non-counterfeit or illegal items.
2 Also his co-defendant will -- who was also charged with him
3 will have her charges dismissed as well as a result of this
4 plea. We would be asking you to accept this plea, and he
5 intends to move forward from this and get this behind him.

6 THE COURT - Anything you wan to say, Mr.
7 Richardson?

8 MR. RICHARDSON - No, Your Honor.

9 THE COURT - All right, these sentences are all to
10 run concurrent; they're all for one year, suspended upon
11 payment of a hundred dollars plus cost and assessments.
12 You'll be on probation for a year, have your probation
13 transferred to Newberry County; you're to surrender any
14 illegal CDs, DVDs; you owe five hundred dollars for having
15 an appointed attorney. When you pay your fine and all
16 costs and appointed counsel fee, they can terminate your
17 probation. You understand that?

18 MR. RICHARDSON - Yes, Your Honor.

19 THE COURT - Thank you.

20 MR. ST.PIERRE - Thank you, Your Honor.

21 MR. ANTHONY - Thank you, Your Honor.

22 (END OF TRANSCRIPT)

23

24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 8 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Anthony Derone Richardson, as taken by me in the Court of General Sessions for the Sixteenth Judicial Circuit on December 5, 2011 and provided by me this the 1st day of July, 2016.

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

/s/ Shirley G. Broom

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

CLOCK IN TIME
CANCELLED
FORM 5
FILED FEB 28 2013

STATE OF SOUTH CAROLINA

COUNTY OF UNION

ANTHONY DERONE RICHARDSON
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILE FOR COURT
2013 MAR -6 PM 1:03
CLERK OF COURT

INSTRUCTIONS - 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.

1. Place of detention Went
2. Name and location of Court which imposed sentence UNION COUNTY, South Carolina
3. Name(s) of co-defendant(s) (if any) wh
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 GS4400346
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence
 - (a) 12-05-2011
 - (b) _____

A TRUE COPY

MAR -6 2013

W.D. Paul
CLERK OF COURT

- (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?
 YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina State of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed notice of Appeal
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 2-18-2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. ATTORNEY failure to properly serve STATE notice of Appeal
- ii. within (10) days
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: NOT IN custody

- (a) _____
- (b) _____
- (c) _____

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

- (a) _____
- (b) _____
- (c) _____

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~~ NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - 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?

N/A

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- 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) N/A
- (b) _____
- (c) _____

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

Attorney Joseph T. St. Pierre
4

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

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

(a) the name and address of each attorney who represented you:

i. Attorney Joseph T. St. Pierre

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. state & Appeal

ii. _____

iii. _____

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

dismissal of state court case

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

NA

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

I, Aiz, 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.



Applicant

SWORN or affirmed to and subscribed before me this
27 day of February, 2013.



Notary Public

My Commission Expires: 4/13/16

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, A.R., 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.

Anthony D. Peltz

SWORN to and subscribed before me this 27
day of February, 2013.

Janice Allen (L.S.)
Notary Public

My Commission Expires: 4/13/16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	SIXTEENTH JUDICIAL CIRCUIT
)	
Anthony Derone Richardson,	)	2013-CP-44-0070
)	
Applicant,)	
)	
v.	)	RETURN AND MOTION TO
	)	DISMISS
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed March 6, 2013, the Respondent would show this Court:

I.

The Applicant is not presently in custody. The Applicant was indicted at the December 2011 term of the Union County Grand Jury for three (3) counts of Illegal Distribution of recordings without names and address (2011-GS-44-0345, -0346, -0347). Joseph St. Pierre, Esquire, represented him. On December 5, 2011, the Applicant plead guilty to three (3) counts of Illegal Distribution of recordings (25 or fewer audio, 10 or fewer video), 1st offense. The Honorable John C. Hayes, III sentenced him to confinement for one (1) year suspended to \$100.00 plus court costs and one (1) year probation. A notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to timely serve opposing counsel with the notice of appeal on February 18, 2013.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Not in custody"

III.

The Applicant fails to allege a claim of ineffective assistance of counsel. The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to

secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

These facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Applicant fails to allege any grounds for PCR. Therefore, the Court should summarily dismiss this application for post-conviction relief.

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Applicant's current application for PCR be summarily denied and dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General

P.O. Box 11549
Columbia, SC 29211

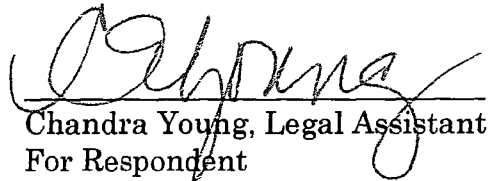
April 18, 2013

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION)	
)	
	)	2013-CP-44-0070
)	
ANTHONY RICHARDSON)	
)	
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 Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Anthony Richardson
914 Gray St.
Newberry, SC 29108

DATED this 18TH day of April, 2013.


Chandra Young, Legal Assistant
For Respondent

[Handwritten mark]

FILED FOR RECORD

STATE OF SOUTH CAROLINA
COUNTY OF UNION

2013 MAY 9 9 AM THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

WILLIAM F. GAULT
CLERK OF COURT

UNION, SC 2013-CP-44-0070

Anthony Derone Richardson,

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 6, 2013. The Respondent made its Return and Motion to Dismiss on April 18, 2013.

PROCEDURAL HISTORY

The records before this Court indicate that The Applicant is not presently in custody. The Applicant was indicted at the December 2011 term of the Union County Grand Jury for three (3) counts of Illegal Distribution of recordings without names and address (2011-GS-44-0345, -0346, -0347). Joseph St. Pierre, Esquire, represented him. On December 5, 2011, the Applicant plead guilty to three (3) counts of Illegal Distribution of recordings (25 or fewer audio, 10 or fewer video), 1st offense. The Honorable John C. Hayes, III sentenced him to confinement for one (1) year suspended to \$100.00 plus court costs and one (1) year probation. A notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to timely serve opposing counsel with the notice of appeal on February 18, 2013.

