



Montrio Belton

LAW OFFICES OF MONTRIO BELTON, LLC

March 18, 2019

Via USPS Regular Mail

Darius Stewart SCDC# 00299076
Kirkland Correctional Institution
4344 Broad River Road
Columbia, SC 29210

Re: The State v. Darius J. Stewart
Appellate Case No. 2019-000363

RECEIVED
MAR 20 2019
SC Court of Appeals

Dear Mr. Stewart:

Attached are the:

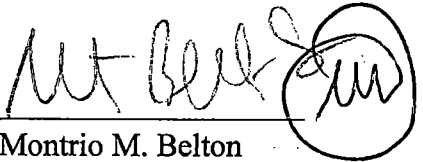
1. Communiqués from The South Carolina Court of Appeals (Attachment #1);
2. Notice Of Appeal filed on your behalf (Attachment #2); and
3. Order Denying Defendant's Motion to Reconsider.

It is important that you read all documents carefully and comply strictly by the dates contained for the South Carolina Court of Appeals therein.

Pursuant to Rule 203(d)(1)(B)(iv), SCAR, an appellant ("you") must provide the Court with the legal issue to be raised on appeal. Based on my analysis, the sentence was excessive; however, it was a lawful sentence, and there is no legal basis for an appeal. The Court indicates it imposed the sentence, *inter alia*, because of your prior criminal convictions and the fact that the Solicitor dismissed more than 65 years of charges, including 45 years on the spitting in which there was limited, if any, defense.

Though I think your better legal route is to pursue a Post Conviction Relief ("PCR") claim for ineffective assistance of counsel, you have a legal right to pursue this appeal. However, you must inform the Court of Appeal of the legal basis for your appeal. **Please read attachment #1 from the Court of Appeals. You have twenty (20) days from today's date (March 18, 2019) to provide the Court of Appeals with of "any arguable basis of issues preserved for appeal" or the Court of Appeals will dismiss your appeal.**

Please let me know if there is anything I can do to assist you with this appeal. However, please note, as an attorney, I cannot file any action in Court that I know is frivolous or without legal merit. Let me know if you want me to visit you at the prison to explain all of this to you. Please call my office at (803) 324-4529, and Vernard will arrange the visit.

A handwritten signature in cursive script, appearing to read "Montrio M. Belton", with a circular flourish at the end.

Montrio M. Belton
SC Bar #102189
125 Hampton Street
P.O. Box 566
Rock Hill, SC 29731
803-324-4529
Attorney for Appellant

C: South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Attachment #1



RECEIVED
3/11/19

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 08, 2019

Mr. Montrio Montess Belton, Sr., Esquire
125 Hampton Street, Suite 200
PO Box 566
Rock Hill SC 29731

Re: The State v. Darius J. Stewart
Appellate Case No. 2019-000363

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court, or this appeal will be dismissed.

Very truly yours,

V. Claine Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Robert Michael Dudek, Esquire
Sharon Josepha Ohayon, Esquire



RECEIVED
RS 3/11/19

The South Carolina Court of Appeals

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March 08, 2019

Mr. Montrio Montess Belton, Sr., Esquire
125 Hampton Street, Suite 200
PO Box 566
Rock Hill SC 29731

Re: The State v. Darius J. Stewart
Appellate Case No. 2019-000363

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review

filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

The State, Respondent,

v.

Darius Jermale Stewart, Appellate.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Robert Michael Dudek, Esquire
Sharon Josepha Ohayon, Esquire

Attachment # 2



Montrio Belton

LAW OFFICES OF MONTRIO BELTON, LLC

March 5, 2019

The Honorable David Hamilton
Clerk of Court for York County
Post Office Box 649
York, SC 29745-0649

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2019 MAR -5 PM 1:21

RE: State, Respondent, v. Darius Stewart, Appellant, Case No. 2018-GS-46-08147

Dear Mr. Hamilton:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,

Montrio M. Belton
125 Hampton Street, Suite 200
PO Box 566
Rock Hill, SC 29731
(803) 324 - 4529
Attorney for Appellant

Other Counsel of Record:
Sharon Ohayon, Assistant Solicitor
Sixteenth Circuit Solicitor's Office
1675-1A York Highway
York, South Carolina 29745
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

William H. Seals Jr., Circuit Court Judge

Case No. 2018-GS-46-08147

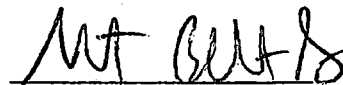
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2019 MAR -5 PM 1:21
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

The State, Respondent,
v.
Darius J. Stewart, Appellant.

NOTICE OF APPEAL

Darius J. Stewart appeals his conviction and sentence in this case. The sentence was imposed by the Honorable William H. Seals, Jr. on February 14, 2019. This appeal is taken from the order of the Honorable William H. Seals Jr., dated February 27, 2019, which denied appellant's motion to reconsider. Appellant received written notice of entry of this order on February 27, 2019.

March 5, 2019



Montrie M. Belton
SC Bar #102189
125 Hampton Street
P.O. Box 566
Rock Hill, SC 29731
803-324-4529
Attorney for Appellant

Other Counsel of Record:
Assistant Solicitor Sharon Ohayon
1675-1A York Highway
York, SC 29745
803-628-3020

STATE OF SOUTH CAROLINA)
)
IN THE COURT OF APPEALS)
State of South Carolina)
)
-vs-)
)
Darius Stewart,)
)
Defendant.)
_____)

Indictment No.: 2018-GS-46-08147

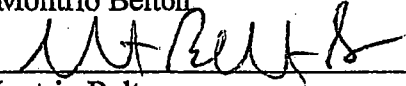
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC
2019 MAR -5 PM 1:24
1000 WOODWAY A

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), SCACR, the issue to be raised on appeal is whether the trial court abused its discretion when it imposed the twenty (20) year sentence upon the Appellant after he pled guilty to Assault and Battery of a High and Aggravated Nature.

