

RECEIVED

NOV 11 2024

S.C. SUPREME COURT

OFFICE OF DISCIPLINARY COUNSEL *

THIS IS ALONZO TARELL JONES

THERE'S A CONFLICT OF INTEREST

BETWEEN ME AND ATTORNEY SARAH

SHIPE FOR THE DIVISION OF

APPELLATE DEFENSE I TOLD HER

TO TAKE HER SELF TO REMOVE

HER SELF OFF MY CASE BECAUSE

SHE WANT CRET EVIDENCE I NEED

FOR MY P.C.R HEARING I

NEED HER OFF MY CASE SHE WANT

DO NOTHING FOR ME CHECK (EXA)

LETTER FROM MRS SHIPE OCTOBER 3, 2024

STATING SHE NOT GOING TO DO

WHAT I ASK HER. CHECK (EXB)

ORDER GRANTING RELATED APPEAL

PURSUANT TO ARISTID LIS STATE

PAGE (1) CLEARLY STATES THAT

COUNSEL MRAK DIDN'T PRESENT NO
EVIDENCE ON MY BEHALF SO HOW CAN
MRS SHIPE RAISED CLAIMS THAT WASN'T
RAISED — I TOLD HER TO REMOVE

HER SELF SHE REFUSED TO CHECK
(EX A) — I WROTE THE COURT FOR HER
TO BE REMOVE CHECK (EX D)

RETURN TO SUCCESSIVE POST CONVICTION

RELIEF APPLICATION PG. 6 U.I. AM/

AMENDMENTS AND INVOCATION OF

DISCOVERY CLEARLY STATES THAT

I RAISE AT THE P.C.B HEARING

SHE DON'T WANT WORK FOR ME

SHE VIOLATING MY DUE PROCESS

RIGHTS.

ALONZO TARELL JONES

EV (A)



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 3, 2024


Mr. Alonzo Tarell Jones, 70680-053
FCI Bennettsville
696 Muckerman Road
Bennettsville, SC 29512

Mr. Jones,

I am writing to follow up after our phone conversation earlier this morning. In the conversation we discussed again your dissatisfaction with my representation in your case. I understand that you are displeased that I cannot get the chain of custody for you or raise a jurisdictional claim that you requested. My explanation is the same as it has been from the beginning of my representation. My job as your attorney in this matter is to review the record of the proceedings at PCR to see what legal errors to present to the Supreme Court on your behalf. I will present those in the form of a Petition for Writ of Certiorari. The Court can only consider the information that was before the PCR court. No new information can be brought to their attention at this point. In addition, the issue I present must have been addressed in the PCR court's order of dismissal before I can raise it to the Court. Meaning I can only raise claims that were raised at your PCR.

As we discussed, at this time I am trying to reconstruct your 2015 PCR hearing because transcripts from that hearing could not be produced. I understand why you are upset and frustrated. This is a long process.

At the end of our conversation, you asked me to make a motion to relieve myself as your attorney. I cannot do that. I was appointed to your case that is something only the Court can do. I know you are unhappy with me, but I will continue to represent you to the best of my ability until your case is resolved. If you would like me removed you can write to the Court and request to have me relieved. I will continue to keep you informed of any changes in your case.

Sincerely,

Sarah E. Shipe
Appellate Defender

SES/kw

C-13

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Alonzo Tarell Jones,

Case No.: 2017-CP-28-0226

Applicant,

ORDER GRANTING BELATED
APPEAL PURSUANT TO AUSTIN STATE

v.
State of South Carolina,

Respondent.

FILED FOR RECORD
JUL 2 2017
FEB -2 PM 1:08
SANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before the court for a hearing on January 24, 2022. The Applicant, Alonzo Tarell Jones, was represented by Counsel Michael H. Lifsey. The Respondent, State of South Carolina, was represented by Assistant Attorney General Michael D. Davidson.

