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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Colleton County

Honorable Kristi F. Curtis, Circuit Court Judge

LESLIE TWYMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001271

APPENDIX

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1 Q Mr. Shaffer, did you represent Mr. Twyman at the
2 PCR hearing?

3 A Yes, sir, I did.

4 Q Was there any discussion about appealing that
5 decision?

6 A I don't have any recollection of it, but I'm
7 certain that he wanted an appeal.

8 Q And that's kind of a normal practice, isn't it?

9 A Yes, sir.

10 Q Was there a discussion about a 59(e) motion?

11 A I don't recall any discussion at the time of
12 the actual PCR. I do recall a discussion after we
13 got the order in. After we got the order in,
14 which -- I don't recall -- the attorney's general
15 office indicated that they served me with the
16 order. I am not doubting that they did. I was
17 not aware of that until we acquired it a good bit
18 of time later.

19 Whenever I did become aware of it, I went to
20 go see Mr. Twyman at the prison and I told him the
21 issue. I told him that his order was similar to a
22 case of Fishburne, which I was the attorney on at the
23 time. I was doing the Fishburne order or Fishburne
24 appeal at the time that we found this out. I said,
25 well, there's this issue that it may actually give you

1 some relief. He said -- he took the position that it
2 wouldn't give him any relief because I didn't file the
3 59(e) at that time, but -- yeah.

4 I mean, he did ask me, whenever I went to go
5 see him, I do definitely recall him saying that there
6 was a problem with not filing a 59(e) but that was
7 after I had received the order and after the
8 timeliness, based off the attorney general's office --
9 it would have been untimely to do an appeal at that
10 point.

11 Q Is Fishburne your case?

12 A Yes.

13 Q Okay. So, the order that was issued in this case,
14 do you think it -- I'm sure you're the foremost
15 authority in this state on Fishburne orders, I guess.

16 A Yeah. It is very, very similar. I have
17 created one that is -- essentially, I underlined
18 everything in the findings of fact and conclusion
19 of law section that is essentially word for word
20 what was in the Fishburne order.

21 And it's basically -- outside of the last
22 three or four sentences, maybe five or six sentences,
23 it is word for word from Fishburne.

24 There is a couple of comments in there.
25 Those comments, I think, are pretty conclusionary at

1 the end in those last three or four sentences. I
2 don't think that they qualify as specific findings of
3 fact.

4 Q And they're going back. But you would agree it's
5 common practice to file appeals after PCR hearings.

6 A Oh, yes. Unless someone specifically tell
7 you not to, you pretty much always file an
8 appeal.

9 Q You also started your testimony by saying you were
10 pretty sure that you thought that he wanted to file
11 appeal.

12 A Yeah. I mean, I have absolutely no doubt
13 that he wanted to file an appeal.

14 Q It's just that you don't have a specific
15 recollection of the conversation.

16 A That's correct.

17 Q Okay.

18 MR. FALK: No further questions.

19 THE COURT: Miss Mims.

20 MS. MIMS: No further questions.

21 THE COURT: Thank you, sir. You can step
22 down.

23 THE WITNESS: Thank you.

24 MR. FALK: I'd like to call Mr. Twyman.

25 THE COURT: Okay.

1 THE CLERK: Raise your right hand. Do
2 you solemnly swear or affirm the testimony you
3 give to this Court will be truth so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Thank you. If you could
6 please speak directly into the microphone and
7 state your name and spell your last name for the
8 record.

9 THE WITNESS: Leslie Twyman, T-w-y-m-a-n.

10 WHEREUPON:

11 LESLIE TWYMAN,

12 after having been sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FALK:

15 Q Mr. Twyman, when this hearing started, I was, sort
16 of, articulating what I thought the problem was, that
17 you, sort of, are left without a remedy. But, you
18 know, those are my words. So I want you to tell me,
19 what are your concerns with about going forward with
20 just Austin relief at this time?

21 A My concerns is my --

22 Q You're going to have to speak up.

23 A My concerns is my issues that I found on PCR,
24 when we went to my PCR, going to the next court,
25 that the court ain't going to listen to them

1 because there wasn't a 59(e) filed.