The undersigned does not have a good faith basis to believe that this issue is properly before the Court of Appeals. The undersigned did not object contemporaneously to the sentence because it was a lawful sentence pursuant to SC Code Ann. § 16-003-0600 (B)(1); therefore, there was no legal basis in which to base an objection. However, the undersigned does believe the sentence was excessive-- considering the facts. The undersigned did timely file a Motion to Reconsider that was denied by the Court. (see attached order).

Nevertheless, the undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. *See Frazer v. South Carolina*, 430 F.3d 696, 705 (4th Cir. 2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'") (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

Respectfully submitted,
s/Montrio Belton

Montrio Belton
Law Offices of Montrio Belton, LLC
P.O. Box 566
Rock Hill, South Carolina 29731
(803) 324-4529
Attorney for Darius Stewart

York, South Carolina

March 1, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
State of South Carolina,)
)
-vs-)
)
Darius Stewart,)
)
)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT
2018-GS-46-08147

ORDER DENYING DEFENDANT
MOTION TO RECONSIDER

2019 FEB 27 AM 9:06
DAVID HAMILTON
CLERK
SIXTEENTH JUDICIAL CIRCUIT
YORK COUNTY, SC

FILED-RECEIVED

From an incident that occurred on October 29, 2018, Darius Stewart, was charged with Assault and Battery of a High and Aggravated Nature which carries a penalty of 0 to 20 years in the Department of Corrections, three counts of Throwing Bodily Fluids *each* count carrying a penalty of 0 to 15 years and one count of Resisting Arrest which has a penalty of 0-10 years. Prior to these offenses, Mr. Stewart was out on bond for the Unlawful Neglect of a Child which carries a penalty of 0 to 10 years. Also, per the plea negotiation, Assistant Solicitor Ohayon agreed not to direct indict Defendant for Attempted Murder, which carries a maximum sentence of 30 years. Therefore, Mr. Stewart was facing a potential penalty of 95 years in the Department of Corrections should he proceed forward to trial and be found guilty. Mr. Stewart's attorney, Montrie Belton, competently and wisely negotiated a plea whereby the State would recommend time served on the Unlawful Neglect of a Child, and then dismiss all three counts of Throwing Bodily Fluids, and the Resisting Arrest. Also the State would not indict the Defendant on Attempted Murder. Via the plea deal, Mr. Stewart only faced a plea to the Assault and Battery of High and Aggravated Nature thus his exposure was limited to 20 years. *This plea was without recommendation or negotiation.*

CERTIFIED TRUE COPY
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DAVID HAMILTON
CLERK
SIXTEENTH JUDICIAL CIRCUIT
YORK COUNTY, SC

The incident for which Mr. Stewart was being charged involved an act of violence whereby in summary, Mr. Stewart attacked a police officer thereby hitting him twice in the head and further choked the officer for a period of time. Furthermore, Mr. Stewart spit on three officers and was extremely belligerent and unruly using loud profanity throughout the entirety of the event. All of this took place at and in front of parents and children at a youth football game. Same was recorded via police body cams and cell phone recordings as well as documented by witness statements. The court viewed these recordings at the plea and found same violent and shocking. The Solicitor, Kevin Brackett, and Assistant Solicitor Ohayon both emphatically asked the Court for the maximum of 20 years stating that Mr. Stewart already received the benefit of having exposure of 65 years dismissed as a result of the plea negotiations. Furthermore, both Solicitors emphatically stated that a message needed to be sent to society that this kind of lawless behavior is not acceptable and will not be tolerated. Mr. Stewart has a past criminal record of Resisting Arrest, Public Disorderly Conduct, Possession With Intent to Distribute Crack Cocaine Near a School, Assault and Battery, Assault and Battery of a School Employee, Malicious Injury to Personal Property, Manufacturing\ Distributing Crack Cocaine, Distributing\Selling Crack Cocaine Near a School. Four of his past eight crimes involve violence and a lack of any respect for lawful authority.

Mr. Stewart entered a plea pursuant to Alford. The Court considered the lengthy presentation by the Solicitor, Mr. Belton's limited mitigation, the violent nature of the offenses, the negotiations, as well as Mr. Stewart's lengthy and violent criminal record. The Court sentenced Mr. Stewart to 20 years. Mr. Belton filed a Motion to Reconsider. After careful and deliberate consideration, this Court finds the sentence as given appropriate.

THEREFORE, Defendant's Motion to Reconsider, is hereby,

DENIED.

February 23, 2019
Marion, SC

A handwritten signature in black ink, appearing to read "W. H. Seals, Jr.", written in a cursive style.

William H. Seals, Jr., Circuit Court Judge

LAW OFFICES OF MONTRIO BELTON, LLC

125 HAMPTON STREET, SUITE 200

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ROCK HILL, SC 29731

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MAR 20 2019

SC Court of Appeals

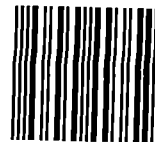
South Carolina Court of Appeals

P.O. Box 11629

Columbia, SC 29211



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