

# THE BOOZER LAW FIRM, LLC

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**Lance S. Boozer, Esq.\***

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October 12, 2018

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

The Honorable Sharon W. Staggers  
Clerk of Court  
125 W Main St.  
Kingstree, SC 29556

**RECEIVED**

OCT 16 2018

S.C. SUPREME COURT

**RE: Arthur Niles, v. State of South Carolina  
2016-CP-45-345**

Dear Mr. Shearouse and Ms. Staggers:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) Dennison Letter to Petitioner;
- (3) A copy of the Order which is to be challenged on appeal; and
- (4) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Niles in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Niles in this appeal.

Yours very truly,



Lance S. Boozer

Enclosures

cc: Julie Coleman, AAG  
Loriene French, OAD  
Arthur Niles

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

OCT 16 2018

S.C. SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2016-CP-45-345

Arthur Niles, BOP#97288-071, .....Petitioner,

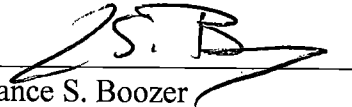
v.

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

**NOTICE OF APPEAL**

The Petitioner appeals the Honorable R. Ferrell Cothran's Order dated August 21, 2018, denying post-conviction relief to the Petitioner. The Order was received by undersigned counsel on October 12, 2018. A copy of the Order on appeal is attached to this notice. Pursuant to Rule 243(c), SCACR, undersigned counsel is unable to provide an arguable basis for asserting the PCR court ruling was improper. Petitioner is advised that he has twenty (20) days from the date of this appeal to file a pro se explanation as to why he believes that the determination by the PCR court was improper. *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L.S. Boozer", is written over a horizontal line.

Lance S. Boozer

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October 12, 2018

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October 12, 2018

Mr. Arthur Niles  
#97288-071  
USP ATWATER  
U.S. PENITENTIARY  
P.O. BOX 019001  
ATWATER, CA 95301

**RECEIVED**

OCT 16 2018

S.C. SUPREME COURT

**RE: Arthur Niles, v. State of South Carolina  
2016-CP-45-345**

Dear Mr. Niles:

The PCR court has dismissed your PCR application and I have filed the enclosed Notice of Appeal on your behalf. However, pursuant to Rule 243(c), SCACR, I am unable to provide an arguable basis for asserting the PCR court ruling was improper. Please be advised that you must within twenty (20) days from the date of this appeal, provide to the Supreme Court an explanation why this determination was improper. The explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If you fail to make a sufficient showing, your Notice of Appeal may be dismissed.

Yours very truly,



Lance S. Boozer



his application. Applicant was true bill indicted at the March 1993 term of the Williamsburg County Grand Jury for two counts of assault and battery with intent to kill, two counts of possession of a weapon during a violent crime, and accessory after the fact (1993-GS-45-146). William Legrand Carraway, Esquire, represented Applicant. On April 2, 1993, Applicant pled guilty before the Honorable Thomas W. Cooper, Jr. to assault and battery with intent to kill. Judge Cooper sentenced Applicant to a fifteen year term of imprisonment.

On August 10, 2015, Applicant filed a notice of appeal and a proof of service alleging timely service of the notice of appeal upon the Attorney General. Subsequently, Applicant served and filed a motion to file the notice of appeal out of time. The South Carolina Court of Appeals denied and dismissed Applicant's appeal in an Order filed December 10, 2015. The Remittitur was issued on December 30, 2015.

#### **CURRENT APPLICATION**

In his current application for post-conviction relief, Applicant alleges his conviction was unconstitutional for the following reasons:

1. Ineffective Assistance of Counsel in violation of due process pursuant to the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment rights of the United States Constitution.
  - a. Mr. Niles instructed counsel to file a notice of appeal on his behalf following sentencing, but counsel failed to do so. Mr. Niles did not freely or voluntarily waive his right to appeal his sentence or conviction. If Mr. Niles counsel would have files his appeal, Mr. Niles would have appealed the conviction because of involuntary guilty plea by failure to inform him of the collateral consequences of the plea.