[Handwritten initials]

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

1. "Not in custody"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b) (2003), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20 (1976).

These facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, this Court summarily dismisses this application for post-conviction relief.

The Applicant fails to allege any grounds for PCR. Pursuant to Rule 12(b)(6), SCRPC, this Court summarily dismisses this allegation because it does not state a claim for which relief may be granted.

CONCLUSION


S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Union County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Rutledge Johnson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 27th day of Apr, 2013.


LEE S. ALFORD
Presiding Judge
Sixteenth Judicial Circuit Court

York, South Carolina.

14
2013

ATTORNEY GENERAL'S OFFICE

RECEIVED 5/13/13

ADMINISTRATIVE INSTRUCTIONS

JBG
5/10

FILE OPEN END

HAVE COPIES MADE

ROUTE TO _____

ORDER: _____ TRANSCRIPT

PEN RECORDS CLERK RECORDS

OTHER: See memo to Sec'd

copy to Leah Masdy

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STATE OF SOUTH CAROLINA

-----x

ANTHONY DERONE RICHARDSON,

Petitioner,

Case No.

-against-

2013-CP-44-0070

STATE,

Respondent.

-----x

November 18, 2014

York, S.C.

B E F O R E:

HONORABLE ALLISON LEE

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

LEAH MOODY, Esquire

Attorney for the Petitioner

J. Rutledge JOHNSON, Esquire

Attorney for the Respondent

Aileen Butler

Official Court Reporter

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I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

Anthony Richardson

Ms. Moody 7

Mr. Johnson 17

Joseph St. Pierre

Ms. Moody 190

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
P-1	Letter		23
P-2	Notice to Appeal		23

1 THE COURT: Yes, sir Mr. Johnson.

2 MR. JOHNSON: May it please the Court. Your
3 Honor, this is a case of Anthony Derone Richardson
4 versus State of the South Carolina. It is case number
5 2013-CP-44-0070.

6 Mr. Richardson was indicted the December 2011 term
7 of the Union County Grand Jury for three counts of
8 illegal distribution of recordings without and names
9 and addresses. Joseph St. Pierre, Esquire,
10 represented him. On December 5, 2011 he plead guilty
11 to three counts of illegal distribution of recordings,
12 first offense.

13 The Honorable John C. Hayes sentenced him to
14 confinement, one year suspended upon \$100 plus court
15 costs and one year probation. A notice of appeal was
16 filed on his behalf but the Court of appeal dismissed
17 the appeal for failure to timely serve opposing
18 counsel with notice, on February 18, 2013. His only
19 grounds for post conviction relief listed in the
20 application was, quote, not in custody, end quote. He
21 thereafter filed an application for post conviction
22 relief on March the 6th, 2013.

23 The State filed its return and motion to dismissed
24 for failure to state a claim on April 18, 2013.

25 The Honorable Lee S. Alford signed a conditional

1 Order of Dismissal on April 22, 2013, which was
2 thereafter filed May 8th 2013. And he is represented
3 by Miss Leah Moody who has a has a matter before the
4 Court.

5 MS. MOODY: Your Honor, may it please the Court,
6 we ask that Mr. Richardson be allowed to go forward
7 with his hearing.

8 In the application he does not state any grounds as
9 to the plea itself but he stated later on in the
10 application that his notice of appeal which he
11 requested his attorney to file was dismissed and the
12 basis was failure to file it timely. Under the rules
13 of the Court of Appeals if you miss the deadline for
14 filing your notice of appeal they can not enlarge that
15 time or give you an extension.

16 Your Honor, also due to trying to locate Mr.
17 Richardson, we were unable to find him according to
18 address that we have on his sentencing sheets which --
19 the address that we have that we were given was ■■■
20 Brantly Street, Newberry, South Carolina and based on
21 the documentation in my notes all of the letters that
22 we were sending him in order for him to send back his
23 claim -- of course at the time I did not have his full
24 file from his attorney -- they were returned to my
25 office. There is a letter that was sent to him on May

1 20, 2014. This was returned to us and we were able to
2 contact him actually by an e-mail and I got a call
3 from the Department of Probation, or either it was the
4 Department of Corrections, where they knew where he
5 was and that's how I was able to get in contact with
6 him.

7 He's maintained that his issue was that his
8 attorney did not file his Notice of Appeal properly
9 and therefore he was not afforded his opportunity to
10 have an appeal of his guilty plea and sentence. And
11 for those grounds Your Honor, we ask that we be able
12 to put testimony up as to his Notice of Appeal and the
13 failure to have a timely appeal.

14 THE COURT: Any response by the State?

15 MR. JOHNSON: Miss Moody and I have been in
16 contact about this issue coming up so on those grounds
17 I am prepared to go forward, but it is going to be a
18 very high burden. Not only does he have to prove
19 ineffective assistance, but he's got to prove
20 prejudice. He was sentenced to one year suspended
21 upon one year probation. That was 2011. He needs to
22 prove prejudice on what the appeal. He's also got to
23 state a ground that would be meritorious on the
24 appeal. So it's going to be a very high ground but I
25 am prepared to defend this claim.

1 THE COURT: In light of what has been stated to me
2 by Miss Moody it appears that issue is more or less
3 raised in his application for post conviction relief
4 and so I will allow it to go forward on that basis at
5 this time.

6 MS. MOODY: Thank you, Your Honor. At this time
7 we would like to call Mr. Richardson to the stand.

8 THE COURT: Step forward please to be sworn.

9 ANTHONY RICHARDSON, called as a witness, having
10 been duly sworn by The Clerk, was examined and
11 testified as follows:

12 THE COURT: State your full name please.

13 MR. RICHARDSON: Anthony Darone Richardson.

14 THE COURT: And where are you currently residing?

15 MR. RICHARDSON:

16 DIRECT EXAMINATION

17 BY MS. MOODY:

18 Q Mr. Richardson, where are you currently residing?

19 A Newberry.

20 Q What's your address?

21 A Its [REDACTED] Brown Chapel Drive.

22 Q Okay, and how long have you been residing at that
23 address?

24 A I have been there for like about six months at that
25 residence.

1 Q Okay, and you are here before the Court today on your
2 post conviction relief application, correct?

3 A Right.

4 Q Can you please state why you filed your application?

5 A I filed the application because the day I was sentenced
6 my attorney agreed to a plea and the plea was for the court
7 costs and other several costs would be included with the plea
8 would be a flat rate of \$600 and no probation and that's the
9 reason why I am in here.

