

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY S.C. SUPREME COURT
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Case No.: 2023-CP-10-04698

Darrell L. Goss Appellant

v.

State of South Carolina Respondent

NOTICE OF APPEAL

Appellant appeals the Court’s denial of his application for post-conviction relief. Appellant is not opposed to his named being removed from the Sex Offender Registry. Attached is the order from the court dated January 10, 2025, and received January 14, 2025.

February 6, 2025

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2023-CP-10-4698

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

Darrell L. Goss,

) CASE NO. 2024-CP-10-02101

Applicant,

) **ORDER REQUIRING APPLICANT'S**
) **NAME BE REMOVED FROM**
) **SEX OFFENDER REGISTRY AND**
) **DISMISSING REMAINING CLAIMS**
) **WITH PREJUDICE**

v.

State of South Carolina,

)

Respondent.

)

)

FILED
2024 JUN 10 PM 2:33
J. ARNOLD
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Darrell L. Goss (Applicant) on September 25, 2023; and an amended application filed June 27, 2024. Respondent filed a return and moved to summarily dismiss the claim related to a belated Austin appeal as premature and not ripe for consideration due to a pending Rule 59(e), SCRCF, motion. Respondent likewise made an amended return and moved to dismiss the allegation raised in the amended application as untimely and successive. On August 6, 2024, the Honorable Jennifer B. McCoy issued a Conditional Order of Dismissal, provisionally dismissing the application but providing Applicant twenty days to show why the Order should not become final. Thereafter, Applicant filed a response to the Conditional Order of Dismissal.

On December 17, 2024, a hearing convened on the State's motion to dismiss. Applicant was present and represented by Christopher L. Murphy, Esquire.¹ Assistant Attorney General Danielle Dixon represented Respondent. At the start of the hearing, Respondent waived its affirmative defenses to the issue of whether Applicant should be on the sex offender registry. Respondent further conceded that based on its review of the records, Applicant should not be on

¹ Applicant waived on the record any conflict of interest related to Mr. Murphy representing him at this proceeding.

the sex offender registry. Respondent moved to dismiss the remainder of the allegations. Applicant opposed the motion to dismiss the late appeal issue, asserting standby counsel had a duty to file a notice of appeal. After consideration and for the reasons set forth herein, this Court finds Applicant should not be required to register on the sex offender registry. This Court further finds the remaining allegations should be denied and dismissed with prejudice.

PROCEDURAL HISTORY (STATE COURT)²

Applicant is NOT presently confined in the South Carolina Department of Corrections, as he has completed his sentence on the underlying convictions. In September 2007, the Charleston County Grand Jury indicted Applicant for assault and battery with intent to kill, kidnapping, and armed robbery. These charges arose from a June 14, 2007 robbery of a retail store.

On February 23-26, 2009, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson. James Smiley, Esquire, represented Applicant, and Assistant Solicitors Trip Lawton and Kevin Hales prosecuted the case.³ The jury convicted Applicant as indicted, and Judge Nicholson sentenced him to concurrent sentences of twenty years for each charge.

Applicant filed a direct appeal, which was perfected by Appellate Defender Robert M. Pachak. On appeal, Applicant argued the trial court erred in (1) overruling defense counsel's objection to the solicitor's burden shifting in closing argument and (2) refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods. The Court of Appeals affirmed both issues on the merits. State v. Goss, Up. Op. No. 2011-UP-214 (filed May 17, 2011). The remittitur was sent June 9, 2011.

² Applicant has filed four federal habeas corpus petitions related to these convictions; three have been dismissed due to failure to exhaust State remedies (2:18-cv-02938-BHH, mandate issued Nov. 10, 2021; 2:20-cv-04133-BHH, mandate issued Sept. 20, 2021; 2:23-cv-00722-BHH, dismissed June 6, 2024, mandate not yet issued). The fourth was dismissed based upon Applicant's motion to dismiss (21-200, dismissed September 1, 2021).

³ Applicant was tried with co-defendant Joy Mack, who was represented by Alex Apostolou, Esquire.

On May 27, 2011, Applicant filed his first PCR application alleging ineffective assistance of counsel (2011-CP-10-3782). Respondent filed a return requesting an evidentiary hearing. On September 11, 2011, an evidentiary hearing convened before the Honorable Deadra L. Jefferson. Applicant was present and represented by Charles Brooks, Esquire. Assistant Attorney General Matthew S. Friedman represented Respondent.

On December 1, 2011, Judge Jefferson issued an order denying and dismissing with prejudice Applicant's PCR application. Applicant filed a petition for a writ of certiorari from the denial of his application (2011-204386), and the Court of Appeals granted certiorari. On July 27, 2016, the Court of Appeals issued an opinion affirming. State v. Goss, 2016-UP-382. Applicant filed a petition for a writ of certiorari in the Supreme Court of South Carolina, and the Supreme Court granted certiorari. On October 17, 2018, the Supreme Court issued an order remanding for a de novo PCR hearing.⁴ The remittitur was sent November 2, 2018.

On December 8, 2021, a de novo evidentiary hearing convened before the Honorable Jennifer B. McCoy.⁵ Applicant was present and initially represented by Christopher Murphy, Esquire.⁶ At the start of the hearing, Applicant moved to proceed pro se, and Judge McCoy granted his request. Assistant Attorney General Samantha Weidauer represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness his cousin Sharon Goss. Respondent called as a witness trial counsel James Smiley, Esquire.

⁴ Pertinently, the Court stated, "We emphasize the proceedings will be de novo, and neither party may rely upon testimony presented at the initial hearing which is the subject of this appeal."