Before the Court are the records of the Williamsburg County Clerk of Court, Applicant's appellate records, and the records from this post-conviction relief action.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### **Statute of Limitations**

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 ("the Act"). Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was sentenced on April 2, 1993. Accordingly, Applicant was required to file this Application on or before July 1, 1997. Applicant did not file this Application until July 22, 2016, which was nearly ten years beyond the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court must summarily dismiss this application for failure to file within the time mandated by the Act.

### Laches

This Court further finds Applicant's allegation that he did not voluntarily waive his right to a direct appeal is without merit and should be summarily dismissed. While the one-year limitations period in which to file a petition for post-conviction relief does not apply where the defendant alleges he was denied a direct appeal due to ineffective assistance of counsel, this allegation should be summarily dismissed because Applicant waited more than *fourteen* years after his guilty plea to challenge the involuntary waiver of his right to a direct appeal. This claim is barred by laches. Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002).

Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id.

Applicant should not be allowed to pursue his belated appeal claim as his application is barred by the doctrine of laches. Under South Carolina law, to establish laches, the circumstances must be such as to import that the complainant had abandoned or surrendered the claim or right which he now asserts. Willcox v. Stroup, 358 B.R. 824 (D.S.C. 2006), aff'd, 467 F.3d 409 (4th Cir. 2006), cert. denied, 2007 WL 579531 (U.S. 2007). In order to establish laches as a defense, a party must show that the complaining party unreasonably delayed its assertion of

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a right, resulting in prejudice to the party asserting the defense of laches. Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (2009).

Applicant's delay in asserting his right to have this Court review whether or not he voluntarily waived his right to a belated appeal is prejudicial to the State of South Carolina. Because of the delay in the filing of this application more than fourteen years after he pled guilty, the guilty plea transcript of Applicant's proceeding is no longer available. Inability to obtain Applicant's guilty plea transcript would substantially prohibit Respondent from fully responding to this claim at an evidentiary hearing. Without a guilty plea transcript, it would also be very difficult for the State of South Carolina to defend against any claims presented on appeal if a belated direct appeal were granted to the Applicant. Although the State's main witness is still available, Respondent represents to this Court that Mr. Carraway insists that he remembers absolutely nothing about Applicant or the guilty plea in question. The State would be severely prejudiced if forced to proceed at this time with no record of the proceeding and no witness to recall it.

This Court will summarily dismiss this application for post-conviction relief including the Applicant's allegation that he was not advised of his right to appeal because this allegation is barred by the doctrine of laches.

#### **CONCLUSION**

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. 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. Applicant's

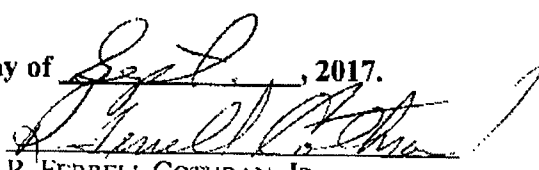
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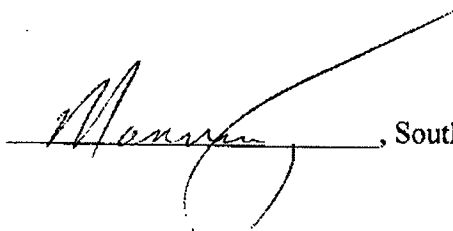
attorney shall file any reasons he may have with the Williamsburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Julie A. Coleman, Esquire  
PCR Division – 3<sup>rd</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Williamsburg County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 21 day of Sept., 2017.

  
R. FERRELL COTHRAN, JR.  
Chief Administrative Judge  
Third Judicial Circuit

  
\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

Arthur Niles, BOP #97288-071, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT

2016-CP-45-345

**FINAL ORDER OF DISMISSAL**

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This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed July 22, 2016. Respondent made its Return and Motion to Dismiss on July 14, 2017, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the doctrine of laches. A hearing over the motion to dismiss was scheduled for July 25, 2017, at the Sumter County Courthouse before the Honorable D. Craig Brown. Lance S. Boozer, Esquire, appeared on Applicant's behalf. Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office appeared on behalf of Respondent.

