

STATE OF SOUTH CAROLINA
COUNTY OF Horry

Meleik Lamont Roach, # 336878

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-26-10362

ORDER GRANTING BELATED APPEAL

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This matter came before the Court pursuant to an Application for post-conviction relief filed December 12, 2011, seeking a belated appeal from his PCR. An evidentiary hearing was convened at the Horry County Courthouse on April 24, 2012. The Applicant was present in court and represented by Brana Williams, Esquire. The Respondent was represented by Tyson Andrew Johnson, Sr., Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from Horry County. Applicant was indicted at the July 2010 term of the Horry County Grand Jury for trafficking heroin (2010-GS-21-959). He was indicted during the January 2011 term for three counts of distribution of heroin (2011-GS-21-097-099). He was additionally indicted for two other charges, possession of heroin (2011-GS-21-101) and possession of a controlled substance and habitual traffic offender (2011-GS-21-102). Henry M. Anderson and Michael Bell, Esquires, represented Applicant. On April 11, 2011, Applicant pled guilty to trafficking heroin and the three counts of distribution of heroin. The State recommended concurrent sentences. The remaining charges were dismissed. Applicant was sentenced by the Honorable D. Craig Brown to nine years imprisonment for the trafficking charge and concurrent

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sentences of five years imprisonment for the distribution charges. Applicant did not appeal his conviction or sentence.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Regarding claims against PCR counsel, “the contention that prior PCR counsel was ineffective is not per se a ‘sufficient reason’ warranting a successive PCR application under § 17-27-90.” Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). The only recognized exception to the rule barring claims of ineffective assistance of post conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Austin recognizes a general exception to this rule where prior post conviction relief counsel fails to appeal the denial of the application. Id. Austin “is limited to its particular factual situation...” Aice, supra. Pursuant to Austin, a post conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Aside from this exception there is no currently recognized right to allege PCR claims against PCR counsel.

In order to receive a belated appeal, an applicant must prove that he asked his attorney to file an appeal, but his attorney’s deficient performance caused him to lose his opportunity for a timely appeal. Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant had a previous PCR in which relief was denied on February 23, 2011. At the start of the hearing, the Court ruled that all Applicant’s claims other than the request for a belated appeal are denied as successive, and as filed outside the statute of limitations. In considering the

Applicant's belated appeal claim, this Court had before it the PCR pleadings, the records of the Florence County Clerk of Court regarding the convictions, the Applicant's records from the South Carolina Department of Corrections, and the transcript. The Applicant, and the Applicant's former counsel testified at the hearing.

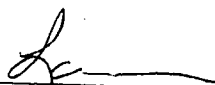
Summary of the Testimony

The Applicant was represented by Marshall Biddle, Esquire at his first PCR. Applicant testified that he asked attorney Biddle to file an appeal and that none was filed. Counsel could not recall Applicant asking him to file an appeal. No appeal was filed. This Court finds that the Applicant did not knowingly and voluntarily waive his right to appeal from his denial of his first PCR action, and that he is entitled to petition the South Carolina Supreme Court for review of his PCR appeal issues.

CONCLUSION

Accordingly, the Applicant's request to petition for belated direct review of his convictions is hereby **GRANTED**. Within **thirty (30) days** of service of this Order, counsel for the Applicant must file a notice of belated appeal with the South Carolina Supreme Court to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), and Rule 243(i), South Carolina Appellate Court Rules, for the appropriate procedure for a belated appeal. See also Rules 203, 206, and 243, South Carolina Appellate Court Rules.

AND, IT IS SO ORDERED this 28 day of May, 2013.



Larry B. Hyman
Presiding Judge
15th Judicial Circuit

_____, South Carolina