PROCEDURAL HISTORY

On April 19, 2013, Applicant pled guilty to Unlawful Carrying of a Pistol and Resisting Arrest in Kershaw County General Sessions Court and was sentenced to concurrent terms of one year suspended to six months of probation on each charge. No direct appeal was taken from these convictions or sentences. On April 8, 2014, Applicant, with the assistance of retained counsel Ronald W. Moak, filed his first PCR application. That action was docketed as 2014-CP-28-0302. Subsequent to the filing of this action, Applicant was incarcerated on federal charges. A hearing on the PCR action was held on July 16, 2015. ~~Counsel Moak represented Applicant at this hearing but Applicant was not present and no evidence was presented on behalf of the Applicant.~~ An order was issued on December 3, 2015, dismissing Applicant's application with prejudice. Counsel Moak did not file an appeal on Applicant's behalf.

DCB
8/18/17

Applicant ultimately filed a complaint with the Office of Disciplinary Counsel concerning Counsel Moak's representation of him alleging that Counsel Moak never attempted to call or explain what was happening in regard to his PCR action, failed to respond to emails requesting status updates and other communications, failed to inform Applicant his PCR hearing was scheduled and arrange a means by which Applicant could participate, and failed to advise Applicant that his application was denied at the end of the hearing. Counsel Moak's representation of Applicant was cited as one of the bases for discipline imposed on Counsel Moak. *Matter of Moak*, 417 S.C. 73, 789 S.E. 2d 42, (2016). In that opinion, the Supreme Court found that Counsel Moak violated Rules 1.3 and 1.4, South Carolina Rules of Professional Conduct, Rule 407, SCACR, because he did not act with reasonable diligence in his representation of Applicant, and did not keep Applicant reasonably informed about the status of the matter or comply with requests for information.

In November of 2016, Applicant filed a petition for writ of Habeas Corpus in the original jurisdiction of the South Carolina Supreme Court. On December 1, 2016, the Supreme Court issued an order holding that habeas relief was not proper as applicant had not exhausted all other available remedies pursuant to *Gibson v. State*, 329 S.C. 37, 495 S.E. 2d 426 (1998).

Accordingly, the South Carolina Supreme Court denied the petition without prejudice and advised Applicant to file a subsequent application in the circuit court asserting these claims. Applicant filed this action in conformity with that advice. A hearing was held on January 24, 2022, to determine if Applicant was entitled to appellate review of his prior PCR application bearing the docket number 2014-CP-28-0302.

DCB
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FINDINGS OF FACT

Applicant testified on his own behalf. His recitation of the procedural history of the case was consistent with the history outlined above. He testified that Counsel Moak never informed him of the date of his PCR hearing or the outcome of that hearing. Applicant testified that Counsel Moak never informed him of his right to appeal from a decision dismissing his application and that he did not knowingly and intelligently waive that right. Applicant further testified that if he had been informed of his right to appeal the dismissal of his application, he would have requested Counsel Moak file an appeal. He further testified that his purpose in filing the habeas action in the original jurisdiction of the South Carolina Supreme Court was to seek appellate review of his prior PCR application.

Ronald W. Moak testified at the call of the State. Mr. Moak is currently suspended from the practice of law for other, unrelated misconduct. *In the Matter of Moak*, 427 S.C. 1, 828 S.E. 2d 760 (2019). Mr. Moak testified that he did not keep Applicant informed of the status of his prior PCR application and that he did not inform him of the dismissal of his application or of his right to appeal the dismissal.

At the conclusion of the evidentiary hearing, the State conceded that Applicant had met his burden showing he was entitled to appellate review pursuant to *Austin*.

Based on the testimony of both Applicant and Mr. Moak, it is uncontroverted that Applicant was not informed of his right to appeal the dismissal of his prior PCR action and Applicant did not knowingly and intelligently waive his right to appeal.


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CONCLUSIONS OF LAW

PCR applicants have a right to seek appellate review. Section 17-27-100, S.C. Code of Laws, as amended, and *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991). A PCR Applicant is entitled to a belated *Austin* appeal if the PCR judge find either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State*, 337 S.C. 256, 523 S.E. 2d 753 (1999).