10 Q And your attorney, who was your attorney in this case?

11 A Joseph St. Pierre.

12 Q And what were your exact charges that he represented
13 you on? Counterfeit goods CD's and DVD's.

14 Q And how many counts were there?

15 A I think if I remember it was three separate counts or
16 maybe a little more.

17 Q So you would agree with me that you had three counts
18 for selling illegal goods?

19 A Right.

20 Q Okay, and you indicated that you had an agreement with
21 your attorney, correct?

22 A Right.

23 Q And when you speak of an agreement you are talking
24 about a plea offer from the State?

25 A Right, we are talking about something me and him worked

1 out and I guess he took it back to the State and came back and
2 said it was okay and that was the agreement was to include court
3 costs. Everything else would be a flat rate of \$600 and no
4 probation at all.

5 Q And on the day you went before the Court did the State
6 in fact make that recommendation to the Court?

7 A I don't know if the State recommended because I was
8 depending on Joseph to explain it to the State because he had
9 told me that prior to going in front of the judge to take this
10 plea that he would correct it in the middle of the -- between
11 the judge and solicitor when we got out on the floor.

12 Q Let's back up. I want to be clear. When you decided
13 to go and plead to your charges of illegal distribution of
14 recordings --

15 A Right.

16 Q -- the three counts. You had a plea offer from the
17 State?

18 A From my understanding that's what the lawyer that was
19 representing me introduced.

20 Q And your understanding of that plea offer was that you
21 would plead to those charges in exchange for a fine and that
22 fine would total up to \$600?

23 A Right, including Court costs and other costs would be
24 totaled \$600 with no probation.

25 Q So on that day when you went were you prepared to pay

1 that 600?

2 A Yes, I was. I came to Court with the \$600.

3 Q And you went before Judge Hayes is that correct?

4 A Right.

5 Q And you went through the plea and answered all the
6 questions with the judge?

7 A Yes, I did.

8 Q Okay, and at that point he issued you a sentence?

9 A Yes, he did.

10 Q And what was that sentence?

11 A If I recall I think it was the fine, including the fine
12 and plus the year's probation and once you pay the fine off it
13 would be suspended or something like that.

14 Q So, your sentence was one year suspended upon the \$100
15 fine plus court costs?

16 A Right. It came out to -- right.

17 Q Is that correct?

18 A About \$1500 or something like that.

19 Q Well, I'm coming to that in one second. Your fine was
20 one year suspended upon \$100 plus the court costs and probation?

21 A No, ma'am it wasn't one hundred dollars.

22 Q Would you agree with me if that was in the sentencing
23 sheet that is what the what was the sentence that was given to
24 you?

25 A Yes, I agree.

1 Q But your issue with that sentence was the probation?

2 A Right, and the attached fines that was attached to the
3 \$600. Me and him agreed all the fines together would be a flat
4 \$600 with no probation. That is what the agreement me and him
5 made.

6 Q Okay. And that's for each count, the three counts?

7 A Right, all of them together including the fines, any
8 fines that attach to the court costs. The fine would be flat
9 \$600 you have to pay on the day of the sentence with no
10 probation at all.

11 Q Okay. Now after you received that sentence from the
12 judge what if anything did you do with the \$600?

13 A That I had in my pocket.

14 A Yes. I went to Joseph. Hey Joseph, what happened? My
15 first thing I did since representing me.

16 Q Okay.

17 A And he says, well, you go get the sentencing sheet. So
18 that's when I went to the clerk and got the sentencing sheet and
19 I found him downstairs of the courthouse and I went to ask him
20 to explain to me the sentencing part of the sheet.

21 Q Okay, so let me ask you this. When you say he, are you
22 speaking of your attorney?

23 A My attorney.

24 Q Okay. So you went and spoke with your attorney?

25 A Right.

1 Q And what did he explain to you regarding your
2 sentencing sheet?

3 A Well, he explained to me he said, well, they had on the
4 sheet it has the court costs it came at about between 1,200 and
5 \$1,500 and he said with a year probation attached to it. He
6 said, well, I don't know what happened. We can appeal. So I
7 said, well, can't you go in back in front of the judge to see if
8 we can get it reconsidered or altered? He said, no I will do it
9 in an appeal.

10 Q Okay, so you wanted to go back right then in front of
11 Judge Hayes?

12 A Yes.

13 Q Okay. So that it would be as you understood it the
14 \$600 of the fine and no probation?

15 A Right.

16 Q And Mr. St. Pierre said he would appeal it?

17 A Yes, he said he would appeal instead of going back in
18 front of the judge because the system was still going on. They
19 still have Court.

20 Q What was still going on?

21 A The court session was still going on.

22 Q Okay.

23 A I said we can go back in front of the judge and see if
24 we can correct this issue and he said no, we will do it in an
25 appeal, and he will file an appeal and that's what he did. We

1 had discussed about the appeal and he said, well, asked me what
2 do I think I should do. I said, well, you know, I think you
3 should do the right thing. If I need to to appeal it then I
4 need to appeal.

5 Q Okay, so, you all discussed the appeal and you in fact
6 tried to file your appeal?

7 A Right. Well, no. I asked him. I sought guidance
8 because he was my attorney at the time and I knew in order for
9 me to actually file an appeal I had to get -- seek information
10 from my attorney who was present. He had represented me at the
11 time.

