

Mar 28 2025

S.C. SUPREME COURT

NOTICE OF APPEAL FROM A POST CONVICTION RELIEF IN THE
COURT OF COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2018-CP-10-1675

Robert Wilson, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Robert Wilson, appeals the dismissal of his application for post conviction relief in Case No. 2018-CP-10-1675. An evidentiary hearing in the matter was convened before the Honorable Cordell Maddox, Jr. Following the hearing, Judge Maddox issued a Form 4 order dismissing the application dated February 28, 2019 and filed March 4, 2019. No other order appears to have been issued. A subsequent post conviction relief application was filed under Case No. 2019-CP-10-5343 seeking a belated discretionary review of the dismissal of Applicant’s previous application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). An evidentiary hearing was convened before the Honorable Michael G. Nettles. Following the hearing, Judge Nettles issued a written order granting the belated

appeal pursuant to Austin dated February 15, 2025 and filed February 27, 2025. Undersigned counsel received a written filed copy of said order on February 28, 2025.

March 28, 2025

s/ Denise Grainger. Swope
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STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 Robert Wilson, #272726,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2019-CP-10-05343

**ORDER GRANTING LATE APPEAL
 AND DISMISSING REMAINING
 ALLEGATIONS**

FILED
 2025 FEB 27 PM 1:21
 CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Robert Wilson (Applicant) on October 17, 2019. Respondent made its return and moved to dismiss the application as untimely and successive. On March 26, 2021, the Honorable Roger Young Sr. issued a Conditional Order of Dismissal provisionally dismissing the application but providing Applicant twenty days to respond and provide a reason why the Order should not become final. Thereafter, Applicant responded to the Conditional Order of Dismissal. Respondent filed an amended return requesting a hearing on the narrow issue of whether Applicant should be granted a late appeal of the dismissal of his first PCR hearing pursuant to Austin v. State, 305 S.C. at 454, 409 S.E.2d at 396.

On September 12, 2024, an evidentiary hearing convened. Applicant was present and represented by Denise Swope, Esquire. Assistant Attorney General Danielle Dixon represented the State. After reviewing the records before this Court and the stipulation by the parties, this Court finds Applicant is entitled to a late appeal of his first PCR application. This Court further finds Applicant waived the remaining allegations, and they are dismissed with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirteen-year sentence. In April 2015, the Charleston County Grand Jury indicted Applicant for two counts of armed robbery (2015-GS-10-1767, -1769). On January 6, 2016, Applicant proceeded to a jury trial before the Honorable Kristi L. Harrington. Russell D. Hilton, Esquire, represented Applicant. Assistant Solicitor David L. Osborne prosecuted the case. The jury found Applicant guilty as indicted, and Judge Harrington sentenced him concurrently to thirteen years for each count of armed robbery.

Applicant filed a timely notice of appeal, and Appellate Defender Kathrine H. Hudgins perfected the appeal. On appeal, Applicant argued the trial court erred in not allowing Applicant to cross-examine a witness about lying to law enforcement. The Court of Appeals affirmed on the merits. State v. Wilson, Op. No. 2017-UP-444 (S.C. Ct. App. filed Nov. 29, 2017). The remittitur was sent on December 15, 2017.

On April 3, 2018, Applicant filed his first PCR application alleging:

1. "Ineffective Assistance of Counsel"
 - a. Failure to request continuance;
 - b. Failure to effectively cross-examine witnesses on dismissed charge;
 - c. Failure to move for mistrial.
2. "Prosecutorial Misconduct"
 - a. Nondisclosure of material evidence;
 - b. Conflict of interest.

As relief, Applicant sought to have his "sentence vacated, verdict set aside."

On January 24, 2019, an evidentiary hearing convened before the Honorable J. Cordell Maddox, Jr. Applicant was present and represented by Christopher Murphy, Esquire. Assistant Attorney General Benjamin Limbaugh represented Respondent. At the hearing, Applicant

indicated he wished to withdraw his PCR application. On March 4, 2019, Judge Maddox issued a final order dismissing the application. Applicant did not appeal.

