

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2020-CP-26-2070

State of South Carolina,

Respondent,

v.

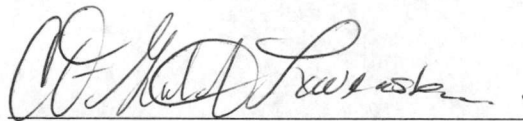
Robert L. Meyers,

Appellant.

**AMENDED NOTICE OF APPEAL**

Robert L. Meyers appeals the order of the Honorable Judge William H. Seals, Jr. dated July 31, 2021. Appellant received written notice of entry of this order on August 21, 2021. Counsel is retiring and requesting that another attorney be appointed for the appeal.

August 25, 2021



Carla F. Grabert-Lowenstein, Esquire  
S.C. Bar No. 76886  
Law Office of Carla Faye Grabert-Lowenstein LLC  
P.O. Box 51105  
Myrtle Beach, SC 29579  
Attorney for Appellant

cc: Attorney General's Office  
William Ray  
1000 Assembly Street, Room 519  
Columbia, SC 29201

**RECEIVED**

AUG 30 2021

S.C. SUPREME COURT



ALAN WILSON  
ATTORNEY GENERAL

August 19, 2021

Carla Faye Grabert Lowenstein, Esquire  
Carla Faye Grabert-Lowenstein, LLC  
PO Box 51105  
Myrtle Beach, SC 29579

**Re: Robert Lee Myers, Jr., #229315 v. State of South Carolina**  
**2020-CP-26-2070**

Dear Ms. Lowenstein:

Enclosed is a copy of the filed Order of Dismissal in the above-captioned case signed by The Honorable William H. Seals, Jr. and filed with the Horry County Clerk of Court.

Sincerely,

William H. Ray  
Assistant Attorney General

WHR/geh  
Enclosure(s)

**COPY**

STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
IN THE COURT OF COMMON PLEAS

Robert Lee Myers, Jr., #229315

Applicant,

v.

State of South Carolina,

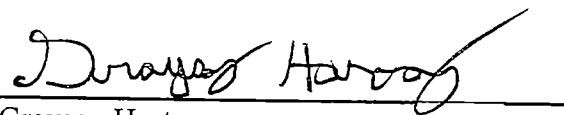
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** have been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

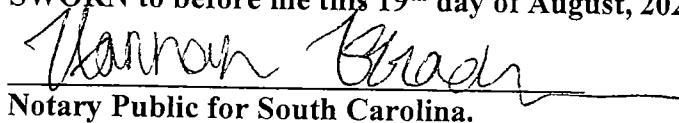
Carla Faye Grabert Lowenstein, Esquire  
Carla Faye Grabert-Lowenstein, LLC  
PO Box 51105  
Myrtle Beach, SC 29579

This 19<sup>th</sup> day of August, 2021.



Grayson Horton  
Legal Assistant for Respondent

SWORN to before me this 19<sup>th</sup> day of August, 2021.



Hannah Brad

Notary Public for South Carolina.

My Commission Expires: September 11<sup>th</sup>, 2029

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AUG 30 2021

S.C. SUPREME COURT



## I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted by the Horry County Grand Jury for first-degree burglary (2017-GS-26-00642), first-degree criminal sexual conduct (2017-GS-26-00643), kidnapping (2017-GS-26-00644), possession of a weapon during the commission of a violent crime (2017-GS-26-00645), armed robbery (2017-GS-26-00646), and assault and battery of a high and aggravated nature (2019-GS-26-00647). Applicant was represented by Attorneys Kia Wilson and Colon Cagle and Assistant Solicitor Marry Ellen Walter, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On March 4, 2019, Applicant appeared before the Honorable Benjamin H. Culbertson and entered a guilty plea, as indicted and without negotiation or recommendation, to the assault and battery, burglary, and armed robbery charges. Applicant was sentenced to forty years' imprisonment for the burglary, thirty years' imprisonment for the armed robbery, and twenty years' imprisonment for the assault and battery. The remaining charges were subsequently dismissed *nolle prosequi*. Applicant did not appeal his conviction or sentence.

