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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM JASPER COUNTY
Court of Common Pleas
Honorable Bentley Price, Circuit Court Judge

Case No.: 2014-CP-27-00375

Breon Alexandre 340229.....Petitioner

v.

State of South Carolina.....Respondent

NOTICE OF APPEAL

The Petitioner Breon Alexandre appeals the Honorable Bentley Price's October 11, 2022 Order Granting an Appeal pursuant to Austin v State. Undersigned counsel received notice of entry of the order on November 3, 2022. A copy of the order on appeal is attached to this notice.

Respectfully submitted



James Falk
Falk Law Firm
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Attorney for Petitioner

November 21, 2022

Other counsel of Record
Lauren Mims, Esq
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FILED
JASPER COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER) FOR THE FOURTEENTH JUDICIAL CIRCUIT

2022 OCT 14 AM 9:44

Breon Alexandre, SCDC #340229,)

Case No. 2014-CP-27-00375

Applicant,)

**CONSENT ORDER GRANTING RIGHT
TO SEEK BELATED APPELLATE
REVIEW PURSUANT TO *AUSTIN V. STATE*¹**

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 10, 2014, by Applicant Breon Alexandre, seeking belated appellate review of the denial of his initial post-conviction relief action. In response, Respondent filed a return on August 19, 2015. An evidentiary hearing was convened on October 20, 2015, before the Honorable Roger L. Couch, at the Beaufort County Courthouse. The sole issue before the Court was whether Applicant was entitled to seek belated appellate review of the denial of his first post-conviction relief action pursuant to *Austin*. The State consented to Applicant's limited requested relief. At the conclusion of the hearing, Judge Couch granted relief and asked Applicant's counsel to submit a proposed order for the Court's review. Applicant's counsel submitted a proposed Order via email on November 23, 2020, to Judge Couch. However, Judge Couch ceased serving as an active retired circuit court judge before the proposed order was signed.

Accordingly, this Court is issuing this order pursuant to Rule 63, SCRCPP, with the consent of both parties. As provided in Rule 63, SCRCPP, this Court has been provided with and thoroughly reviewed the entire record, including the transcript of the evidentiary hearing before Judge Couch. After review of the record, this Court certifies familiarity with the record and determines that the

¹ *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: [Signature]
DATE: 10-14-2022

matter may be completed based on the record without prejudice to the Applicant or Respondent. Moreover, this Court determines both parties consent that Applicant is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted by the Jasper County Grand Jury at the October 2009 term for murder (2009-GS-27-00494), burglary-1st degree (2009-GS-27-00493), and armed robbery (2009-GS-27-00492). Stephen T. Plexico, Esquire, represented Applicant. On April 12, 2010, Applicant pled guilty as indicted before the Honorable J. Ernest Kinard. Judge Kinard sentenced Applicant to concurrent sentences of forty years for murder, forty years for the burglary charge, and thirty years for armed robbery. Applicant did not appeal his convictions and sentences.

First PCR Application: 2012-CP-27-00218

Applicant filed his first application for post-conviction relief on March 29, 2012. Respondent made its return on December 27, 2012. An evidentiary hearing into the matter was convened on August 27, 2013, before the Honorable Deadra L. Jefferson at the Beaufort County Courthouse. Applicant was present at the hearing and represented by Gerald Kelly, Esquire. Assistant Attorney General Ashleigh R. Wilson of the South Carolina Attorney General's Office represented Respondent. Judge Jefferson denied and dismissed Applicant's application by written Order on October 28, 2013.

Applicant then filed a *pro se* notice of appeal dated November 20, 2013. That notice of appeal was not accompanied by any proof of service showing that a copy had been served on opposing counsel. Applicant's counsel was then asked to provide a notice of service. Applicant subsequently filed a second notice of appeal dated December 18, 2013. On January 3, 2014, the Supreme Court of South Carolina entered an order in Appellate Case No. 2013-002567 denying the appeal as untimely filed.

Allegations in Current PCR Action: 2014-CP-27-00375

In his current application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Due Process"
 - a. "Counsel for PCR failed to file appeal"
2. "Equal Protection"
 - a. "Denial of the appellate process".

On August 19, 2015, the State filed a return, requested an evidentiary hearing be held solely on the matter of Applicant's ability to seek belated appellate review pursuant to *Austin*, and moved to summarily dismiss all other allegations as untimely and successive to Applicant's prior PCR action. Attached to that return were the records from Applicant's general sessions matter, prior post-conviction relief action and subsequent appeal records, and the records from this current action.

Subsequently, an evidentiary hearing was held October 20, 2015, before the Honorable Roger L. Couch, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James K. Falk. Assistant Attorney General J. Rutledge Johnson of the South Carolina Attorney General's Office represented Respondent. At the call of the case, the State advised the court it did not contest Applicant's claim for relief pursuant to *Austin v State*.

Thereafter, Judge Couch indicated he would “sign an order allowing [Applicant] to do so” – file a belated appeal from his prior post-conviction relief application.

This Court has reviewed all these records in addition to the transcript from the proceeding before Judge Couch in accordance with Rule 63, SCRPC.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, including the transcript from the evidentiary hearing. After this thorough review of the record as required under Rule 63, SCRPC, this Court finds no additional proceedings are necessary and a ruling can be rendered based on the record. Furthermore, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

Applicant alleges he was denied the right to seek an appeal following the dismissal of his previous post-conviction relief application. Pursuant to *Austin*, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his or her PCR application.

After review of the facts and circumstances surrounding Applicant’s right to appeal the denial of his initial post-conviction relief application, the parties below have consented to the granting of an appeal of Applicant’s first post-conviction relief application (2012-CP-27-00218) pursuant to *Austin*. This Court finds both parties consent to the denial of all claims in Applicant’s application for post-conviction relief except Applicant’s allegation he is entitled to a belated PCR appeal pursuant to *Austin v. State*. Therefore, this application for post-conviction relief is granted only as to Applicant’s right to seek a belated appeal of his previous application for post-conviction relief and is denied and dismissed as to all other claims for relief.

Based upon the foregoing, this Court finds granting Applicant's request to seek belated appellate review of his first PCR (2012-CP-27-00218) pursuant to *Austin*, is warranted. Counsel for the State and Applicant's PCR counsel consented to the granting of leave to pursue a PCR appeal in this matter. Thus, Applicant's PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

IT IS THEREFORE ORDERED:

1. Applicant is granted belated appellate review of his first post-conviction relief action, captioned 2012-CP-27-00218, pursuant to *Austin v. State*;
2. All other allegations for post-conviction relief are denied and dismissed with prejudice;
3. Applicant shall remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 11th day of October, 2022.

Jasper, South Carolina

Bentley Price
BENTLEY PRICE
Chief Administrative Judge
Fourteenth Judicial Circuit