THEREFORE, IT IS ORDERED that Applicant is entitled to appellate review of the dismissal of his prior PCR application, 2014-CP-28-0302.

AND IT IS SO ORDERED this 31 day of Jan., 2022.


D. CRAIG BROWN
Circuit Court Judge

Florence, South Carolina

DCB
p. 4 of 4

FILED FOR RECORD

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

2024 OCT 14 AM 7:53

IN THE COURT OF COMMON
PLEAS FIFTH JUDICIAL
Circuit

ALONZO JONES
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, SC
Applicant

CASE# 2017-CP-28-00000

v.

STATE OF SOUTH CAROLINA

MOTION TO RELIEVE
COUNSEL

Respondent

NOW COMES THE APPLICANT IN THE ABOVE-CAPTIONED ACTION, ACTING PRO-SE, HEREBY MOVING THIS COURT TO RELIEVE SARAH SHIFF AS COUNSEL FOR APPLICANT. THE APPLICANT IS REQUESTING THAT SARAH SHIFF BE RELIEVED AND NEW COUNSEL BE APPOINTED. APPLICANT AND COUNSEL HERE, HAS BEEN A BREAK DOWN COMMUNICATING COUNSEL DON'T WANT DO WHAT APPLICANT HAS BEEN ASKING FOR TWO YEARS.

WHEREFORE, HAVING SET FORTH HIS GROUNDS, THE APPLICANT MOVES THIS HONORABLE COURT TO ISSUE SUCH ORDER AS IS JUST AND PROPER.

10/3/24

Respectfully submitted
Alonzo Jones
Applicant

TRULINCS 70680053 - JONES, ALONZO TARELL - Unit: BEN-A-C

FROM: 70680053

TO: Shipe, Sarah

SUBJECT: YOU

DATE: 09/18/2024 12:43:22 PM

HOW YOU DOING I SENT YOU A LETTER THIS PROCESS IS TAKING TO LONG I TOLD I NEED THE CHAIN OF CUSTODY WHEN THE ATF TOOK THE WEAPON FROM THE CITY CAMDEN POLICE DEPARTMENT AND THE GRAND JURY TRANSCRIPTS BECAUSE HOW CAN THEY INDICT ME WHEN THE FEDS TOOK THE WEAPON ON JANUARY 7 2013 THIS IS SERIOUS TO ME AND THEY GAVE UP PRIOR EXCLUSIVE JURISDICTION WHEN THEY DID THAT IF YOU NOT GOING TO DO THESE THINGS FOR ME YOU NEED TO REMOVE YOUR SELF OFF MY CASE PLEASE THANK YOU

EXID

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
)
)
Alonzo Tarell Jones,)
Applicant,)
)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2017-CP-28-0226

**RETURN TO SUCCESSIVE POST-
CONVICTION RELIEF APPLICATION**
(Appointment of Counsel Requested)

In response to the successive post-conviction relief application filed March 15, 2017 by Applicant Alonzo Jones asserting irregularities and issues pertaining to his initial post-conviction relief action, Respondent, the State of South Carolina, would show this Court:

I. PROCEDURAL HISTORY

Applicant is not presently incarcerated, as he has completed both his state and federal sentences and been released from custody.¹ During the February 2013 term, the Kershaw County Grand Jury indicted Applicant for possession of a firearm by a prior convicted felon (2013-GS-28-0054) and unlawful carrying of a pistol (2013-GS-28-0083). Applicant was subsequently indicted in the May 2013 term for resisting arrest (2013-GS-28-0334). Kershaw County Chief Public Defender Cornelius J. Riley represented Applicant. Fifth Circuit Deputy Solicitor Brett A. Perry prosecuted the case. On April 9, 2013, Applicant plead guilty as indicted to unlawful carrying of a pistol and resisting arrest before the Honorable DeAndrea G. Benjamin. In exchange for the guilty plea, the State dismissed the charge of possession of a firearm by a prior convicted felon.