2 Q So you're saying there were issues that were
3 raised that weren't addressed in the order?

4 A Yeah. There was plenty of issues that were
5 raised.

6 Q So it's not that you're trying to add anything
7 new. It's just you think the order did not cover all
8 the issues that were raised at the hearing?

9 A No, it didn't.

10 MS. MIMS: Your Honor, may we pause and
11 approach?

12 THE COURT: Sure.

13 (Bench conference off the record.)

14 BY MR. FALK:

15 Q I can't remember what the last question I asked
16 you was, but what I was asking you, though, is that
17 you thought that there were issues that were raised at
18 the PCR hearing that were not addressed in the order.

19 A Yes.

20 Q And you had a conversation with Mr. Shaffer,
21 right?

22 A Yes.

23 Q And you had asked him at that time to file a
24 59(e); is that right?

25 A That was after. But I also wrote him, but he

1 never --

2 Q You got to get closer to the mic.

3 A That was after, but I also wrote him.

4 Q Okay.

5 A And I called him on several occasions.

6 There's no contact. When I got -- when I wrote to
7 the Supreme Court, I wrote them a letter, and they
8 send him a copy of the letter that I wrote about
9 the 59(e).

10 Q Okay.

11 A There still was no response.

12 Q All right. What are the -- just give me an idea
13 of some of the issues that you felt should have been
14 covered in the order?

15 A Like the summary judgment of the statement
16 that she made when they asked her in the court.
17 She made a tape saying that I was outside talking
18 to two people. And when she got to court, she
19 lied and said she don't remember nothing like
20 that. And I've been trying to get that DVD for
21 the longest, but the State never had give it to
22 me.

23 Q Are there other issues that you felt were --

24 A Just that would have helped me because that
25 was two witness. Even Mr. Beach too, you know

1 what I'm saying. He never even went to go get
2 them. They lived right across from where the
3 incident happened, that they said it happened.

4 Q And those are issues that you were trying to raise
5 in your PCR?

6 A Yes. Those issues I was trying to raised in
7 my PCR. It would have showed a different
8 outcome.

9 MR. FALK: No further questions.

10 THE COURT: Miss Mims.

11 MS. MIMS: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. MIMS:

14 Q The issues that you spoke about briefly here, were
15 those issues that were actually raised at the PCR
16 hearing?

17 A Yes. It was mentioned in summary judgement
18 that the DVD would show a different statement,
19 yes.

20 Q And you spoke about those issues with Mr. Shaffer?

21 A Yes.

22 Q Okay. And this was?

23 A That was at the PCR hearing.

24 Q Okay. And you said you wrote him about filing a
25 59(e) motion, correct?

1 A Yes, I did.

2 Q And this was before he had given you the order?

3 A This is before I got the order of dismissal.

4 I wrote the Supreme -- I wrote him and then I
5 wrote the Supreme Court because he never answer in
6 months.

7 Q So did you know that the court had denied your
8 application?

9 A No, I didn't know until the order. When the
10 order came in, everything was over with. Then
11 Shaffer came and told me about Fishburne and stuff
12 like that. And I asked him, did he file a 59(e),
13 and he admitted that he didn't file a 59(e). He
14 even gave me a statement that he didn't file a
15 59(e).

16 Q Would you want him to file a 59(e) before you even
17 knew if your order was dismissed?

18 A I would tell him to file an 59(e) if they
19 dismissed my order.

20 Q Okay.

21 A That's what's in the letter specifically.

22 Q Okay.

23 MS. MIMS: No further questions, Your
24 Honor.

25 THE COURT: If this is the one I'm

1 remembering, it seems like there was a good bit of
2 delay between the time of the hearing and the time
3 the order came out. And I think, in that interim,
4 I saw that there was a letter from Supreme Court
5 saying, basically, that he has written to inquire
6 about the status of the order. I can't remember
7 who the letter went to saying, you know, what can
8 you do help them gentleman? I think that was this
9 case. Am I making that up?