⁵ On January 7, 2019, Applicant filed a pro se motion to stay his PCR proceedings pending the disposition of his federal habeas corpus petition; that motion was granted on January 21, 2019.

⁶ Mr. Murphy was initially appointed to represent Applicant on December 17, 2018. On January 15, 2019, Applicant filed a motion to proceed pro se, which was granted by the Honorable Roger M. Young, Sr. that same day. On July 26, 2021, Applicant filed a motion for appointment of counsel. Applicant's motion to appoint counsel was granted, and Mr. Murphy was reappointed on September 13, 2021.

On June 21, 2022—*after* the PCR evidentiary hearing, Application filed a 4th Motion to Amend PCR Application. On June 15, 2022, Judge McCoy issued an order denying and dismissing Applicant’s PCR application.⁷

On June 27, 2022, Applicant filed a “Motion to Alter or Amend Judgement.”⁸ That motion is currently pending before the Court.

On July 6, 2022, Applicant filed a notice of appeal from the Order denying his PCR application and a motion to proceed pro se. On September 19, 2022, the Supreme Court of South Carolina issued an order denying his motion to proceed pro se. That same day, the Court sent Applicant a letter instructing him to “submit the name of the attorney you have obtained to represent you or provide proof that you have filled out and submitted the enclosed affidavit of indigency to the Division of Appellate Defense” within twenty days. The Court cautioned, “Failure to timely respond may result in dismissal of this matter.” On October 24, 2022, the Court dismissed Applicant’s appeal for failure “to submit the name of an attorney or provide proof that he has filled out and submitted an affidavit of indignity with the Division or Appellate Defense.” Applicant did not file a petition for rehearing, and the remittitur was sent November 9, 2022.

CURRENT APPLICATION

On September 25, 2023, Applicant filed this PCR application alleging:

Ineffective assistance of counsel: PCR counsel failed to file appeal on Applicant’s behalf.

As relief, Respondent requests, “I want to appeal the denial of my first post conviction relief

⁷ Respondent served this Order on Applicant by mail on June 16, 2022.

⁸ Although not accompanied by a formal certificate of service, Applicant relayed in his cover letter, dated June 22, 2022, “By copy, I am also serving the State.” On June 24, 2022, Applicant mailed Respondent a letter indicating he had filed the motion but “Due to the prison’s policy, I was not able to receive copies of my handwritten legal documents in order to serve you a copy as required.” Respondent does not take issue with the service of this motion.

application (2011-CP-10-3782) pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).”

On June 27, 2024, Respondent filed an Amended PCR application again raising the Austin issue and additionally requesting the following:

Pursuant to the S.C. Supreme Court’s ruling in Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (2008), Applicant requests the Court to issue a declaratory judgment declaring that his kidnapping conviction did not include a criminal sexual offense or attempted criminal sexual offense and would not require him to register as a sex offender.

Before this Court are the Charleston County Clerk of Court records of the underlying convictions; Applicants records from the South Carolina Department of Corrections; and the records from Applicant’s direct appeal, his 2011 PCR action, and his federal habeas corpus petitions.

SEX OFFENDER REGISTRY

At the start of the hearing, Respondent waived its affirmative defenses as to the issues related to the sex offender registry. Respondent further conceded that, based on its review of the records, Applicant should not be required to register on the sex offender registry. This Court has reviewed the records and agrees Applicant should not be required to register on the sex offender registry. This Court further finds the South Carolina Law Enforcement Division shall remove Applicant’s name from the sex offender registry.

BELATED APPEAL

Respondent moved to dismiss Applicant’s claim related to a belated appeal of his first PCR action pursuant to Austin, arguing the issue was not ripe for consideration due to a pending Rule 59(e), SCRPC, motion in the first PCR action. This Court agrees and finds the time for filing this appeal has not yet begun—making Applicant’s request for a belated appeal of the 2022 order premature. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (“A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e),

SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion.”). Because the time to appeal the 2022 order has not begun, this issue is premature and not ripe for consideration.

Alternately, this Court finds that even if the Rule 59(e) motion did not stay the time for filing the direct appeal, Applicant cannot demonstrate prejudice from any alleged deficiency by standby counsel’s failure to file a notice of appeal. Pertinently, Applicant filed a timely pro se notice of appeal from the 2021 order, but his appeal was dismissed by the South Carolina Supreme Court for failure to comply with its directive to submit proof that he had retained counsel or applied for counsel through the South Carolina Commission on Indigent Defense. The undisputed evidence does not show Applicant did not knowingly and intelligently waive his right to an appeal; rather, it shows he *did* appeal but failed to comply with the directives of the Supreme Court, resulting in the dismissal and subsequent remittitur of his appeal. See Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (“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 appellate review of a previous PCR order was not knowingly and intelligently waived.*” (emphasis added)). Thus, this Court finds Applicant cannot demonstrate prejudice from counsel’s failure to file a notice of appeal, and this claim is denied and dismissed with prejudice.

CONCLUSION


Based on the foregoing, this Court concludes Applicant should not be required to register on the sex offender registry. This Court further finds Applicant has not established any other constitutional violations that would require this Court to grant additional relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file

and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. Applicant shall NOT be required to register on the sex offender registry, and the South Carolina Law Enforcement Division shall remove his name from the registry; and
2. The remainder of this application is denied and dismissed with prejudice.

AND IT IS SO ORDERED THIS 6th day of January 2025.


JOCELYN NEWMAN
Presiding Judge
Ninth Judicial Circuit

Columbia, South Carolina