¹Applicant's State sentence was suspended to six months of probation for each charge to run concurrently (Plea Tr. 11-12). Records from the Bureau of Prisons inmate search show Applicant was released from federal custody on November 3, 2017.

Pursuant to the State's recommendation, Judge Benjamin sentenced Applicant to imprisonment for concurrent terms of one year, suspended to six months' probation for each charge. Applicant did not appeal his conviction or sentence.²

First PCR Application (2014-CP-28-0302)

On April 8, 2014, Applicant, with the assistance of retained counsel Ronald W. Moak, filed his first PCR application in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. "My plea counsel failed to investigate the facts underlying my charges, specifically whether or not the State actually had possession of the evidence in my case. I have since discovered that the State did not possess the evidence and I would not have pled guilty knowing that there was no evidence."
 - b. "I was not advised by my plea counsel of the collateral consequences of my guilty plea to a weapons offense, namely that I would be subject to Federal Prosecution from it. I would not have pled guilty had I been made aware of that consequence."

Respondent made its return on June 12, 2014, requesting an evidentiary hearing. Ronald W. Moak, Esquire, represented Applicant. An evidentiary hearing in to the matter was convened on July 16, 2015, before the Honorable G. Thomas Cooper, Jr.. Applicant, who was in federal custody out-of-state at the time was not present, but was represented by counsel Moak.³ Applicant and Plea Counsel Cornelius Riley testified. Applicant alleged Plea Counsel failed to investigate his case and allegedly learn that the gun, which was recovered from Applicant's person during the incident, was not processed by investigators. Applicant also testified Plea Counsel failed to advise him that he could be subject to federal prosecution from the incident. The Court found Plea Counsel acted

² Following the plea Applicant was indicted for and ultimately convicted and received a term of incarceration for federal offenses.

³ The Order of Dismissal from Applicant's first PCR action states Applicant was present at the PCR hearing. However, Applicant was not present, but rather was in federal prison in West Virginia at the time, and was not transported back to South Carolina for his evidentiary hearing.

reasonably in his representation and strategic decision to advise Applicant to accept the beneficial plea deal. On December 3, 2015, Judge Cooper issued an Order of Dismissal, denying and dismissing Applicant's application with prejudice. Counsel Moak did not file an appeal on Applicant's behalf.⁴

Petition for a Writ of Habeas Corpus

Thereafter, on November 2016, Applicant filed a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court. On December 1, 2016, the Supreme Court issued an order holding that habeas relief was not proper, as Applicant had not exhausted all other available remedies, pursuant to *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998). Accordingly, the South Carolina Supreme Court denied the petition without prejudice and advised Applicant to file a subsequent application for PCR in the circuit court asserting these claims.

II. ALLEGATIONS

In his second and current application for post-conviction relief, Applicant raised the following allegations:

1. Ineffective Assistance of PCR Counsel
 - a. "Plaintiff engaged an attorney, Ronald Wade Moak, Esquire, who failed to provide adequate legal representation regarding a Post-Conviction Relief (PCR). Moak was later sanctioned and received a public reprimand by the State Supreme Court on July 20, 2016. Due to Plaintiff's loss of his Sixth

⁴Applicant filed a complaint with the Office of Disciplinary Counsel alleging: Counsel Moak never attempted to call or explain what was happening with his PCR application, failed to respond to emails requesting status updates and other communications, failed to inform Applicant his PCR hearing was scheduled and arrange a means by which Applicant could participate, and failed to advise Applicant his petition was denied at the end of the hearing. The representation of Applicant by Counsel Moak was cited as one of the bases for Moak's disciplinary action. *Matter of Moak*, 417 S.C. 73, 789 S.E.2d 42 (2016). The ODC and Court found Counsel Moak violated Rules 1.3 and 1.4 of the Rules of Professional Conduct, Rule 407, SCACR because he did not act with reasonable diligence in his representation of Applicant, and did not keep Applicant reasonably informed about the status of matter or comply with requests for information. Based on these circumstances, along with Applicant's current action, Respondent interprets his claim as seeking *Austin* review of the procedural irregularities and other issues of his first PCR action.