12 Q So who filed your appeal?

13 A Appeal application?

14 Q Your Notice of Appeal, who filed it?

15 A Well, I can't really exactly -- I can't really remember
16 who who filed it, but I know he advised me on filing. What I
17 think that he filed the appeal, but I think that is why it was
18 denied because it wasn't timely or something like that.

19 Q On that date that you plead which was December 5, 2011,
20 within the ten dates of that date, did your attorney file an
21 appeal, a Notice of Appeal on your behalf?

22 A He suppose to have did. From my understanding the
23 letter that I got from the court saying that it wasn't timely.

24 Q Okay.

25 A So it was dismissed.

1 Q And so from that point what if anything happened with
2 your case?

3 A At a standstill. That's about it. Other than I got a
4 letter from the court. I called him and asked him why was it
5 dismissed and he explained to me that he could work this thing
6 out and may be he could call the people and find out why it
7 wasn't done timely. So that's why I would have to contact the
8 lawyer conduct and file a paper work with lawyer's conduct and
9 make him respond to me what happened to the appeal. Why the
10 appeal didn't go through.

11 Q Okay. So after you talked to him and he informed you
12 that the appeal, the Notice of Appeal was not filed timely --

13 A Right.

14 Q -- you went on with the sentence?

15 A I went on with the lawyer's conduct.

16 Q That's not what I am asking. I am saying as far as
17 your sentence that you received from the Court, what, if
18 anything, did you do as it relates to your fine that you had to
19 pay, the fees that you had to pay and the probation?

20 A Well, they transferred the case back to Newberry. If
21 that's what your asking me they transferred it back to Newberry
22 and that's when my probation officer said he had to call Joseph
23 and find out what his procedure, because he had never had a case
24 transferred from one county to the next and what he told Joseph,
25 I don't recall the conversation but ---

1 Q So in essence what I am trying to get at you had to pay
2 the fines, the fees and the fines?

3 A I had to pay them, right but I didn't pay them because
4 the appeal was in effect.

5 Q You did or did not?

6 A What I am saying I did not the pay the fine, is that
7 what you are asking, the fine for the probation, no.

8 Q Okay. Did you finish the probation?

9 A No, ma'am. The probation officer said that once you
10 file an appeal your probation stops. In other words when you
11 file appeal it stops it until the Appellant Court finds out what
12 they are going do with the case. So they told me at this time I
13 don't have to report until they get a letter from the Appeals
14 Court, the Court telling them what they need to do.

15 Q And since your case was dismissed, you they stayed your
16 probation? They held your probation?

17 A Right, that's what I have been instructed by the
18 probation officer in Newberry. He said it was stayed until he
19 gets a letter from the court because I think there was a
20 transition down there. A new guy. And he said that I would call
21 you to let you know what you do from there and I he called me on
22 the phone. I went back to probation officer and he told me they
23 will have to stay the case until they get an Order from the
24 Court.

25 Q Did you have any other conversations with Mr. St.

1 Pierre?

2 A I had a hard time contacting him. Once after I
3 realized that it was dismissed. Like I said before, I had to
4 write the lawyer's conduct and ask him to get him to respond and
5 and get in contact with him again. I did speak with him over the
6 phone.

7 Q And so what you are asking the Court hear to do today,
8 is what?

9 A Is to give my opportunity for the Court to seek an
10 appeal. I mean to renew the appeal or reconsideration of the
11 appeal.

12 Q So you are asking the Court to grant you the relief
13 that you may be able to appeal your guilty verdict --

14 A Yes.

15 Q Your guilty conviction and sentence?

16 A Yes. Right.

17 Q Is there anything else that you are asking the court
18 for?

19 A That's it.

20 Q Now, how have you been prejudiced in this matter other
21 then you had to paid the \$600. Are you saying the prejudice
22 that you have is the additional stuff that was added on by the
23 Court?

24 A Right, and also I feel like I had a right to an appeal,
25 and also the other thing that was attached to the plea also I

1 was prejudiced. I think it was entitled to an appeal.

2 Q You were entitled to appeal because you could appeal
3 within ten days?

4 A That's right.

5 Q Okay, and you didn't get the opportunity to have the
6 Court of Appeals look at your sentence?

7 A Right, because of my attorney ineffective assistance of
8 counsel.

9 MS. MOODY: No further questions for this witness,
10 Your Honor. Please answer any questions Mr. Johnson.

11 CROSS EXAMINATION

12 BY MR. JOHNSON:

13 Q Yes, sir, just briefly. Mr. Richardson, good to see
14 you again.

15 Are you currently on probation?

16 A According to Newberry they said that the probation
17 stopped. So right now according to them what they advised me
18 that it's on a standstill. Whatever that mean. I take that as
19 I am not.

20 Q So you've never been on this probation for this charge?

21 A Right, when they transferred from Union to Newberry I
22 was on it until, like I said, my public defender called Joseph
23 on the phone to find out what he needed to do with the case.

24 Q Currently are you reporting to probation officer on
25 this case?

1 A No, sir.

2 Q So you are not on probation? You're free and clear as
3 to this case as we speak right now?

4 A My probation officer advised me it's at a standstill
5 until the appeal -- whatever they said from the Court.

6 Q So what they're saying it's hanging over your head?

7 A That's basically what they're saying.

8 Q That's what --

9 A That's what my probation officer said.

10 Q That's your understanding is?

11 A Right.

12 MR. JOHNSON: That's all I have, Your Honor.

13 THE COURT: I don't have any questions. You may
14 step down. Thank you.

15 MS. MOODY: Your Honor at this time we call Mr.
16 Saint Pierre.

17 JOSEPH ST. PIERRE: Called as a witness, having
18 been duly sworn by The Clerk, was examined and
19 testified as follows:

20 THE COURT: State your full name, please.

21 THE WITNESS: Joseph Thomas St. Pierre.

22 DIRECT EXAMINATION

23 BY MS. MOODY:

24 Q Mr. St. Pierre, where do you practice law?

25 A In Lawrence.

1 Q And how long have you been practicing?

2 A About seven and a half years.

3 Q And do you recall representing Anthony Richardson?

4 A I do.

5 Q And you recall handling his case through a point of a
6 plea?

7 A I do.

8 Q And what was the actual plea offer in this case?

9 A The plea the offer -- the offer originally was for a
10 fine of a hundred dollars, for three of the charges. So a three
11 hundred dollar fine plus costs an assessments and if he could
12 have paid the fines then he would not have to go on probation.