10 It looks like a letter to Daniel
11 Shearhouse at the Supreme Court in November of
12 2016. And then on November 15, 2016, a letter
13 from the Daniel Shearhouse to Mr. Shaffer. I
14 think, at that time, the order had still not been
15 issued. But it may be that the judge had maybe
16 indicated what the ruling was going to be because,
17 "It appears that the judge is going to rule
18 against us, but it may take a little while." And
19 then I think there was a protracted period of time
20 before the order actually came out.

21 MS. MIMS: Yes, Your Honor.

22 THE COURT: That was the feeling that I
23 got.

24 Anything else, Mr. Falk?

25 MR. FALK: No, Your Honor.

1 THE COURT: You can step down, sir.

2 THE WITNESS: Thank you, ma'am.

3 THE COURT: Anything further from either
4 party?

5 MR. FALK: No, Your Honor.

6 THE COURT: So I think he's entitled to
7 the belated appeal and that's all I can really do
8 at this point.

9 The State is in agreement that he is
10 entitled to the appeal, that's my understanding.

11 MS. MIMS: Yes, Your Honor.

12 THE COURT: And you-all are going to
13 prepared an order to that effect?

14 MS. MIMS: We can, Your Honor.

15 MR. FALK: Can the order just address
16 his -- saying that this Court has no jurisdiction
17 to grant a belated 59(e) appeal -- I mean, 59(e)
18 motion.

19 THE COURT: I don't have any problem with
20 that. Miss Mims is going to circulate the order
21 to you at the same time she sends it to me, or
22 before. And so if there's any wording that you
23 would like to add, you can certainly address it if
24 it's not in the order and I'll take it up.

25 MR. FALK: Thank you.

1 THE COURT: Okay. Thank you.

2 (The hearing was concluded.)

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CERTIFICATE OF REPORTER

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2
3 I, SHARON G. HARDOON, Official Circuit
4 Court Reporter, III for the State of South Carolina at
5 Large, do hereby certify that the foregoing is a true,
6 accurate and complete Transcript of Record of the
7 proceedings had and evidence introduced in the hearing
8 of the captioned case, relative to appeal, in the
9 Court of Common Pleas for Colleton County, South
10 Carolina.

11
12 I do further certify that I am neither kin,
13 counsel, nor interest to any party hereto.

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October 18, 2024



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA)
 COUNTY OF COLLETON)
)
 Leslie Twyman, SCDC# 345787,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-15-0484

**ORDER GRANTING RELIEF
 PURSUANT TO *AUSTIN V. STATE*¹
 AND DENYING ALL OTHER
 GROUNDS**

2024 JUL 25 PM 3:52

COLLETON COUNTY
 COMMON PLEAS COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Leslie Twyman on June 24, 2019, asserting he was denied the right to appeal the denial of his initial post-conviction relief action and he was entitled to further proceedings to address issues not ruled upon in the prior action. Respondent, the State of South Carolina made its Return and Partial Motion to Dismiss on July 1, 2020. An evidentiary hearing was convened on July 20, 2022, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James F. Falk, Esquire. Assistant Attorney General Lauren Mims of South Carolina Attorney General’s Office represented the State. Applicant testified on his own behalf, and called former post-conviction relief counsel, Tristan M. Shaffer.

This Court had before it a copy of the Colleton County Clerk of Court’s records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s former post-conviction relief records, the current post-conviction relief application, Respondent’s return, the trial transcript and appellate records. After a review of the evidence presented and the State’s concession that Applicant is entitled to a belated appellate review of the denial of his first-post conviction relief action, this Court grants Applicant the right to seek belated

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

appellate review pursuant to *Austin*. However, this Court denies and dismisses the application on all remaining grounds.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. The Colleton County Grand Jury indicted Applicant for first-degree criminal sexual conduct and third-degree criminal sexual conduct (mental defect, mental incapability, etc.) (2010-GS-15-00849, Count 1 and Count 2). Harris S. Beach of the Colleton County Public Defender's Office represented Applicant. Assistant Solicitor Ben Shelton of the Fourteenth Circuit Solicitor's Office prosecuted the case.

On April 18, 2011, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III, circuit court judge. The jury convicted Applicant as indicted, and on April 20, 2011, Judge Buckner sentenced Applicant to imprisonment for twenty-five years for first-degree criminal sexual conduct and for ten years for third-degree criminal sexual conduct, with the sentences to be served concurrently.