## II. FACTUAL HISTORY

At around 2:00 AM on August 18, 2016, a 71 year old Horry County woman noticed that a light was on in a building adjacent to her home. (Tr. 20, 23-5). She went to check on it and unexpectedly discovered Applicant inside. (Tr. 21, 5-7). He rushed her, threw her to the ground, stripped off her clothes, tied her up with electrical cord, and sexually assaulted her. (Tr. 21, 7-11; Tr. 33, 23 – Tr. 34, 2). He held a knife to her throat, doused her in bleach, forced her to scrub it on her skin, and demanded that she tell him where her money was. (Tr. 21, 13-19; Tr. 33, 14-16). She told him that there was money in her vehicle, which was parked outside. (Tr. 21, 19-21; Tr. 34, 12-18). He eventually untied her and went outside, allowing her an opportunity to flee, naked, to

police who happened to be down the street at the scene of a car accident. (Tr. 21, 21-24; Tr. 18-24).

Officers investigated and discovered camera footage showing Applicant riding a bicycle away from the scene before hiding in nearby bushes around the time of the assault. (Tr. 22, 1-10). Officers searched the area and discovered rubber dish gloves and electrical cord that had been taken from the victim's home. (Tr. 22 8-12). Both Applicant's and the victim's DNA was found on these pieces of evidence. (Tr. 22, 11-12). The victim was taken to the hospital with injuries to her wrists, a puncture wound to her face, and significant traumatic injuries indicating sexual assault. (Tr. 22, 18 – Tr. 23, 3). A rape kit was processed, which indicated that seminal fluid that did not contain DNA evidence was present. (Tr. 23, 10-20).

Applicant was arrested the next day and found to be in possession of the victim's cell phone. (Tr. 22, 13-15). He voluntarily confessed to police. (Tr. 26. 6-15).

### III. CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. Counsel failed to file notice of appeal
  - b. Counsel did not secure plea deal
  - c. Counsel falsely advised defendant about guilty plea
2. Unknowing, unwilling, involuntary plea

At the hearing Applicant proceeded on the following allegations, which were served on Respondent on June 10, 2021 and alleged as follows:

1. Ms. Wilson failed to file the directed verdict motion, or even a notice of appeal. Mr. Myers informed counsel he wanted to appeal the sentence. Counsel failed to file the appeal. The State now claims this PCR claim is beyond the statute of limitations. Clearly Mr. Meyer has been prejudiced.

2. Ms. Wilson did not spend adequate time with Mr. Myers to be able to fully and reasonably advise him on the charges faced and possible defenses. Ms. Wilson was unaware Mr. Myers was on the docket for the plea which was entered on March 4, 2019. How could Ms. Wilson adequately advise Mr. Myers given counsel was unaware of what was scheduled with the case. Mr. Colon Cagle, attorney, was sitting in a "Second Chair" position, adding additional confusion on Mr. Myer's part.
3. Mr. Myers's confusion was exacerbated having been through a complex competency and criminal responsibility evaluation and report. PCR counsel is not alleging that Mr. Myers did not understand what happened the night of the crime or did not understand the questions in court. Rather counsel argues, if there was sufficient question to have these evaluations conducted, Ms. Wilson should have taken extra care to ensure that Mr. Myers fully understood all aspects and elements involved going into the plea hearing.
4. The plea transcript is ambiguous, jumbled with confusion about what was the actual offer, what charges were included. Due to this confusion the court decided to take a break in the plea. (Reporters Transcript p. 37 at 23-25). In the absence of clear professional advice and counsel from Ms. Wilson, faced with confusion, if not disorganized proceeding, Mr. Myers finally capitulated to the plea.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. §17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

##### *Respondent's Partial Motion to Dismiss for Untimeliness*

The State argued in its return and partial motion to dismiss that all of Applicant's allegations were untimely except for his claim for belated appellate review pursuant to *White v. State*, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974). At the hearing Respondent renewed its motion and again asserted that all of the amended allegations were untimely filed, except for the request

for a belated appeal, to the extent that one was raised in the amendment. This Court finds that the partial motion to dismiss is proper.