13 Q And so, did you know the exact costs and assessments?

14 A I told him it would more than double, so over six
15 hundred dollars.

16 Q Okay, and when you spoke to him about that and you all
17 went to court, did you have any idea the total amount at that
18 time?

19 A No. I knew that when we did go to court he did not
20 have the money on him and he could not pay it so he would have
21 to go to probation.

22 Q So on that day that you all went before the judge he
23 had no money? He didn't have the six hundred dollars?

24 A That's correct.

25 Q Okay. So, from there did you all inform the Court

1 about his inability to pay that day?

2 A No, it was understood between all of us that because he
3 could not pay the fine he would have to go on probation and the
4 probation was PTUP'd as part of the plea agreement.

5 Q So when you say all of us are you talking about
6 yourself and the solicitor or yourself, solicitor and the judge?

7 A Myself, the solicitor. I'm not sure if the judge was
8 involved or not, but that was part of the deal between at least
9 myself, the solicitor and Mr. Richardson.

10 Q And so you all got through the plea. The judge
11 accepted his plea and issued his sentence. Do you recall what
12 the exact sentence was?

13 A It was one year suspended to one hundred dollar fine,
14 plus the cost and assessments, PTUP after he could pay the fines
15 and that probation would be transferred to Newberry, and I
16 believe in the plea the judge said that he would have to assess
17 the five hundred dollar public defender fee and Mr. Richardson
18 acknowledged that he understood that.

19 Q So, as far as PTUP, we are talking in acronyms. Can
20 you say what PTUP means?

21 A Sure. Probation terminates upon payment.

22 Q So, did you you explain or did you have opportunity to
23 explain that to Mr. Richardson?

24 A Yes.

25 Q Okay, and was there still an issue about having the

1 probation?

2 A At what point?

3 Q After the sentence was issued and -- well, let me back
4 up. After the sentence was issued and Mr. Richardson got a copy
5 of the sentencing sheets. Did he come back to you?

6 A I got a phone call from him that after he went down --
7 after he was transferred he met with Union after the plea to do
8 a little bit of paperwork and then made an appointment to go
9 meet with probation officer in the Union. After he met with the
10 probation officer in Newberry he called my office complaining
11 about the cost of probation, the monthly fees of probation and
12 then the public defender assessment that he claims he didn't
13 know about and wanted me to ask the judge to reconsider. I said
14 well, your options right now are an appeal or a PCR.

15 Q Okay, and so from -- and he choose obviously an option?

16 A To appeal.

17 Q And so what happened with the appeal?

18 A On December the 15th, around late in the day around
19 four o'clock, I drafted a Notice of Appeal. Faxed it to the
20 Clerk of Court in Union County and then also put a copy in the
21 mail. I asked in my letter the Clerk of Court to put a copy of
22 it into the solicitor's box, however I did not personally serve
23 the Notice of Appeal on the State. Later on in the process of
24 dealing with the Court of Appeals on this issue they said to
25 please provide notice that -- or please provide proof that I

1 served the State in a timely manner and when I could not give
2 them any kind of proof that I personally served the State the
3 appeal was dismissed.

4 MS. MOODY: Your Honor, may I approach?

5 THE COURT: Yes, ma'am.

6 Q Mr. St. Pierre, can you identify that document?

7 A This is the Notice of Appeal.

8 Q Okay, and that's what you filed on the 15th?

9 A That's correct.

10 Q Okay, and then this document do you recall? Could you
11 identify that document?

12 A That is a letter that I sent to the clerk's office at
13 Union County.

14 Q That doesn't have anything to do with the appeal?

15 A No.

16 Q Okay. So, that was something that you just had written
17 them?

18 A Right.

19 Q So I will hand you this document can you identify?

20 A This is the letter that I referenced earlier saying
21 from the Court of Appeals asking me to provide them proof that I
22 served the State.

23 Q Okay. So, again your testimony is that you served the
24 Clerk of Court but you didn't personally serve the solicitor in
25 the case?

1 A Correct.

2 Q Okay. And shortly thereafter when you received this
3 letter from the Court of Appeals you were not able to perfect
4 his notice?

5 A Correct.

6 Q Okay, and you received a letter stating that the appeal
7 was dismissed, the Notice of Appeal was dismissed?

8 A That's correct.

9 MS. MOODY: Your Honor, at this time I would like
10 to introduce into evidence the letter from the Court
11 of Appeals as well as his notice of intent to appeal.

12 MR. JOHNSON: No objection, Your Honor.

13 THE COURT: Without objection. So marked Petition's
14 number one and two.

15 (Petitioner's Exhibit one and two, Letter and
16 Notice to Appeal, received in evidence as of this date.)

17 Q Mr. St. Pierre, what is the rules regarding filing an
18 appeal, a Notice of Appeal in a criminal matter? Well, let me
19 rephrase that.

20 How much time do you have to appeal a criminal guilty plea in
21 a criminal matter?

22 A Ten days.

23 Q Okay. And with that your filing and serving all
24 parties involved in that particular case?

25 A Correct, yeah, ten days.

1 Q And so your testimony is that you filed it within that
2 particular timeframe?

3 A Yes.

4 Q And you did not serve it on the State?

5 A That's is correct.

6 Q And as far as whether Mr. Richardson had an appeal --
7 appealable issue, you were filing pit at his request?

8 A That's correct.

9 Q And he is in fact entitled to do that?

10 A He is.

11 Q Okay, and as to the actually sentence what did you
12 explain to Mr. Richardson regarding the actual sentence issued
13 by the judge.

