

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

Honorable J. Mark Hayes, II, Circuit Court Judge

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App. Case No.: 2018-0266

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RECEIVED

OCT 26 2018

S.C. SUPREME COURT

MICHAEL C. KENNEDY,  
RESPONDENT,

V.

THE STATE,  
PETITIONER.

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MOTION REGARDING CROSS-APPEAL

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This matter is now before the Court pursuant to a Motion regarding cross-appeal.

In support of this Motion, Respondent, through counsel, would submit the following:

1. On October 5, 2017, the Honorable J. Mark Hayes, II, issued an Order Granting Post Conviction Relief. By way of the Order, Judge Hayes granted the alternative relief of a White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), appeal and the Order stated that "Applicant may pursue a belated appeal through the filing of a notice of cross-appeal or by following the proper procedure with the South Carolina Supreme Court."

2. Thereafter, a timely Motion, pursuant to Rule 59, SCRPC, was filed by Petitioner and responded to by Respondent. On February 5, 2018, an Order denying the Motion was issued by the Honorable J. Mark Hayes, II.
3. On February 21, 2018, Petitioner filed a Notice of Appeal stating that the Order was received on February 16, 2018.
4. On February 23, 2018, undersigned counsel (hereinafter “counsel”) drafted a Notice of Cross-Appeal, which was placed in the mail on February 24, 2018. A copy of which is attached.
5. After receiving notice from the Office of Appellate Defense, counsel provided an Affidavit of Indigency to the Office of Appellate Defense on March 8, 2018. Before the expiration of the time limit for filing the Notice of Cross-Appeal, Respondent’s case was accepted by the Office of Appellate Defense.
6. On April 30, 2018, counsel submitted a Motion for Substitution and was substituted in as counsel via Order of this Court dated June 12, 2018.
7. Thereafter, undersigned counsel provided consent for Petitioner to obtain four extensions with the understanding that Respondent’s filings would not be due until such time as the State filed the Appendix as the petitioning party.<sup>1</sup>
8. At no time during the period during which extensions were sought, did Petitioner raise a concern to counsel that the Notice of Cross-Appeal appeared to not be filed.
9. On July 11, 2018, counsel was contacted by an Assistant Solicitor from Barnwell County stating he had received notice that the State had not appealed

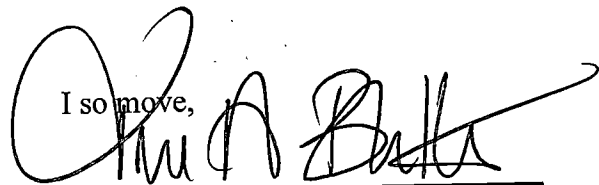
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<sup>1</sup> It must be noted that counsel has never handled a White v. State appeal stemming from the State’s appeal of an Order Granting Relief on a separate issue nor could counsel locate an appellate attorney, who had undertaken such an appeal.

and wanted to discuss the next steps. Counsel checked with the State and confirmed that the appeal was still going forward. Again, counsel did not discover at this time that there was any concern that the Notice of Cross-Appeal had not been filed.

10. On October 22, 2018, counsel received the Petition for Writ of Certiorari and Appendix. Upon review, counsel discovered that Petitioner was arguing that Respondent had affirmatively waived the White v. State appeal since a Notice of Cross-Appeal was not filed.
11. Counsel immediately contacted Petitioner to discuss the matter and the filing of the instant Motion. Counsel for Petitioner has provided counsel written verification that Respondent does not oppose this Motion or the requested relief.
12. Respondent, through counsel, requests that this Court honor the attached Notice of Cross-Appeal, which counsel believed to be filed, and allow Respondent to proceed with said cross-appeal so that further relief does not have to be sought through a third post conviction relief action regarding the White v. State appeal.<sup>2</sup>

I so move,



Tricia A. Blanchette  
S.C. Bar No. 74904  
PO Box 2147  
Leesville, SC 29070  
(803) 908-3266  
Attorney for Respondent

October 24, 2018

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<sup>2</sup> The State's appeal is from the Order of Judge Hayes granting a new sentencing hearing, which was originally granted by Order of this Court on January 22, 2015 on appeal from Respondent's first post conviction relief application. Michael C. Kennedy v. State, App. Case No. 2013-002334.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

Honorable J. Mark Hayes, II, Circuit Court Judge

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App. Case No.: 2018-000266

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MICHAEL C. KENNEDY,  
RESPONDENT,

V.

THE STATE,  
PETITIONER.

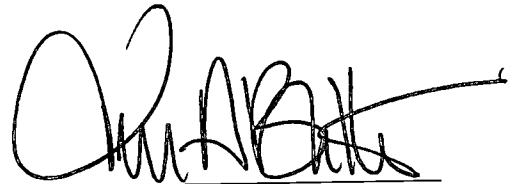
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CERTIFICATE OF SERVICE

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I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that a copy of a Motion was placed in the United States mail this 24<sup>th</sup> day of October 2018 to Julie A. Coleman, Assistant Attorney General, addressed as follows:

Office of the Attorney General  
ATT: Julie A. Coleman, Ast. AG  
PO Box 11549  
Columbia, SC 29211



Tricia A. Blanchette  
S.C. Bar No. 74904  
PO Box 2147  
Leesville, SC 29070  
(803) 908-3266

October 24, 2018

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OCT 26 2018  
S.C. SUPREME COURT

LAW OFFICE OF  
**TRICIA A. BLANCHETTE**

October 23, 2018

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

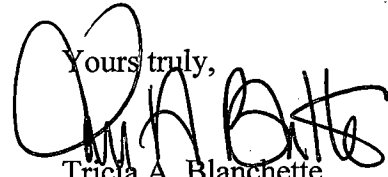
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S.C. SUPREME COURT

RE: Michael Kennedy v. State; Appellate Case No.: 2018-0266

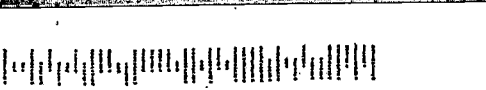
Dear Sir:

For filing the above referenced PCR appeal, please find an original and seven copies of a Motion, with Certificate of Service attached. Upon filing, it would be greatly appreciated if the extra filed copy could be returned in the enclosed envelope.

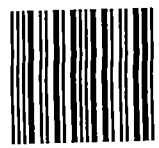
Thank you for your assistance with this matter. Please contact me if any additional information is needed.

Yours truly,  
  
Tricia A. Blanchette  
Attorney at Law

cc: Julie A. Coleman, Office of the Attorney General  
Michael Kennedy



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LAW OFFICE OF  
**RICIA A. BLANCHETTE**  
Box 2147 • LEESVILLE, SC 29070

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
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