The Uniform Post-Conviction Procedure Act states as follows:

An application for relief . . . must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. §17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may be used to raise the statute of limitations defense. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). The statute of limitations will be tolled where the Applicant shows that the failure to timely file a PCR application was due to mental incompetency. *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009). Furthermore, the statute of limitations does not apply when a PCR applicant does not knowingly and voluntarily waive his right to appeal his trial conviction. *White*, 263 S.C. 110, 208 S.E.2d 35. The statute of limitations may also be tolled when an inmate places an application in the prison mailroom and a subsequent delay, beyond the inmate's control, renders the application untimely. *Mose v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017). In addition, S.C. Code Ann. §17-27-70(c) authorizes this 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." Respondent moved to dismiss all allegations other than the request for a belated appeal under *White*.

The record shows that Applicant entered a guilty plea on March 4, 2019 and did not pursue a direct appeal. Thus, the application was due to be filed on or before March 5, 2020. The

application was notarized on March 17, 2020, and was filed on March 19, 2020; about two weeks past the filing deadline. At the hearing, Respondent asserted that Applicant had not presented grounds for equitable tolling of the statute of limitations. Applicant responded by arguing that he is a layman in the law, has some mental health issues, and therefore, the statute of limitations as set forth in Section 17-27-45 should be equitably tolled.

Applicant's plea counsel testified that she had requested both a criminal responsibility examination and a competency examination prior to his guilty plea. Those competency evaluations indicated that he was competent, and she had no reason to contest those findings. She stated that it was clear he was competent and she is unaware of any reason why he would have become incompetent since the date of his guilty plea. Applicant testified that he did not know why it took over a year to file his PCR application. He stated that he had tried to file it earlier, but did not produce any evidence or specifics about when this took place or why his attempt to timely file was unsuccessful.

This Court finds that Applicant has failed filed his application within the one year statute of limitations as required pursuant to Section 17-27-45. Furthermore, he has not shown that he is entitled to equitable tolling of the statute of limitations. He has not shown that his delay in filing his PCR application was due to incompetency or incapacity, and produced no evidence indicating that his application's filing was delayed by the prison mailroom. Instead, the application was notarized after the window for timely filing had closed, indicating that it was not completed in a timely manner. Therefore, the State's partial motion to dismiss all allegations except the request for a belated appeal is granted and those allegations are dismissed with prejudice.

### *Belated Appellate Review*

At the evidentiary hearing Applicant proceeded on the sole allegation that his counsel failed to file a notice of appeal on his behalf. This Court finds the allegation to be without merit.

Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when nonfrivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

At the PCR hearing Applicant's plea counsel testified that she did not specifically recall telling Applicant that he could appeal his conviction or sentence, but she is certain that she did so because there were issues communicating with him and she made a point to cover all of her bases. She explained that it is her habit to always thoroughly explain the appeals process to every client that she represents, and that her office makes staff available to her clients so that they may file a notice of appeal even if her clients cannot get in touch with her directly. When a client requests an appeal she tells them to call her office, speak with the staff, and a notice of appeal will be filed without question. She did not recall Applicant requesting an appeal at any point, and believes that the only conversation she had with him after his plea was to discuss the length of his sentence.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 31 day of July, 2021.

*William H. Seals*

William H. Seals, Jr.  
Presiding Judge  
Fifteenth Judicial Circuit

Mami, South Carolina

Copy of Order/ \_\_\_\_\_  
Mailed 8-17-2021  
Initials JMR