14 A As far as what.

15 Q In terms of filing the appeal. I mean, you were filing
16 this appeal. He indicated that he was not satisfied with the
17 outcome?

18 A The amount of money that he had to pay.

19 Q Okay, and so did you take position as to whether or not
20 that was something that he would be successful on?

21 A Personally, yeah, I thought it would be frivolous, but
22 it's his right. If he tells me to appeal it then I got to
23 appeal it.

24 Q Okay, so understand that's your duty to appeal?

25 A Correct.

1 Q And based on that did he ever just say that he was
2 satisfied, he just go on after the appeal was dismissed?

3 A No. He demanded that I -- I told him you can PCR me,
4 and then he demanded that I fill out his PCR application. I
5 said I am going to be the witness. They will appoint you
6 another attorney. He said, well, I really need to win this
7 appeal so I can get my millions from the the pro se federal
8 action he has got pending in Union County against Union County.

9 Q Okay, so he is trying to appeal the sentences that
10 Judge Hayes issued, correct?

11 A Right.

12 Q And then you are saying -- I don't know anything about
13 the millions that you are talking about.

14 A After he was arrested in this case --

15 Q Okay.

16 A -- he filed a federal law suit against Union County for
17 wrongfully arresting him. So essentially when he plead guilty
18 to this plea I would assume that lawsuit would have gone away,
19 and then he told me after the appeal got dismissed that he
20 really needed to win that appeal so he could get his millions.

21 Q Okay, so there is obviously two basis for him trying to
22 file the appeal?

23 A I guess so, yes.

24 Q But at the end of the day the appeal was dismissed.
25 They didn't hear anything or review anything. The appeal was

1 dismissed on the notice of appeal not being properly perfected?

2 A Correct. Correct.

3 MS. MOODY: I no further questions for this
4 witness.

5 MR. JOHNSON: No questions from the State, Your
6 Honor.

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

8 MS. MOODY: No further witnesses, Your Honor.

9 MR. JOHNSON: No witnesses from the State.

10 THE COURT: I am missing some document, I think.
11 I do not have any copies of -- I have a copy of one
12 Indictment, the sentencing sheet I have is not
13 completed. So I do not have any sentencing sheets.

14 MS. MOODY: Your Honor, I will give you copies of
15 the sentencing.

16 THE COURT: And I don't have -- I don't know
17 whether a transcript has been prepared.

18 MR. JOHNSON: Your Honor, the State does not
19 order a transcript until they state a claim that is
20 cognizable, because I did a return motion to dismiss I
21 did not order a transcript, however I just told my
22 legal assistant to expedite it so I will get it to you
23 as soon as it comes in.

24 MS. MOODY: If I may approach?

25 THE COURT: Yes, ma'am.

1 MR. JOHNSON: And the sentencing sheet that I
2 received from the clerk's office is also blank.

3 THE COURT: Are there any arguments at this time?

4 MS. MOODY: No, Your Honor. I would ask that you
5 leave the record open. I think there is testimony
6 that there is no appeal filed is clear and we ask that
7 you grant my client the right to file his appeal and
8 whether or not the Court finds that -- the Court of
9 Appeals finds it something that they will take up that
10 would be solely based on them, but my client is
11 entitled to an appeal in this matter.

12 MR. JOHNSON: And Your Honor, I just e-mailed our
13 expert on probation department and parole services.
14 The reason I asked Mr. Richardson if he is currently
15 on probation to see whether or not this case is moot.
16 If there is no probation hanging over his head there
17 is no effect on him. He's free and clear and
18 probation messed up and they will be the ones that
19 have to bite the bullet.

20 I am trying to figure out if he is facing any
21 repercussions whatsoever, and that's I would ask to
22 leave the record open to see if I can move to dismiss
23 for mootness, but I don't refute that the appeal was
24 not timely filed.

25 MS. MOODY: Your Honor, I think probation -- I

1 think it is still hanging over his head. As to
2 whether it is going forward I would have to look back
3 at the case. There is a case that Justice Baity wrote
4 and it came out I I want to say in April of 2014 or
5 maybe it may have been 2013 that talks about tolling
6 the statute on probation and what happens in those
7 instances and I will be happy to provide it to the
8 State as well as the Court, but I would argue that he
9 would still be looking at probation until he pays
10 those fines that are basically on the sentencing sheet
11 that he has to pay.

12 THE COURT: We'll hold the record open for a copy
13 of the transcript from the plea, as well as the issue
14 relating to probation. If in fact that there is some
15 issue about probation I think that's something that
16 there will need to be some type of testimony whether
17 it's in the form of affidavit or whether you all want
18 to do telephone disposition or however you want to
19 handle it and provide information on that. I don't
20 think that it's something that I can just take
21 judicial notice of. I think there has got to be some
22 testimony about what the issue is. It may be that you
23 all can discuss that and figure out how you want to
24 handle that part, but I will hold the record open and
25 wait until I get a transcript and then copies of the

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appropriate documents.

MS. MOODY: Thank you, Your Honor.

MR. JOHNSON: Thank you, Your Honor.

(END OF TRANSCRIPT)

C E R T I F I C A T E

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I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 18th day of November, 2014.

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

April 10, 2018

Aileen Butler



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 28, 2012

Mr. Joseph T. St. Pierre
PO Box 722
Laurens SC 29360

Re: State v. Anthony Richardson
Appellate Case No. 2012-213609

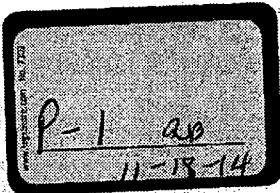
Dear Counsel:

Please provide proof of timely service of the notice of appeal upon the State within ten (10) days of the date of this letter. If the notice was not timely served, we may have no recourse but to dismiss the appeal. See Rule 203, SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK



cc: Robert Michael Dudek
Salley W. Elliott

Fax to clerk of court

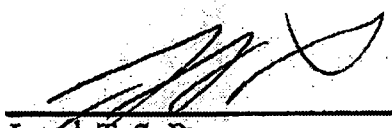
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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF UNION)	
	)	Warrant Numbers: M-675007, M-675008,
THE STATE	)	M-675009
)	
v.)	
)	
Anthony Richardson	)	NOTICE OF INTENT TO APPEAL
)	

TO: THE HONORABLE FREDDIE GAULT

Please let this letter serve as notice that the Defendant intends to appeal the sentence handed down by Judge Hayes on Monday December 5, 2011. The Defendant has been classified as indigent. Please forward this to the office of indigent defense.

