

Don A. Thompson
Attorney at Law

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Greenville, S.C. 29607

RECEIVED
MAR 06 2019
S.C. SUPREME COURT

Telephone: (864) 270-2831

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March 4, 2019

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

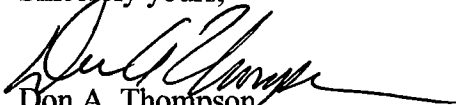
RE: Susan Hendricks, #355210 v. State of South Carolina
2017-CP-39-1032
PCR – Pickens County

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order which is to be challenged on appeal.
- (3) A certificate of Filing with the Pickens County Clerk of Court.

Sincerely yours,


Don A. Thompson

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2017-CP-39-1032

Susan Hendricks, #355210,

Appellant,

v.

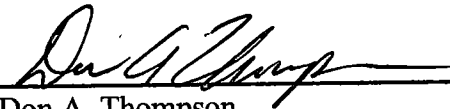
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Susan Hendricks appeals the order of the Honorable Perry H. Gravely dated February 11, 2019. Appellant received written notice of entry of this order on February 19, 2019.

February 27, 2019



Don A. Thompson
(S.C. Bar No. 5545)
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Greenville, S.C. 29607
(864) 270-2831
Attorney for Appellant

Other Counsel of Record:
Kelly Oppenheimer
Assistant Attorney General
S.C. Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM PICKENS COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge

Case No. 2017-CP-39-1032

Susan Hendricks, #355210,

Appellant,

v.

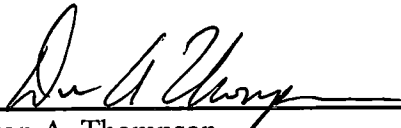
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina (respondent) by depositing a copy of it in the United States Mail, postage prepaid, on February 27, 2019, addressed to the State's attorney of record, Kelly Oppenheimer, Assistant Attorney General, S.C. Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211.

February 27, 2019



Don A. Thompson
(S.C. Bar No. 5545)
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Attorney for Appellant

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
2019 FEB 12 A 11:46

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Susan Hendricks, #355210,)
Applicant,)

2017-CP-39-1032

v.)

FINAL ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

This matter comes before this Court pursuant to an application for post-conviction relief filed by Susan Hendricks (Applicant) on August 30, 2017. Respondent made its return and motion to dismiss on or about November 19, 2018, requesting the application be summarily dismissed as there was no genuine issue of material fact alleged in the application upon which relief could be granted.

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 on November 26, 2018, 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. This conditional order was served on Applicant, through her counsel, on January 16, 2019.¹ Thereafter, Applicant, through her counsel, filed a response to the conditional order on January 22, 2019, entitled: "Reply and Objection to Conditional Order of Dismissal," which is incorporated herein by reference.

¹ Upon information and belief, neither counsel for Respondent nor counsel for Applicant received a copy of the filed conditional order from the Pickens County Clerk of Court. After discussing the matter via telephone, both parties pulled the conditional order from the public index and considered it served on both parties on January 16, 2019.

PH

In her response, Applicant alleges she did not knowingly and voluntarily waive her right to appeal from the denial of her post-conviction relief action. Applicant further alleges it was her desire to appeal the order of dismissal from her first post-conviction relief application, but she did not wish her previously retained counsel, Jeremy A. Thompson, Esquire, represent her on appeal. Applicant admits the letter she submitted to counsel Thompson was poorly worded, stating "I do not wish to go any further with an appeal. . . . There is not any reason to visit me!" Applicant further contends because she was unable to secure other counsel to represent her on appeal, she attempted to file a *pro se* notice of appeal on May 24, 2017, which the Supreme Court dismissed for failing to timely serve the notice of appeal.

This Court has reviewed Applicant's response to Respondent's motion to dismiss and the conditional order of dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the conditional order of dismissal should not become final.

Austin² Review

This Court finds this application must be summarily dismissed as there is no genuine issue of material fact based on its review of the application, return and motion to dismiss, and records of the general sessions proceeding, appellate proceeding, and prior post-conviction relief proceeding. In her application for post-conviction relief, Applicant's sole allegation is she is entitled to belated appellate review of the denial of her prior post-conviction relief action. However, the letter provided by prior post-conviction relief counsel, which was attached to and incorporated into Respondent's return and motion to dismiss, establishes Applicant voluntarily waived her right to appeal her initial post-conviction relief action. Furthermore, following the

² *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

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attempt by Applicant to file a *pro se* notice of appeal to the Supreme Court, counsel Thompson informed the Court via letter dated June 12, 2017³, he sent a letter to Applicant on August 23, 2016, advising Applicant the order of dismissal from her post-conviction relief matter had been filed and further advising her of the date by which a notice of appeal needed to be filed. In that August 23rd letter, counsel Thompson also enclosed an affidavit of indigency for Applicant to complete and return to counsel Thompson, should she want to be represented by the Office of Appellate Defense. After receiving said letter, Applicant sent the aforementioned letter instructing counsel Thompson she did not wish to pursue an appeal. Additionally, Applicant wholly failed to enclose a copy of the affidavit of indigency which she had been provided should she want someone other than counsel Thompson to represent her on appeal.

Accordingly, this Court finds the record conclusively refutes Applicant's sole allegation she is entitled to belated appellate review of the denial of her prior post-conviction relief action. S.C. Code Ann. § 17-27-70(c) 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 finds this application must be summarily dismissed with prejudice for failing to state a genuine issue of material fact. S.C. Code Ann. § 17-27-70; Rule 12(b)(6), SCRPC; Rule 56, SCRPC.

Before this Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a *prima facie* showing based on the information set forth in her response, and, therefore, she is not

³ A copy of this letter is incorporated herein by reference.

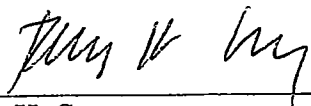
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entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's conditional order of dismissal and above, the application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant she 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 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 11th day of February, 2019



PERRY H. GRAVELY
Chief Administrative Judge
Thirteenth Judicial Circuit

Pickens, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2017-CP-39-1032

Susan Hendricks, #355210,

Appellant,

v.

State of South Carolina,

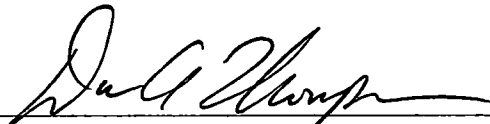
Respondent.

CERTIFICATE OF FILING
WITH THE PICKENS COUNTY
CLERK OF COURT

I certify that I have filed the Notice of Appeal and Proof of Service in the above referenced matter with the Pickens County Clerk of Court by depositing a copy of the same in the United States Mail, postage prepaid, on February 28, 2019, addressed to:

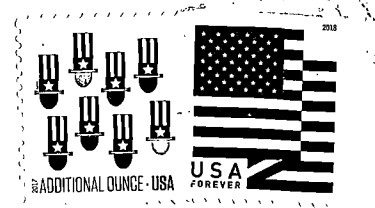
The Honorable Harold P. Welborn, Jr.
Pickens County Clerk of Court
P.O. Box 215
Pickens, S.C. 29671

March 4, 2019



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Attorney for Appellant

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Clerk, Supreme Court of South Carolina
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