

**Law Office of Leah B. Moody, LLC**

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October 3, 2013

Mr. Daniel E. Shearouse  
The Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, SC 29221

**RECEIVED**

OCT 07 2013

RE: Donnie Mack Hagins v. State of South Carolina  
C.A. No. 2012-CP-46-4146

**S.C. SUPREME COURT**

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Donnie Mack Hagins in his Post Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal, Proof of Service and the Statement of Appeal in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope. Also enclosed is a copy of the Order Granting Belated PCR Appeal Pursuant To Austin v. State.

Thank you for your assistance with this matter.

Sincerely,

Leah B. Moody

LBM/jow

Enclosures

cc Donnie Mack Hagins  
Rutledge Johnson, Esquire

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

G. Edward Welmaker, Presiding in York County

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Case No. 2012-CP-46-4146

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Donnie Mack Hagins, ..... Appellant,

v.

State of South Carolina, ..... Respondent.

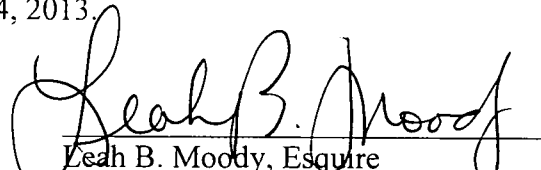
**RECEIVED**

OCT 07 2013

NOTICE OF APPEAL

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**S.C. SUPREME COURT**  
Donnie Mack Hagins appeals the order of the Honorable G. Edward Welmaker, dated August 25, 2013 and mailed on September 3, 2013. Appellant received written notice of entry of the final order on September 4, 2013.

  
Leah B. Moody, Esquire  
Law Office of Leah B. Moody, LLC  
235 E. Main Street, Suite 115  
Post Office Box 1015  
Rock Hill, South Carolina 29731

Other Counsel of record:  
J. Rutledge Johnson, SC Attorney General's Office  
Attorney for Respondents  
Rembert C. Dennis Building  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-3970

**IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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**APPEAL FROM YORK COUNTY  
Court of Common Pleas**

**G. Edward Welmaker, Presiding in York County**

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**Case No. 2012-CP-46-4146**

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**Donnie Mack Hagins, ..... Appellant,**

**v.**

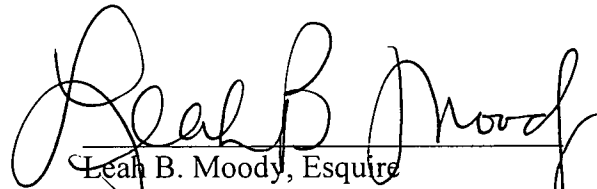
**State of South Carolina, ..... Respondent.**

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on J. Rutledge Johnson by depositing a copy of it in the United States Mail, postage prepaid, on October 3, 2013, addressed to its attorney of record, J. Rutledge Johnson, Post Office Box 11549, Columbia, South Carolina, 29211-1549.



Leah B. Moody, Esquire  
Law Office of Leah B. Moody, LLC  
235 E. Main Street, Suite 115  
Post Office Box 1015  
Rock Hill, South Carolina 29731

cc: Sharon A. Graham  
Donnie Mack Hagins

STATE OF SOUTH CAROLINA  
COURT OF APPEALS  
[In The Supreme Court]

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

G. Edward Welmaker, Presiding in York County

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Case No. 2012-CP-46-4146

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Donnie Mack Hagins, ..... Appellant,

v.

State of South Carolina, ..... Respondent.

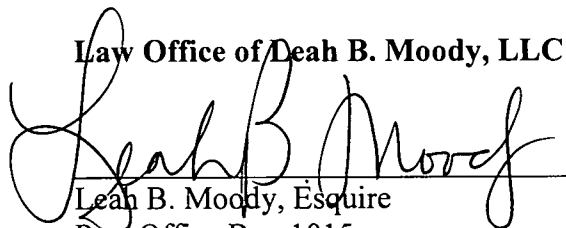
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STATEMENT OF APPEAL

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Now comes the Appellant, by and through his undersigned Attorney, states that Appellant's Notice of Appeal should be heard Pursuant to the Final Order of the Honorable G. Edward Welmaker was granted an *Austin* review of the Honorable Lee S. Alford's Final Order in Case No. 2008-CP-46-00373. The Appellant received written notice of the Final Order in Case No. 2008-CP-46-00373 on June 17, 2011.