Respectfully submitted



Joseph T. St. Pierre
P.O. Box 722
Laurens, SC 29360
864.681.5297
864.681.5298 Fax
joe@josephstpierre.com

FAXED
12-15-11
JSP

Date: December 15, 2011
Laurens, South Carolina

FILE FOR RECORD
2011 DEC 16 AM 11:43
WILLIAM F. GAULT
CLERK OF COURT
LAURENS, SC

P-2 an
11-18-11

STATE OF SOUTH CAROLINA FILED FOR RECORD IN THE COURT OF COMMON PLEAS
COUNTY OF UNION SIXTEENTH JUDICIAL CIRCUIT

2017 OCT 6 PM 1 41

Anthony Derone Richardson, CLERK OF COURT
UNION, SC

2013-CP-44-0070

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL
GRANTING A BELATED APPEAL
PURSUANT TO WHITE V. STATE¹**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 6, 2013. An evidentiary hearing into the matter was convened on November 18, 2014, at the Moss Justice Center in York, South Carolina before the Honorable Alison Lee. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Joseph St. Pierre, Esquire, also testified. At the conclusion of this hearing, the PCR court held the record open to obtain a copy of the plea transcript and other related documents. By an order dated March 1, 2016, Judge Lee ordered that due to the length of time that the record had remained open, the PCR court would no longer retain jurisdiction over the matter.

This matter was rescheduled for a hearing on August 10, 2016 in York County before the Honorable Letitia Verdin. Applicant was represented by Leah Moody, Esquire, and Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, all parties agreed to submit the entire lower court record along with the transcript from the initial PCR hearing to Judge Verdin for her to rule upon. This Court had before it a copy of

¹ 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974)

the records of the Union County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript, and the transcript from the November 18, 2014 PCR hearing.

I. PROCEDURAL HISTORY

Applicant is not presently in custody. Applicant was indicted at the December 2011 term of the Union County Grand Jury for three counts of Illegal Distribution of recordings without names and address (2011-GS-44-0345, -0346, -0347). Joseph St. Pierre, Esquire, represented him. On December 5, 2011, Applicant plead guilty to three counts of Illegal Distribution of recordings (25 or fewer audio, 10 or fewer video), 1st offense. The Honorable John C. Hayes, III, sentenced him to confinement for one year suspended to one year probation AND \$100.00 plus court costs.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to timely serve opposing counsel with the notice of appeal on February 18, 2013.

Allegations

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

1. "Not in custody."

Respondent made a Return and Motion to Dismiss on April 18, 2013. A Conditional Order of Dismissal was signed by the Honorable Lee S. Alford on April 22, 2013, and filed May 9, 2013, provisionally dismissing the action for failing to state a claim upon which relief may be granted in post-conviction relief. At the hearing, Applicant, through his Counsel, amended his Application to proceed on the ground that his Counsel was ineffective for failing to properly file the notice of appeal in his direct appeal action.

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that Counsel agreed to a plea deal that was for court costs and no probation. He testified that Counsel worked out a deal with the State where Applicant would pay a flat rate of \$600 and would not have to serve any probation. Applicant testified that his sentence was ultimately one year probation with a fine and the probation would end upon payment. He testified that the fine and court costs totaled around \$1500. Applicant further testified that he had \$600 with him at the hearing because he thought that the agreement was a flat fee of \$600. He testified that he approached Counsel after the hearing who explained the added court costs and probation.

Applicant testified that Counsel said he would appeal the sentence. He testified that he is not sure who filed the appeal but Counsel advised him on filing it. He testified that he thinks Counsel filed the appeal but it was dismissed as untimely. Applicant further testified that he is asking this Court to allow him to appeal his guilty plea and sentence.

Counsel Joseph St. Pierre's Testimony

Counsel testified that the original plea offer in this case was for a total fine of \$300 plus costs and assessments, and if Applicant could pay the fines then he would not have to go on probation. He testified that he told Applicant that the costs and assessments would make the fine more than double, or, over \$600. He testified that he had no idea what the total amount would be prior to the plea hearing. He testified that it was understood by himself, Applicant, and the solicitor in court that day that Applicant would not be able to pay the total amount and that he would have to go on probation. Counsel testified that the probation was to be terminated upon payment (PTUP) of the fines costs, and assessments as part of the plea agreement. Counsel

testified that the ultimate sentence Applicant received was one year suspended to one hundred dollar fine, PTUP after he could pay the fines plus the cost and assessments, and that probation would be transferred to Newberry County. He testified that the plea judge said that he would have to assess the five hundred dollar public defender fee and Applicant acknowledged that he understood that. He further testified that he explained to Applicant what "PTUP" meant.

Counsel testified that Applicant met with the probation officer in Newberry and called Counsel's office complaining about the fees of probation and public defender assessment, claiming that he did not know they would result and wanting Counsel to ask the judge to reconsider. Counsel testified that he told Applicant that his options were an appeal or PCR action.

Counsel testified that he filed a notice of appeal with the Clerk of Court's office and asked the clerk's office to put a copy in the solicitor's office's mailbox, but that he did not personally serve the notice on the State. He testified that the appeal was subsequently dismissed. Counsel testified that it is Applicant's right to have an appeal, however he thought that Applicant's issue with the amount of money he had to pay was frivolous. Counsel testified that Applicant told him that wanted to appeal his sentence to correct the costs and assessments and so that he could win a federal lawsuit for millions of dollars for wrongful arrest.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the lower court record and the testimony and arguments presented at the PCR hearing. This Court interprets Applicant's testimony at the PCR hearing to allege that Counsel was ineffective regarding the plea offer. This Court finds that Applicant has failed to show that Counsel's actions were deficient. This Court finds that Counsel provided credible testimony that Applicant's PTUP probationary sentence was understood in

advance by all parties involved. The plea record also reflects Applicant's understanding of the State's plea recommendation. Accordingly, Applicant has failed to meet his burden of proving that Counsel was deficient regarding his plea and any such allegation must be dismissed.