Applicant's Direct Appeal

Applicant pursued a direct appeal, represented by Appellate Defenders Elizabeth Franklin-Best and Susan B. Hackett from the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant raised the following instances of trial court error:

I. The trial court judge erred when he did not grant appellant's motion for a directed verdict for criminal sexual conduct, 3rd degree because the language in the body of the indictment indicated that the state was proceeding under a theory that appellant "forcibly" penetrated the accuser which negated the aggravated component of the CSC 3rd statute which also proscribes sexual conduct against persons who are "mentally incapacitated."; and

II. The trial court judge erred in not granting appellant's motion for a directed verdict because the accuser was not mentally defective or incapacitated as defined under S.C. Code Ann. § 16-3-651(e) or (f).

Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. *State v. Leslie Twyman*, Unpub. Op. No. 2013-UP-325 (S.C. Ct. App. filed July 17, 2013). The remittitur was returned to the circuit court on August 9, 2013.

Applicant's Initial Post-Conviction Relief Action (2014-CP-15-0127)

Applicant filed his first application for post-conviction relief on February 11, 2014. In that application, Applicant alleged his imprisonment was unlawful based on:

1. Ineffective Assistance of Trial Counsel;
 - a. Trial Counsel only renewed motion for directed verdict on third-degree criminal sexual conduct and not first-degree criminal sexual conduct
 - b. Trial counsel should have objected to Solicitor leading the witnesses
2. Ineffective Assistance of Appellate Counsel;
 - a. On third-degree criminal sexual conduct, more to be amended later.

As requested relief, Applicant stated he was seeking to have his conviction and sentences vacated, a new trial, or resentencing.

Respondent made its return on August 20, 2014, requesting an evidentiary hearing, which was convened on October 29, 2014, before the Honorable Edgar W. Dickson. Applicant was represented by Tristan Shaffer, Esquire. Trial counsel and appellate counsel Hackett both testified at the evidentiary hearing, as did Applicant. Following the evidentiary hearing, Judge Dickson denied and dismissed the application with prejudice. The order was filed on December 21, 2015, and served on counsel for Applicant on March 1, 2016. Applicant did not file an appeal.

II. FACTS GIVING RISE TO THE CHARGES

Jessie Mae Gooding was the State's first witness. She met Applicant through her church's outreach program and allowed Applicant and his wife to stay with her after they lost

their home. Applicant was staying at Gooding's home at the time of the incident. Gooding's son Conrad is a disabled, bedridden veteran also living in the home. Victim lived down the street from Gooding, and would sometimes come to the house to sit with Conrad. Gooding got permission from Victim's mother before each visit, Gooding and would bring Victim back and forth from her house. ROA. pp. 40-43. Victim has an I.Q. of 55 and is emotionally developed at the equivalent to a six or seven year old. ROA. p. 119, p. 121.

On August 21, 2010, Gooding was away while Applicant was home with Conrad. Applicant called Gooding on the cell phone and said a friend was picking him up at the house and he would have Victim sit with Conrad. Later, Victim's mother called Gooding and consequently, Gooding called Applicant and said Victim had made an accusation against him. Applicant denied the accusation. Gooding went to Victim's house, where police were already interviewing Victim. Victim was upset and said she was feeling pain. ROA. pp. 44-50.

Victim's stepfather (Stepfather) testified that he was outside in the yard when Victim came running to the house and said "Mamma, Mamuna, something happened to me down the street, this man attacked me." ROA. p. 65. Victim's Mother (Mother) testified Victim came home disturbed and too upset to speak clearly – it took her ten minutes to calm down. Stepfather called 911. Mother took Victim to the bathroom and saw white semen in her underwear. ROA. pp. 76-81.

Victim testified that she was at home watching television when Applicant knocked on the door and asked her to watch Gooding's son. She went to Gooding's house and was watching a cartoon. Applicant said he wanted her to be a model. Then he unzipped Victim's pants and took a picture of her privates with a cell phone. Victim testified that Applicant put

his penis in her mouth, in her butt two times, and then in her "private part." Applicant threatened Victim by telling her she could go to jail if she told anyone what happened. Victim ran out the back door after Applicant blocked her from going out of the front door. She ran home and told her mother what happened. ROA. pp. 164-177.

