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Attorneys At Law

November 14, 2018

RECEIVED

NOV 19 2018

S.C. SUPREME COURT

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

RE: Scotty M. Brown v. State

Dear Mr. Shearouse:

Thank you for your letter of November 6th which I received November 13th. I assume Veteran's Day with the mail kept me from getting it earlier. I contacted your office on November 13th to let you know that it may be a day or two past the 10 day request to respond from the date of the letter due to just getting it.

I was surprised that Mr. Brown filed the *pro-se* Notice of Appeal in this case as he had asked that I file a Rule 59(e) Motion to Alter or Amend the Judgment, a copy of which I am enclosing. It was filed October 3, 2018.

Apparently, he opted to just pursue the appeal without my knowledge, I certainly was only retained to represent him for the PCR hearing though I would have filed the Notice of Intent to Appeal on his behalf.

In regards to when the Order Denying PCR Relief was received, there was some problems with the Clerk of Court's office in getting Orders out for some reason with their computers. Both the Assistant Attorney General who handled this case, Jordan Cox, nor I received the Order until I contacted Judge Knie's office to see if she had prepared an Order. I am enclosing a letter that I wrote to Mr. Brown on September 25th which set forth that the Order was filed August 21, 2018, but the Clerk of Court had some computer problems and we did not receive the Order until September 24th. I am also enclosing a copy of an email to me from Jordan Cox dated September 24th referencing the delay.

I would assume that by Mr. Brown filing the appeal that the jurisdiction no longer is with Judge Knie to reconsider the Rule 59(e) Motion and the appeal will be the only remedy at this time.

Letter to Hon. Daniel E. Shearouse


November 14, 2018

Page two

It is my understanding that when an appeal is filed that the Court loses jurisdiction so I have contacted the Court Reporter to not prepare the transcript of the PCR hearing for the Motion to Reconsider unless the Motion to Reconsider has not been foreclosed by the appeal.

If you need anything further, please let me know. However, at this point I will take no further action unless I hear differently.

Very truly yours,



Richard W. Vieth

Henderson, Brandt & Vieth, P.A.

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RWV/kwh

enclosures

cc: Asst. Attorney General Jordan Cox
Scotty Brown



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Attorneys At Law

RECEIVED

September 25, 2018

NOV 19 2018

Scotty Brown #257869
Perry Correctional Institution
430 Oaklawn Rd.
Pelzer, SC 29669

S.C. SUPREME COURT

**RE: Scotty M. Brown v. State of South Carolina
2017-CP-42-00854**

Dear Scotty:

I am enclosing a copy of Judge Knie's Order denying the PCR relief and also the fact that she considered the Motion to Supplement the Record that we filed August 3, 2018.

As you and I have discussed at the jail on prior occasions, it is so difficult for someone to get a reversal on a guilty plea when the Court record clearly addresses each defendant as to whether the guilty plea was done freely and voluntarily, etc. As you know, had your attorneys testified that they did not remember discussing the parole eligibility date or that they did, in fact, give you bad information, I feel that the chances would have been greatly enhanced to get a jury trial. However, when the attorneys both testified that they never addressed parole eligibility it becomes more of a credibility issue for the Judge to basically determine whether or not the applicant proved his/her case for ineffective assistance.

The Order was filed August 21, 2018. However, the Clerk of Court has had some computer problems and we never received the Court Order until September 24th. I am glad your mother came by the office last week to ask if we had heard anything because I certainly thought the Court Order would have been issued by now. I had not thought about it since I had a murder trial so I contacted Judge Knie's office on Monday, September 24th and we learned that it had been filed August 21st. The Attorney General's Office had not received the Order as well so both of us got the Order September 25th.

As such, you have 30 days to file a Notice of Intent to Appeal. While the 30 days has passed since it was actually filed on August 21, 2018, I would assume that no one would raise the issue that an appeal was not timely filed since the Attorney General's office would have to agree that neither the Attorney General's Office nor I got the Order until we asked for it from the Judge's Office. So I would take the position that you have until October 23rd to decide about an appeal. I have the

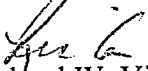
Letter to Scotty Brown
September 25, 2018
Page two

responsibility to file a Notice of Intent to Appeal if you want to appeal her ruling. If you do want to appeal her ruling, let me know as soon as possible so I can get the Notice of Intent to Appeal filed even though I will not be handling the appeal. I believe the SC Appellate Defense in Columbia would be the office to take over the appeal since you would be considered indigent and not have sufficient funds to hire an attorney for the appeal. I would just be filing the Notice of Intent to Appeal if you believe the Judge made an error in ruling the way she did.