Belated Appeal

This Court finds that 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 said he would appeal the sentence and informed him that the notice of appeal was filed. This Court finds that Counsel did not properly serve the notice of appeal on the State and the appeal was dismissed because of Counsel's error. This Court finds Applicant did not knowingly and intelligently waive his right to the direct appeal; therefore, he is entitled to a belated appeal. As such, the Court finds Applicant did not knowingly and voluntarily waive his appellate rights and is entitled to an appeal from his conviction. Applicant's lack of an appeal shall be remedied pursuant to White v. State.

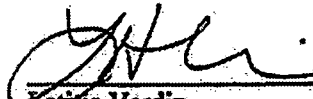
CONCLUSION

Based on the foregoing, this Court grants Applicant a belated review of his conviction pursuant to White v. State. With regard to all other claims, this Court finds Applicant has not established any violations that would require this Court to grant further relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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 the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions. Counsel and the 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 belated appellate review; and
3. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29 day of Sept., 2017.



Letitia Verdin
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina

WITNESSES

S/A B.A. Asbill/SLED

The State of South Carolina

County of Union

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

MARCH 07, TERM 2011

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M675009

THE STATE

vs.

Defendant

Witness:

C.C.C. PLS. AND G.S.

**ACTION OF GRAND JURY
TRUE BILL**

ANTHONY DERONE RICHARDSON

Reuben Healy
Foreperson of Grand Jury

Date: ~~FEB 3~~ 2011 MAR 3 2011

VERDICT

Indictment for

ILLEGAL DISTRIBUTION OF RECORDINGS

SC Code: 16-11-930

CDR Code: 1172

Foreperson of Petit Jury

Date:

66

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on March 03, 2011, the Grand Jurors of Union County present upon their oath:

ILLEGAL DISTRIBUTION OF RECORDINGS

That in Union County, South Carolina, on or about August 18, 2010, Anthony Derone Richardson did willfully and unlawfully act together with another to manufacture or knowingly sell, distribute, circulate, or cause to be sold, distributed, or circulated, or did possess for any of these purposes for commercial advantage or private financial gain, a phonograph record, tape, album of phonograph records or tapes or any other article, to wit: a quantity of ten (10) or less digital video discs (DVDs) without the actual name and street address of the manufacturer and the name of the actual performer or group prominently disclosed on the outside cover, box, or jacket containing the record, tape, album of records or tapes, or any other article, in violation of Section 16-11-930 of the Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR

WITNESSES

S/A B.A. Asbill/SLED

The State of South Carolina

County of Union

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

MARCH 07, TERM 2011

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M675008

THE STATE

vs.

Defendant

Witness:

C.C.C. PLS. AND G.S.

**ACTION OF GRAND JURY
TRUE BILL**

ANTHONY DERONE RICHARDSON

Foreperson of Grand Jury

FEB 3 2011 MAR 3 2011

VERDICT

Indictment for

ILLEGAL DISTRIBUTION OF RECORDINGS

SC Code: 16-11-930

CDR Code: 1172

Foreperson of Petit Jury

Date:

CO

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on March 03, 2011, the Grand Jurors of Union County present upon their oath:

ILLEGAL DISTRIBUTION OF RECORDINGS

That in Union County, South Carolina, on or about June 23, 2010, Anthony Derone Richardson did willfully and unlawfully act together with another to manufacture or knowingly sell, distribute, circulate, or cause to be sold, distributed, or circulated, or did possess for any of these purposes for commercial advantage or private financial gain, a phonograph record, tape, album of phonograph records or tapes or any other article, to wit: five (5) music compact discs without the actual name and street address of the manufacturer and the name of the actual performer or group prominently disclosed on the outside cover, box, or jacket containing the record, tape, album of records or tapes, or any other article, in violation of Section 16-11-930 of the Code of Laws of South Carolina (1976, as amended).

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


 DEPUTY SOLICITOR

WITNESSES

S/A B.A. Asbill/SLED

The State of South Carolina

County of Union

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

MARCH 07, TERM 2011

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M675007

THE STATE

vs.

Defendant

ANTHONY DERONE RICHARDSON

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Reah Healy
Foreperson of Grand Jury

MAR 3 2011

VERDICT

Indictment for

ILLEGAL DISTRIBUTION OF RECORDINGS

SC Code: 16-11-930

CDR Code: 1172

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION)

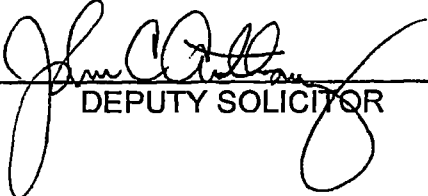
INDICTMENT

At a Court of General Sessions, convened on March 03, 2011, the Grand Jurors of Union County present upon their oath:

ILLEGAL DISTRIBUTION OF RECORDINGS

That in Union County, South Carolina, on or about June 24, 2010, Anthony Derone Richardson did willfully and unlawfully act together with another to manufacture or knowingly sell, distribute, circulate, or cause to be sold, distributed, or circulated, or did possess for any of these purposes for commercial advantage or private financial gain, a phonograph record, tape, album of phonograph records or tapes or any other article, to wit: five (5) digital video discs (DVDs) without the actual name and street address of the manufacturer and the name of the actual performer or group prominently disclosed on the outside cover, box, or jacket containing the record, tape, album of records or tapes, or any other article, in violation of Section 16-11-930 of the Code of Laws of South Carolina (1976, as amended).

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


 DEPUTY SOLICITOR