Applicant testified on his own behalf. He testified he was staying with Gooding because he and his wife had a bad drug habit. His wife went to jail because they had a domestic violence incident, and then they lost their apartment. Applicant confirmed that he called Gooding to let her know he was going to have Victim watch her son, but denied assaulting her. In his version of events, when he went to ask Victim to sit with Conrad, Stepfather answered the door. Victim's sister walked Victim half-way to Gooding's house and Applicant took her the rest of the way. According to Applicant, while they both smoked, they had a conversation about school, Victim said she was going to college. Applicant testified Victim complimented Applicant on a suit he wore previously. Applicant claimed Victim asked Applicant about his wife and their relationship. Applicant testified, "we was just talking cool, regular and stuff." ROA. pp. 259-260 (direct quote: ROA. p. 259, lines 20-21). Applicant also testified that Victim said she had intercourse with her stepfather. ROA. p. 261, lines 1-4.

III. CURRENT APPLICATION

In his second and current application for post-conviction relief, Applicant claims entitlement to belated appellate review of his initial post-conviction relief action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). He also claims entitlement to raise any issues not adequately addressed in the order denying his first PCR, alleging that his prior PCR counsel failed

to file any necessary motions pursuant to Rule 59(e), SCRPC. Applicant attaches several exhibits to his post-conviction relief application, including an unfiled *pro se* motion to alter or amend the order denying his first application, correspondence he sent prior PCR counsel Shaffer, an affidavit from prior PCR counsel Shaffer acknowledging that Shaffer failed to file any post-trial motions or appeals on Applicant's behalf, a letter Applicant sent the South Carolina Supreme Court, and the response from the Court.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, and listen to the testimony of witnesses and pass on their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Belated Appeal pursuant to Austin v. State

Successive applications such as the one before this Court are disfavored. S.C. Code Ann. § 17-27-90. However, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722, (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.]§ 17-27-90." *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (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, 454, 409 S.E. 2d 395, 396 (1991). *Austin* provides for a belated appeal where prior post-conviction relief counsel fails to timely appeal the denial of the application. *Id.* at 454, 409 S.E.2d at 396; *see* S.C. Code Ann. §

17-27-100 (right to appeal final judgment by post-conviction relief court). But *Austin* “is limited to its particular factual situation.” *Aice*, 305 S.C. at 452, 409 S.E.2d at 394.² Pursuant to *Austin*, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application “on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review.” *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. “If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding.” *Id.* at 455, 409 S.E.2d at 396. *Austin*, therefore, allows an applicant to petition the Supreme Court of South Carolina for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, it is apparent from the record and testimony before this Court that Applicant desired appellate review from the denial of his initial post-conviction relief action. Accordingly, this Court finds Applicant is entitled to file a notice of appeal seeking belated appellate review of the denial of his initial post-conviction relief action pursuant to *Austin*.

Failure to File a 59(e) Motion and Sufficiency of Prior Order

Applicant also alleges that prior post-conviction relief counsel was ineffective for failing to file a Rule 59(c) motion, and asks this Court to address allegations that he maintains were not answered or were improperly addressed in the Order dismissing his first post-conviction relief action. In support of this argument, Applicant relied upon *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589-90 (2019), arguing that the lower court order of his first post-conviction relief

² *Aice* was issued in conjunction with *Austin*, limiting the reach of *Austin* and holding “that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel.” 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

action did not adequately address the allegations first raised at the hearing. . . This Court denies relief on this claim and declines to address sufficiency of the initial post-conviction relief court's order issued by a separate circuit court judge.

As noted above, the Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722, (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.]§ 17-27-90." *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991). Accordingly, this Court denies relief on the allegation that prior PCR counsel was ineffective for failing to file a proper 59(e) motion, as this is not a cognizable claim upon which relief can be sought.