Law Office of Leah B. Moody, LLC



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(803) 327-4192  
Attorney for the Appellant

Rock Hill, South Carolina  
Oct 3, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Donnie Mack Hagins, #164744,

2012-CP-46-4146

Applicant,

v.

**ORDER GRANTING BELATED  
PCR APPEAL PURSUANT TO  
AUSTIN V. STATE**

State of South Carolina,

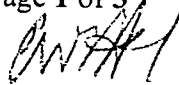
Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 3, 2012.

**I.**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the March 2007 term of the York County Grand Jury for Distribution of Crack Within Proximity of a Public Park or Playground (2007-GS-46-0464) and Distribution of Crack Cocaine (2007-GS-46-0465). Melissa A. Inzerillo, Esquire, represented the Applicant. On April 2, 2007, the Applicant pled guilty as indicted. The Honorable John C. Hayes, III, concurrently sentenced him to ten (10) years for Distribution of Crack Within Proximity of a Public Park or Playground and fifteen (15) years for Distribution of Crack Cocaine. The Applicant did not appeal his conviction or sentence.

2008-CP-46-0373



The Applicant filed his first application for Post-Conviction Relief (PCR) on January 30, 2008. The Respondent made its Return on May 22, 2008. An evidentiary hearing was subsequently convened at the Moss Justice Center in York County, South Carolina on February 4, 2009. The Applicant was present and was represented by Matthew R. Niemiec, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

In his first PCR application, he alleged that he was being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Subject Matter Jurisdiction"

The Honorable Lee S. Alford denied and dismissed the Applicant's application by written Order on February 13, 2009.

## II.

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Fraudulent Indictments"
  - a. "Proper procedures were not followed to obtain indictments"
2. "Failure PCR Counsel to file Notice of Appeal"

## III.

It appearing that counsel for both parties consent<sup>1</sup> to the denial of all claims in his Application for Post-Conviction Relief with the only exception being the granting of a belated

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<sup>1</sup> Counsel for Respondent spoke to prior PCR Counsel before the hearing who informed Counsel for Respondent that he had no proof that he ever served Applicant with a copy of the original Order of Dismissal. Therefore, at the hearing, Counsel for Respondent conceded Applicant was entitled to a belated PCR appeal pursuant to Austin.

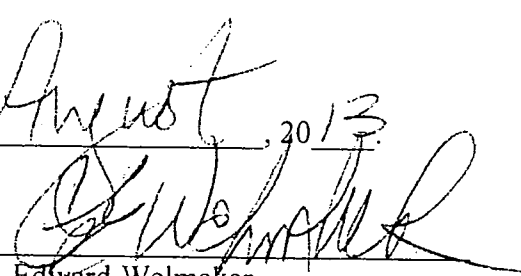
PCR appeal pursuant to Austin v. State<sup>2</sup>, this Application for post conviction Relief is granted only as to Applicant's right to seek a belated appeal of his previous Application for Post Conviction Relief and is denied and dismissed as to all other claims for relief.

IT IS THEREFORE ORDERED:

1. This Application for Post-Conviction Relief is **DENIED WITH THE EXCEPTION OF GRANTING A BELATED AUSTIN APPEAL**. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's first post-conviction relief action, captioned 2010-CP-02-1873. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR, for the appropriate procedure for a belated appeal; and

2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 25 day of August, 2013.

  
G. Edward Welmaker  
Presiding Judge  
Sixteenth Judicial Circuit

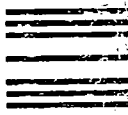
\_\_\_\_\_, South Carolina.

<sup>2</sup> 305 S.C. 453, 409 S.E.2d 395 (1991)

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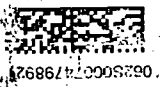


Mr Daniel E. Shearouse  
The Supreme Court of South Carolina  
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