

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	
Johnnie Walker Gaskins, 313590,)	2022-CP-40-1854
Applicant,)	
v.)	ORDER DENYING MOTION PURSUANT
)	TO RULE 59(e) AND 60(b), SCRPC
State of South Carolina,)	
Respondent.)	

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 8, 2022. The State submitted a Return on August 19, 2022. On November 14, 2022, Applicant, through counsel, filed an Amendment, which stated the following:

Applicant, through counsel, would move to amend his Application, as addressed below. Pursuant to Rule 15(b), SCRPC, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

In addition to the information provided in response to question eleven on his Application, Applicant would add the following:

- (a) Applicant’s counsel failed to provide him notice of the entry of the Order of Dismissal, failed to file a Motion under Rule 59, SCRPC, due to the Order omitting the matter of the Court sustaining the State’s objection to a late amendment and/or expert witness, and failed to timely file an appeal. PCR Transcript pp. 90-96, 138-145.
- (b) Following the evidentiary hearing, Applicant was under the belief that further proceedings were going to take place regarding the matter of the late amendment and/or expert regarding video evidence. PCR Transcript pp. 90-96, 138-144.

In addition to the response provided to question nineteen on his Application, Applicant would add the following: A belated appeal of prior PCR Application or whatever relief the Court deems proper.

An evidentiary hearing was conducted on November 14, 2022 at the Richland County Courthouse in front of the Honorable D. Craig Brown. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by D. Russell

Barlow, II, Assistant Attorney General. During the hearing, Applicant took the stand and called Aimee J. Zmroczek, Esquire. Applicant introduced two exhibits.

At the conclusion of the evidentiary hearing, the Court found that Applicant was entitled to a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). The Court requested that Applicant's counsel submit an Order, and she obtained permission to obtain the hearing transcript. Applicant's counsel submitted a proposed Order on February 9, 2023.

On February 15, 2023, the Honorable D. Craig Brown issued an Order on Application for Post-Conviction Relief Granting Belated Appeal Pursuant to *Austin v. State*, which was filed on February 28, 2023. On March 10, 2023, Respondent submitted a Motion Pursuant to Rule 59(e) and 60(b), SCRPC. On March 21, 2023, Applicant, through counsel, submitted a Response to Motion Pursuant to Rule 59(e) and 60 (b), SCRPC.

Pursuant to Rule 59(f), SCRPC, this Court finds that a hearing is not necessary on Respondent's motion and makes this ruling based upon the record before the Court. As a result of a thorough review of the record and filings before this Court, this Court finds that Respondent's motion is DENIED. This Court finds that the argument made under Rule 59(e), SCRPC, fails because the Order on Application for Post-Conviction Relief Granting Belated Appeal Pursuant to *Austin v. State* does not exceed the scope of *Austin*¹ and does not require amendment. This Court also finds that the argument made under Rule 60(b), SCRPC, fails as it does not meet the requirements of Rule 60(b) and is not

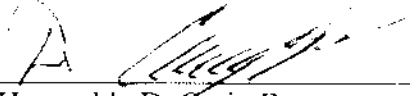
¹ 305 S.C. 453, 409 S.E.2d 395 (1991).

meritorious. Even if the argument was proper under Rule 60(b), SCRCP, this Court is not convinced that the standing Order should be amended.

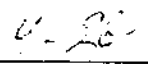
IT IS THEREFORE ORDERED:

1. Respondent's Motion Pursuant to Rule 59(e) and 60 (b), SCRCP, is DENIED.

AND, IT IS SO ORDERED.



Honorable D. Craig Brown
Presiding Judge
Fifth Judicial Circuit


_____, 2023