CURRENT APPLICATION

On October 17, 2019, Applicant filed this current PCR application alleging he is being held in custody unlawfully for the following reasons:

1. Prosecutorial Misconduct: nondisclosure of material evidence, conflict of interest;
2. Ineffective Assistance of Counsel: Failure to request continuance, failure to effectively cross-examine witness on dismissed charges, failure to move for mistrial;
3. Ineffective assistance of PCR counsel: counsel failed to file an appeal from the denial of Applicant's first PCR application.

As relief, Applicant requested "sentence vacated, verdict set aside."

Respondent filed a return and motion to dismiss, asserting the application was successive and untimely. On March 26, 2021, the Honorable Roger Young, Sr. issued a Conditional Order of Dismissal, finding the action was successive and barred by the statute of limitations, and providing Applicant twenty days to show why the order should not become final. Thereafter, Applicant responded to the Conditional Order of Dismissal, asserting:

1. Ineffective assistance of PCR counsel: Counsel did not appeal the dismissal of his first PCR application;
2. Applicant did not voluntarily withdraw his first PCR application;
3. Prosecutorial misconduct: illegal plea agreement with witness.

Respondent filed an amended return requesting an evidentiary hearing on the narrow issue of whether Applicant should be granted a late appeal of the denial of his first PCR application pursuant to Austin.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the records of Applicant's direct appeal; the records of this Applicant's first PCR application; and the records of this application. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

AUSTIN REVIEW

Applicant alleges his prior PCR counsel, Christopher L. Murphy, Esquire, was ineffective for failing to appeal the denial of Applicant's first PCR application. This Court finds Applicant did not knowingly and intelligently waive his right to appeal the denial of his first PCR application and is entitled to a late appeal of that order pursuant to Austin.

An evidentiary hearing may be conducted regarding a successive PCR application "on the issue of whether, in fact, the petitioner requested and was denied an opportunity to seek appellate review" of his first PCR action. Austin v. State, 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 allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial PCR application outside of the ordinary time limits for bringing such an appeal. At the hearing, the parties stipulated that Murphy would testify he intended to file a notice of appeal but did not timely do so. Based on this stipulation, this Court finds Applicant did not voluntarily waive the appeal of his first PCR application and is entitled to a late appeal of that order.

[Conclusion and signature page follows]

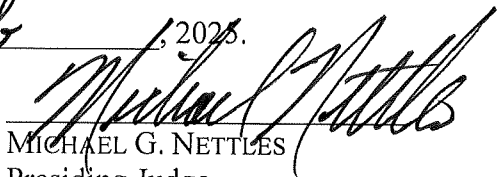
CONCLUSION

Based on the foregoing, this Court finds Applicant is entitled to a late appeal of the denial of his first PCR application pursuant to Austin. This Court further finds Applicant waived his remaining allegations, and they are 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), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. Applicant is entitled to a late appeal of the denial of his first PCR application;
2. The remaining allegations are dismissed with prejudice; and
3. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 15 day of Feb, 2025.


MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

2-15, South Carolina



ALAN WILSON
ATTORNEY GENERAL

February 24, 2025

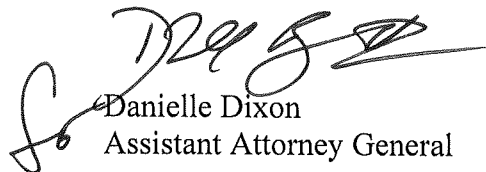
The Honorable Julie J. Armstrong
Clerk of Court - Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: Robert Wilson, #272726 v. State of South Carolina
Case No. 2019-CP-10-05343

Dear Ms. Armstrong:

Enclosed please find the original Order Granting Late Appeal and Dismissing Remaining Allegations signed by the Honorable Michael G. Nettles, in the above-captioned case, for filing in your office. In addition, please forward a time-stamped copy back to our office for our file.

Sincerely,


Danielle Dixon
Assistant Attorney General

DD/vh

cc: Denise Grainger Swope, Esquire