

February 25, 2020

William D. Swaney, #249421
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

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

RECEIVED

FEB 28 2020

S.C. SUPREME COURT

RE: William D. Swaney, #249421 v State of South Carolina
2001-CP-37-00052

Dear Mr. Shearouse:

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

- 1) Proof of Service of the notice of appeal on the Respondent
- 2) A copy of the Order which is to be challenged on appeal
- 3) A copy of an Order of this Court dated November 1, 2005
- 4) A Memorandum In Support of this Notice of Appeal

I am mailing also a second set of these same documents along with a Certificate of Service for the same and a self-addressed stamped envelope. Please return to me by way of the provided SASE, filed stamped copies of these documents.

No filing fee is included regarding this matter as this is an appeal of a post-conviction relief matter.

Thank you for your assistance in this matter.

Sincerely, *William D. Swaney*
William D. Swaney
APPELLANT

February 25, 2020

William D. Swaney, #249421
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

Mr. Robert Dudek, Esq.
S.C. Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211-1433

RE: William D. Swaney, #249421 v State of South Carolina
2001-CP-37-00052

Dear Mr. Dudek:

Please find enclosed, my Notice of Appeal of the ruling in this PCR action. I am requesting an attorney with the Office of Appellate Defense be appointed to handle this appeal. Please have someone in your office contact me about the same.

Thank you for your assistance in this matter.

Sincerely, William D. Swaney
William D. Swaney, #249421
APPELLANT

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FEB 28 2020
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Case No. 2001-CP-37-00052

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FEB 28 2020

S.C. SUPREME COURT

William D. Swaney, #249421

Appellant,

State of South Carolina

v

Respondent.

NOTICE OF APPEAL

William D. Swaney appeals the Order of the Honorable Alexander S. Macaulay dated December 3, 2004.

February 25, 2020

Respectfully submitted,

Other Counsel of Record:

Alan Wilson

Attorney General

SC. Attorney General's Office

Post Office Box 11549

Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

William D. Swaney

William D. Swaney, #249421

Tyger River Correctional Institution

200 Prison Road

Enoree, South Carolina 29335

APPELLANT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Oconee County
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

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S.C. SUPREME COURT

Case No. 2001-CP-37-00052

William D. Swaney, #249421,

APPELLANT,

State of South Carolina,

v

RESPONDENT.

PROOF OF SERVICE

I, William D. Swaney, hereby certify that I have served the Notice of Appeal and Memorandum In Support of Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on February 25, 2020, addressed as follows: Alan Wilson, Esquire, Attorney General, S.C. Attorney General's Office, Post Office Box 11549, Columbia, South Carolina 29211; The Honorable Beverly H. Whitfield, Clerk-Oconee County Clerk, PO Box 678, Walhalla, SC 29691-0678; South Carolina Supreme Court, The Honorable Daniel E Shearouse - Clerk, Post Office Box 11330, Columbia, SC 29211.

William D. Swaney

William D. Swaney, #249421
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

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FEB 28 2020

S.C. SUPREME COURT

Case No. 2001-CP-37-00052

William D. Swaney, #249421,

Appellant,

State of South Carolina,

v

Respondent.

MEMORANDUM IN SUPPORT OF
NOTICE OF APPEAL

Appellant, William D. Swaney, submits this memorandum seeking to provide this Honorable Court with clear understanding of why his Notice of Appeal is filed at this time.

PROCEDURAL HISTORY

Appellant filed his application for post-conviction relief which relates to the above captioned case number on January 30, 2001, with the Oconee County clerk of court. An evidentiary hearing into the matters which were alleged in the PCR application was convened on August 9, 2004, at the Oconee County Courthouse. Applicant was present at the hearing and represented by Bradley Norton, Esquire.

Respondent was represented by Christopher L. Newton, Esquire. On December 3, 2004, by written order, the Honorable Alexander S. Macaulay denied and dismissed the applicant with prejudice.