At the hearing, Mr. Boozer informed the presiding judge his client was currently incarcerated in federal prison in California and was unable to be transported to Sumter County for the hearing. He stated Applicant objected to the hearing going forward without being present. Counsel for both parties and the presiding judge agreed on the record that the case should be handled by the Chief Administrative Judge for the Third Circuit via paper motions, without a hearing over the motion to dismiss. Respondent submitted a proposed Conditional Order of Dismissal.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed September

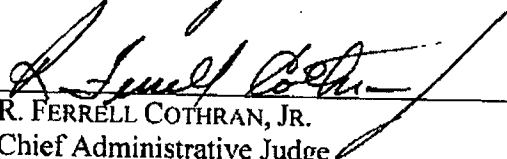
21; 2017 and filed October 3, 2017, provisionally denying and dismissing this action, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Counsel for Applicant requested additional time to submit an affidavit from Applicant in support of his current PCR application. This Court granted that request.

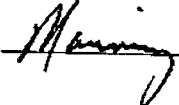
On March 22, 2018, Applicant filed his "Response to Conditional Order of Dismissal," dated March 20, 2018. An "affidavit" from Applicant was attached. This Court has reviewed Applicant's response and finds that all of Applicant's objections are meritless. Applicant has failed to show that he should be entitled to a hearing on his untimely PCR application. Accordingly, this Court finds that Applicant has failed to provide sufficient reason why the Conditional Order of Dismissal should not become final.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

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

  
R. FERRELL COTHAN, JR.  
Chief Administrative Judge  
Third Judicial Circuit

, South Carolina.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

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Case No. 2016-CP-45-345

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Arthur Niles, BOP#97288-071, .....Petitioner,

v.

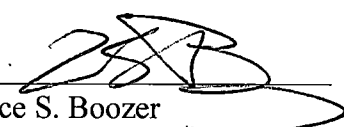
State of South Carolina,.....Respondent.

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**PROOF OF SERVICE**

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I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211 and to the Petitioner at UPS Atwater, P.O. Box 019001, Atwater, CA 95301. I further certify that all parties required by Rule to be served have been served this 12th day of October, 2018.

  
Lance S. Boozer  
The Boozer Law Firm, LLC  
1419 Pendleton Street  
Columbia, SC 29201  
Tele: 803-608-5543

**RECEIVED**  
OCT 16 2018  
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
)  
)  
County of Williamsburg )  
)  
)  
Arthur Niles )  
Petitioner )  
)  
vs. )  
)  
STATE OF SOUTH CAROLINA )  
)  
Defendant )

IN THE COURT OF  
COMMON PLEAS

Third  
Judicial Circuit

NOTICE OF APPOINTMENT  
FOR LEGAL COUNSEL

Case Number 2016-CP-45- 345

To: Boozer ,Attorney at Law

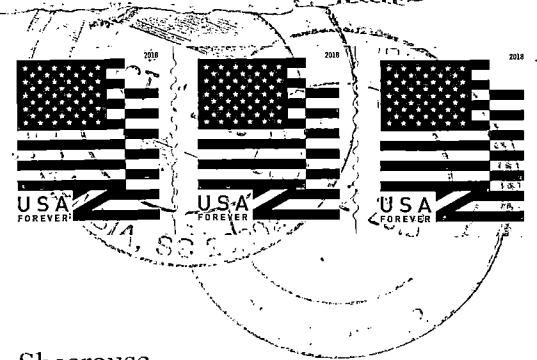
By order of the Chief Administrative Judge and pursuant to Rule 608, SCACR, you are hereby appointed to act as attorney for Arthur Niles, the Petitioner, in this action.

This 9th day of May, 2017.

Sharon W. Skaggs  
Judge/Clerk of Court

**THE BOOZER LAW FIRM, LLC**

1419 Pendleton Street  
Columbia, SC 29201



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