

Frederick A. Hayzill 267399
Broad River C.I. - WAT 253
4460 Broad River Rd
Columbia, SC 29210

RCR
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APR 10 2013

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

S.C. SUPREME COURT

9th April, 2013

RE: The State of South Carolina, Respondent,
v. Frederick A. Hayzill, Appellant, Case No. 2010-CP-42-6815

Dear Mr. Shearouse:

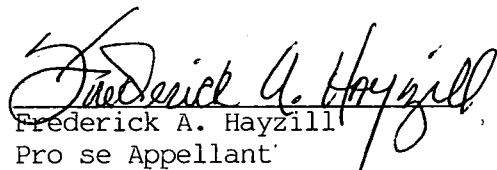
Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order which is to be challenged on appeal.
- (3) As the Appellant has been granted in forma pauperis status, he is exempt from paying a filing fee in this case.
- (4) This appeal is being filed with the Supreme Court because it is the proper venue for hearing this matter.
- (5) A copy of the "Explanation", pursuant to Rule 243(c), SCACR

Please take note also that, so as not to unknowingly risk forfeiture of any of my rights to procedural "due process"; out of an abundance of caution I am filing this Notice even though I have submitted to the Court of Common Pleas in Spartanburg County a Motion for Recusal of the judge who signed the currently standing order of dismissal; as well as a Motion to enter a new judgment, pursuant to Rule 59(a)(2), Rule 52(a), and/or Rule 59(e), SCRCF to alter or amend the standing order.

Thank you kindly for your patience in this matter.

Sincerely,


Frederick A. Hayzill
Pro se Appellant

cc: Suzanne H. White, Esq.
Assistant Attorney General
Office of the S.C. Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Post Script: Please return additional copy in the SASE, clock-stamped for my records. Thank you kindly for your attention to this matter.

Frederick A. Hayzill 267399
Broad River CI - WAT 253
4460 Broad River Rd
Columbia, SC 29210

The Hon. M. Hope Blackley
Clerk of Court, Spartanburg County
P.O. Box 3483
Spartanburg, SC 29304-3483

9/15 April, 2013

RE: FILING "NOTICE OF APPEAL"

SUBJ: Frederick A. Hayzill v. State of South Carolina
Case No. 2010-CP-42-6815

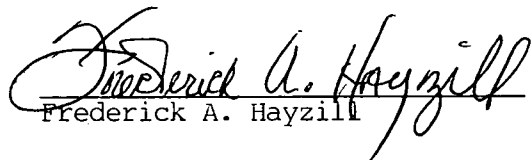
Dear Clerk:

Enclosed for filing please find copies of the above-referenced Notice of Appeal. So as not to unknowingly forfeit any of my rights to procedural "due process", out an abundance of caution I am filing this Notice even though I have submitted under separate cover a Motion to Enter a New Judgment or Motion to Alter and Amend the currently standing order, pursuant to Rules 59(a)(2), 52(a), and/or 59(e), SCRPC, regarding the Final Order, filed March 18, 2013 and signed by Judge Roger L. Couch. You will note also that I submitted for filing a Motion for Recusal of Judge Couch from ruling on this matter as he was the presiding judge whose order I am appealing from in the first place.

As there is a second copy of the Notice of Appeal included, along with a SASE, please return same clock-stamped for my records.

Thank you kindly for your attention and patience in this very important matter.

Sincerely,


Frederick A. Hayzill

cc: Suzanne H. White
file

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APR 10 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Judge

Case No. 2010-CP-42-6815

The State of South Carolina, Respondent,

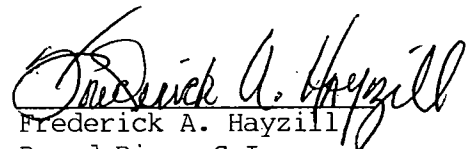
v.

Frederick Alvin Hayzill, Appellant.

NOTICE OF APPEAL

Frederick A. Hayzill appeals the order of the Honorable Roger L. Couch dated March 15, 2013; filed in the Clerk's Office March 18, 2013. Appellant received written notice of entry of this order on March 25, 2013.

Dated: 9th April, 2013



Frederick A. Hayzill
Broad River C.I.
4460 Broad River Road
Columbia, SC 29210

Pro se Appellant

Other Counsel of Record:
Suzanne H. White, Esq.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

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APR 10 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Judge

Case No. 2010-CP-42-6815

The State of South Carolina, Respondent,

v.

Frederick Alvin Hayzill, Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Suzanne H. White, Esq., by depositing a copy with the proper SCDC official for mailing via the U.S. Postal Service, postage prepaid, addressed as follows:

Office of the S.C. Attorney General
Attn: Suzanne H. White, Esq.
Post Office Box 11549
Columbia, SC 29211-1549

On this 9th day of April, 2013.

Dated: 9th April, 2013



Frederick A. Hayzill
Broad River C.I.
4460 Broad River Road
Columbia, SC 29210

BM

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

Frederick A. Hayzill, #267399)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-6815

FINAL ORDER

This matter comes before this Court by way of an application for post-conviction relief filed December 29, 2010. Respondent made its Return and Motion to Dismiss on or about May 17, 2012, requesting that the application be summarily dismissed.