Naturally, I take a lot of pride in what I do in Court and I know that we, along with your mother and Debbyitt Bush could not have done anything differently. It was simply a matter of your prior attorneys taking the oath to tell the truth and nothing but the truth and both testified that they never mentioned parole eligibility when discussing a plea, especially when one of the charges carried a life sentence.

If you feel an appeal is meritorious, again, let me know within two weeks so I have sufficient time with my schedule to file the Notice of Intent to Appeal. Otherwise, it was a pleasure meeting with you and working with you and your family and I wish you the very best.

Very truly yours,


Richard W. Vieth
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enclosure

cc: Annette Dorsey

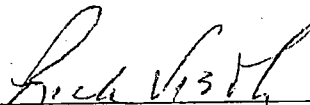
STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
Scotty M. Brown, #257869,)	
)	RULE 59(e) MOTION TO ALTER OR
Applicant,)	AMEND THE JUDGMENT
vs.)	
)	
)	CASE NO.: 2017-CP-42-00854
State of South Carolina,)	
)	
Respondent.)	

The Applicant, Scotty Brown, #257869, by and through his attorney Richard Vieth, file this Rule 59(e) Motion to have a rehearing on the fact that the Applicant does not believe the Order accurately reflects the testimony. A copy of the transcript may be required.

The Defendant would respectfully request a hearing on this issue at the earliest convenience of the Court.

Respectfully submitted,

HENDERSON, BRANDT & VIETH, P.A.



RICHARD W. VIETH
ATTORNEY FOR THE APPLICANT
360 E. HENRY STREET, SUITE 101
SPARTANBURG, S.C. 29302-2646
PHONE: 864-582-2962 FAX:864-583-1894

DATE: 10/3/2018

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 OCT -3 PM 1:33
M. HOPE BLACKLEY

Kimberly Hyder

From: Knie, Grace Secretary (Ashley Searcy) <gkniesc@sccourts.org>
Sent: Monday, September 24, 2018 3:59 PM
To: Jordan Cox; Rick Vieth
Cc: Kimberly Hyder
Subject: RE: Scotty Brown PCR case of last month

Jordan and Vick, I am just now getting flooded with emails. The County's system is still down. I will check back with them tomorrow to get you a copy. Thanks
Ashley

From: Jordan Cox [mailto:JCox@scag.gov]
Sent: Monday, September 24, 2018 10:29 AM
To: Rick Vieth <rvieth@hbvlaw.com>
Cc: Kimberly Hyder <khyder@hbvlaw.com>; Knie, Grace Secretary (Ashley Searcy) <gkniesc@sccourts.org>
Subject: RE: Scotty Brown PCR case of last month

Good morning, Rick.

I just spoke with Ashley Searcy in Judge Knie's office, and she confirmed that the OOD was signed on August 20th. I noticed our office did not have a copy of the clocked Order and it appears that the system may be down across the State. Ashley told me that she would assist you in getting a copy from the clerk's office if you wanted to run by, but I planned on getting a copy once the system comes back online. Let me know if you need anything else.

Take care.



Jordan A. Cox
Assistant Attorney General
Post-Conviction Relief Section

S.C. Attorney General's Office
Rembert C. Dennis Building
1000 Assembly St.
Columbia, SC 29201

Office: (803) 734-3412
jcox@scag.gov

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From: Rick Vieth <rvieth@hbvlaw.com>
Sent: Monday, September 24, 2018 10:07 AM
To: Jordan Cox <JCox@scag.gov>
Cc: Kimberly Hyder <khyder@hbvlaw.com>
Subject: Scotty Brown PCR case of last month

Jordan, Have you ever received an Order in this case. I know I filed a Motion to Supplement the PCR Record and Judge Knie's office replied to include that in the Order that she reviewed it and denied it as well. I think our Clerk's office is having computer problems and Orders are delayed in lot of instances. Scotty's mom came by one day last week when I was tied up and asked my secretary 'had we heard anything' and I noticed I don't have Order in file this morning. Thanks. Rick

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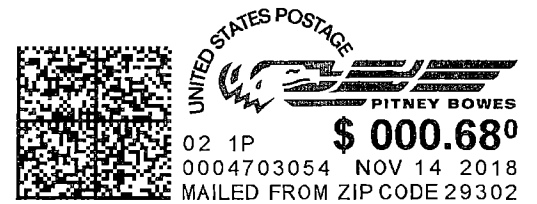
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