A timely Notice of Appeal was filed, and Aileen P. Clare, Esquire, was appointed as appellate counsel. However, Ms. Clare filed a motion to appoint outside counsel due to a conflict of interest with the OAD. The motion was granted, and Bradley A. Norton, Esquire, was subsequently appointed as appellate counsel.

However, Bradley A. Norton, Esquire, acting in capacity as ineffective appellate counsel, failed to timely serve and file the Petition for Writ of Certiorari and the Appendix. Consequently, this Court issued an Order of dismissal on November 1, 2005, dismissing the action due to the failure to timely serve and file the Petition for Writ of Certiorari and the Appendix.

CURRENT INITIATION OF APPEAL

Appellant files this current notice of appeal seeking equitable opportunity of this Court to allow him to perfect his appeal which would ultimately provide Appellant a full and fair opportunity to receive fair opportunity to receive his full 'one bite at the apple'.

Appellant attorney, Bradley A. Norton, Esquire, totally abandoned Appellant and this case. The record in this case

Clearly shows this fact.

Pursuant to Austin v State, 305 SC 453, SE2d (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. See also Bray v State, 366 SC 137, 620 SE2d 743 (2005) - A defendant has a right to an appellate counsel's assistance in seeking review of the denial of post conviction relief.

Counsel on appeal from denial of post conviction relief is required to brief arguable issues, despite counsel's belief that appeal is frivolous, to safeguard the right to appeal. id. In this case, Appellant's right to appeal and path for doing so was not safeguarded.

Appellate counsel is not required to raise every nonfrivolous issue that is presented by the record. Thrift v State, 302 SC 535, 397 SE2d 523 (1990).

However, in the case at bar, Appellate counsel did not raise any issue, hereby violating Appellant's Sixth, Fifth, and Fourteenth Amendment United States Constitutional rights. See e.g., Banks v Reynolds, 54 F3d 1508 (1995); United States v Allmendinger, 894 F3d 121 (2018).

Finally, as Bradley A. Norton, Esquire, was counsel of record by appointment; Appellant, arguendo, would not be allowed to file substantive documents such as the Petition for Writ of Certiorari and the Appendix with the Court as there is no right to 'hybrid representation'.

See Foster v State, 298 S.C. 306, 379 S.E.2d 907 (1989);
Miller v State, 388 S.C. 347, 697 S.E.2d 527 (2010);
Jones v State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v
Cabrera-Pena, 350 S.C. 517, 567 S.E.2d 472 (2002);
State v Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998);
State v Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977).

Appellant was not notified of any petition pursuant
to Johnson v State, 294 S.C. 310, 364 S.E.2d 201 (1988),
neither did appellate counsel, Bradley A. Norton, Esquire,
file any motion with the court seeking to be relieved as
counsel.

Castleberry v Crisp, 414 F.Supp. 945 (1976) - Defendant
should not suffer for mistakes of his counsel.

United States v Marshall, 872 F.3d 213 (4th Cir. 2017) - Criminal
defendants do not have a federal constitutional right to an
appeal; they have only a statutory right.

Defendants have a constitutional right to appellate counsel
when appellate review is available as a matter of right. id.

CONCLUSION

Appellant seeks understanding of this Court in this matter
and seeks that this Court would in the interest of justice and
equity, allow perfection of this appeal. O'Sullivan v
Boeckel, 526 U.S. 838, 845 (1999) - State prisoners must give
the state courts one full opportunity to resolve any constitutional

issues by invoking one complete round of the state's established appellate review process. See also Castleberry v Crisp, 414 F.Supp. 945 (1976).

Mangal v State, 421 SC 85, 805 SE2d 568 (2017) - There are situations where the interest of Justice require PCR courts to be flexible with procedural requirements before PCR applicants suffer procedural default on substantial claims.

"Courts have inherent power to do all things reasonably necessary to insure that just results are reached to fullest extent possible". Ex parte Dibble, 279 SC 592, 310 SE2d 440 (1983).

Respectfully submitted, William D. Swaney
William D. Swaney, #299421
APPELLANT
Tiger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

This 25th day of February, 2020.