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 filed May 25, 2012, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final.

In a document captioned "Objection and Reply to Conditional Order of Dismissal," dated June 7, 2012, Applicant argues that his application should not be summarily dismissed based on the Statute of Limitations and the Doctrine of Successiveness. Applicant asserts that he was abandoned by trial counsel at a critical stage in the adversarial proceedings by not being informed of his right to pursue a direct appeal. Appellant further asserts that this failure by trial counsel to inform Appellant of the right does not constitute a knowing and voluntary waiver of his right to direct appeal.

Appellant further asserts that his failure to raise the direct appeal issue in his first post-conviction relief application was due to the Applicant's lack of knowledge, inadequate access to both

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APPELLANT ONLY

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assistance from properly trained inmate law clerks and access to the prison law library. Applicant attached several documents and case law in support of his claim.

Applicant also submitted a letter addressed to the Court also dated June 7, 2012 captioned "Reply to Conditional Order of Dismissal, pursuant to Rule 243(c)." Applicant further asserts to the Court the same reasons as with the above mentioned objections.

Applicant filed an additional response to supplement the first, captioned "Supplementary Memorandum of Law in Opposition & Reply to Conditional Order of Dismissal, filed June 13, 2012, Pursuant to Rule 243(c), SCAR." The supplemental submission asserts that Applicant's post-conviction relief counsel was ineffective because counsel failed to amend the initial application to include the failure of trial counsel to file a Notice of Appeal or to inform Applicant of his right to do so.

In two documents both dated November 6, 2012, and captioned, "Motion for Judgment on the Pleadings," and "Memorandum of Law in Support of Motion for Judgment on the Pleadings," respectively, Applicant continues to argue that his application should not be summarily dismissed because he was denied his right to file a direct appeal. Applicant argues that he should be allowed to proceed on the successive application because of the holding in the recent Supreme Court case, Martinez v. Ryan, 132 U.S. 1309 (2012). Applicant further argues that the issue has never been ruled upon following the submission of the 2006 Petition for Writ of Certiorari filed on Applicant's behalf by Office of Indigent Defense – Appellate Division, which he attached.

Applicant submitted a document "Motion for Appointment of Counsel and to Set Hearing Date," dated November 26, 2012, in which he requests that the Clerk of Court's office appoint him counsel and set a hearing date.

Handwritten initials and number:
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Applicant also submitted a document captioned, "Initial Brief of Appellant Pursuant to Rule 243(i)(1), SCACR where a White v. State Review is Sought," dated February 11, 2013. Applicant argues four different claims of ineffective assistance of trial counsel in the submitted brief, and continues to assert that because his prior post-conviction relief counsel was ineffective in failing to raise the issue during the hearing, he should be granted the right to a belated direct appeal.

This Court finds it is clear that the issue has been ruled upon, as indicated by both the January 4, 2006, Order of Dismissal from the Honorable Roger L. Couch, and the South Carolina Supreme Court's ruling dated August 23, 2007. Furthermore, the record shows that the denial of the right to have a direct appeal was clearly an issue that could have been raised in his first post-conviction relief application or the numerous amendments filed by the Applicant. This Court does not find that the Martinez case is dispositive in this matter, as it is specifically related to the issue of whether or not "ineffective assistance in an initial-review collateral proceeding on a claim of ineffective assistance at trial may provide cause for a procedural default in a federal habeas proceeding." Martinez v. Ryan, 132 S. Ct. 1309, 1315, 182 L. Ed. 2d 272 (2012). This is not a federal habeas proceeding and therefore, Martinez does not apply.

This Court has reviewed Applicant's responses to the State's Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court further finds that Applicant's current Application is successive to Applicant's previously filed applications, the application is barred by the statute of limitations, and the doctrine of *res judicata*.

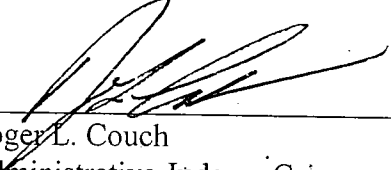
IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

Page 3

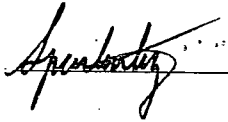
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MHOPE BLICKLEY

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED this 15th day of March, 2013. (Friday)

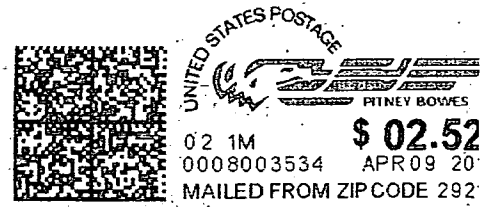


Roger L. Couch
Administrative Judge – Common Pleas
Seventh Judicial Circuit


_____, South Carolina.

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CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 18 AM 9:36 (Monday)
M. HOPE BLACKLEY
Appl Personal Receipt
3-25-13 (Monday)

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APR 09 2013

**BRCI
MAILROOM**

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29201-1330

LEGAL MAIL