Amendment Right to counsel and Fundamental right a fair trial his lack of legal skill and knowledge and loss of ample opportunity to meet the case of the prosecution to which he is entitled....”

- b. “Plaintiff’s counsel was proven ineffective by the Supreme Court and there was reasonable probability of the different result with effective assistance.”
- c. “Plaintiff was in federal prison and a Writ of Habeas Corpus was not completed for PCR hearing for Plaintiff to be present for the PCR. Plaintiff has been prejudiced by lack of adequate legal representation. Plaintiff had an insurmountable impediment to mount any lawful appeal and could not have filed in a timely basis.”
- d. “Due to these deficiencies, the Plaintiff’s constitutional Rights to Due Process of law, Equal Protection and Right to counsel were violated. Material and/or legal argument was over-looked in the decision to deny the Plaintiff’s PCR petition. Plaintiff did not know about the PCR hearing until July 20, 2016.”

Applicant requested a new post-conviction relief action for his case (2014-CP-28-0302) for his requested relief.

Respondent interprets Applicant’s allegations of ineffective assistance of PCR counsel, specifically Applicant’s alleged impediment to filing an appeal of his PCR denial, as a request for *Austin* review. “An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal.” *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989); *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395, 396 (1991). In *Austin*, the South Carolina Supreme Court framed the inquiry as whether the PCR applicant “requested and was denied an opportunity to seek appellate review.” *Austin* at 454, 409 S.E.2d at 396. Under *Austin*, an Applicant is entitled to appeal the denial of a PCR application when they have not voluntarily waived the right to appeal. An applicant may waive the right to appeal by making a “knowing and intelligent decision not to pursue the appeal.” *Simuel v. State*, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010).

The procedural history in this case suggests that Applicant intended to pursue an appeal when he became aware of the denial of his application by submitting a habeas petition. While Applicant pursued an appeal in an incorrect fashion, Respondent views Applicant’s subsequent

habeas petition and successive PCR application as an indication Applicant did not voluntarily waive his right to appeal the denial of his initial PCR action. As such, Applicant's current allegations are interpreted as raising a claim for belated appellate review of the original action due to PCR counsel's failure to file an appeal.

Attached to this return and incorporated herein are the Kershaw County Clerk of Court records regarding Applicant's convictions, Applicant's SCDC records, the plea transcript, the records from Applicant's prior post-conviction relief action, the records from Applicant's prior federal habeas corpus action, and the records of Applicant's current PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO *AUSTIN* CLAIM

In his application, Applicant asserts numerous procedural and substantive irregularities or problems with his initial post-conviction relief proceeding. Because Applicant was not afforded appellate review of the initial post-conviction relief proceeding and denial, and he asserts his initial PCR counsel was ineffective, Respondent interprets this second application as requesting relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).⁵

"The right to seek appellate review of the denial of PCR is expressly authorized by state law." *Austin*, 305 S.C. at 454, 409 S.E.2d at 396; S.C. Code Ann. § 17-27-100 (2014). Pursuant to *Austin*, a post-conviction relief applicant may petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to

⁵ In the event Applicant is not seeking appellate review of his initial PCR application, Respondent requests clarification from counsel once appointed.

appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). Because this allegation raises questions of fact which cannot be conclusively refuted by the record, Respondent requests an evidentiary hearing limited to this ground for relief.

VI. ~~ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY~~

~~Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, Respondent will request a continuance in the matter. See *id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).~~

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. As noted above, Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. See *Love*, 428 S.C. 231, 834 S.E.2d 196.

IV. DENIAL OF REMAINING ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

V. REQUEST FOR AN EVIDENTIARY HEARING

WHEREFORE, Respondent requests an evidentiary hearing solely to address the issue of whether counsel was ineffective in failing to appeal the order denying Applicant's initial application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN
Assistant Attorney General

By: 

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March 2, 2021