However, In *Fishburne v. State*, our Supreme Court remanded a matter back to the post-conviction relief court when it determined PCR counsel failed to ensure all issues were adequately addressed in the order of dismissal. *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589-90 (2019), *reh'g denied* (Sept. 27, 2019) ("However, because the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party's procedural shortcoming—such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80. . . We remand to the PCR court for the issuance of a supplemental order setting forth findings of fact and conclusions of law on the PCR ground that was not addressed in the original order."). However, the Supreme Court did not extend the right to remand based on an incomplete order or to address insufficiency in a prior post-conviction relief to circuit court judges who are reviewing a successive post-conviction relief action. In *Fishburne*, the South Carolina Supreme Court remanded the post-

conviction relief action back to the original post-conviction relief judge for a sufficient order. Here, Applicant is seeking to have one circuit court judge determine whether the work of another circuit court judge is proper while seeking the order be overruled, which is wholly improper. Accordingly, the claim of insufficiency of the order cannot be before this Court as this Court does not have the authority to set aside the order of another circuit court judge. See *Cook v. Taylor*, 272 S.C. 536, 252 S.E.2d 923 (1979); *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). Therefore, this court will not address any claims of insufficiency of Applicant's prior post-conviction relief order.

V. CONCLUSION

Based on all the foregoing, this Court finds Applicant is entitled to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to *Austin*, but denies relief for any other allegations. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appellate review of the denial of his initial post-conviction relief action (2014-CP-15-00127) pursuant to *Austin*.

AND IT IS SO ORDERED this 12th day of July, 2024

Kristi F. Curtis
 KRISTI F. CURTIS
 Presiding Judge
 Third Judicial Circuit

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Colleton)

2010GS1500849

At a Court of General Sessions, convened on April 14, 2011, the Grand Jurors of Colleton County present upon their oath:

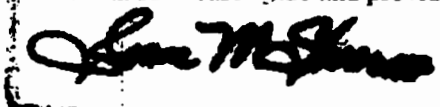
COUNT 1:**Criminal sexual conduct - First degree**

That in Colleton County, South Carolina, on or about August 21, 2010, the Defendant, Leslie Twyman, did commit a sexual battery upon the victim, **J.F.**, and that the Defendant committed the sexual battery upon the Victim while the Defendant did also kidnap forcibly confine, rob, extort, burglarize or commit any other similar offense or act upon the victim, to wit; the Defendant did lure the mentally challenged victim into his home by false pretense and/or did forcibly prevent her from leaving; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976), as amended.

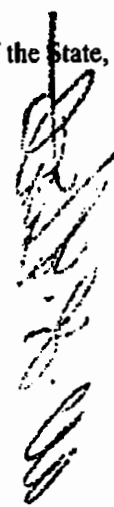
COUNT 2:**Criminal sexual conduct - Third degree: Mental Defect, Mental Incapability, Etc.**

That in Colleton County, South Carolina, on or about August 21, 2010, the Defendant, Leslie Twyman, did commit a sexual battery upon the victim, **J.F.** with knowledge or reason to have knowledge that the victim was mentally defective, mentally incapacitated or physically helpless, to wit: the Defendant did force sexual intercourse upon the mentally disabled victim; all in violation of Section 16-03-654(1)(b), Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac M. Stone, III
Solicitor



IKNE BITT

WITNESSES

J. Taylor

DOCKET NO. 2010GS1500849

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

April Term 2011

ARREST WARRANT NUMBER

M103371

August 27, 2010

ACTION OF GRAND JURY

TRUE BILL

THE STATE

vs.

Leslie Twyman

Indictment for

COUNT 1:
Sex / Criminal sexual conduct - First Degree

SC Code: 16-03-0652
CDR Code: 0160

COUNT 2:
Sex / Criminal sexual conduct - Third Degree
(Mental Defect, Mental Incapacity, Etc.)

SC Code: 16-03-0654(1)(b)
CDR Code: 0162

Amended Indictment: April 14, 2011

Foreperson of Grand Jury

Date: 4/14/2011

VERDICT

Count 1 Guilty 4/20/11
Count 2 Guilty 4/20/11

Foreperson of Petit Jury

Date:

4/20/2011

524 INDICT

COLLETON COUNTY
GENERAL SESSIONS COURT
2011 APR 14 AM 10:56