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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE 13TH JUDICIAL CIRCUIT
RONALD TYRONE DOWNS SCDC #356640 Applicant,	)	
	)	Case No.:2023-CP-23-2199
vs	)	NOTICE OF APPEAL
STATE OF SOUTH CAROLINA, Respondent	)	

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JAY GRESHAM GRE. CIVIL SC

Ronald Tyrone Downs appeals the Order of the Honorable Patrick C. Fant, III dated May 6, 2025. I received a copy of the Order on May 12, 2025.

Isaac Johnson, Jr. Attorney for Applicant
130 Carson's Pond Drive
Simpsonville, SC 29681

June, 9, 2025
Greenville, S.C.

Other Counsel of Record
Kaylee Kemp
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Received
May 12, 2025
E.J. Jr.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THIRTEENTH JUDICIAL CIRCUIT
Ronald Tyrone Downs, Jr., SCDC# 356640, Applicant, v. State of South Carolina, Respondent.	)	Case No: 2023-CP-23-2199 **ORDER OF DISMISSAL PURSUANT TO *AUSTIN V. STATE*** (*with prejudice*)

05 MAY 2025 PM 2:58
GREENVILLE SC

This matter comes before the Court by way of an application for post-conviction relief filed on July 5, 2023, by Applicant Ronald Tyrone Downs, Jr. Applicant sought a belated appeal from his first PCR action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). In its Return, Respondent submitted that an evidentiary hearing is likely necessary to determine whether a belated appeal is warranted.

An evidentiary hearing was held on October 9, 2024, at the Greenville County Courthouse with the Honorable Patrick C. Fant, III, presiding. Applicant was present with his appointed counsel, Isaac L. Johnson, Jr., Esq. and Assistant Attorney General Tommy Evans, Jr., of the South Carolina Attorney General's Office represented the State. This Court received testimony from Applicant, Applicant's grandmother - Betty Downs, and Applicant's prior PCR counsel – Brian Johnson, Esq.

At the conclusion of the hearing, this Court took the matter under advisement. The Court now issues this order with its findings of facts and conclusions of law as required under S.C. Code Ann. § 17-27-80. Based upon the record, the evidence presented at the evidentiary hearing held in this matter, the argument of the parties, and consideration of the applicable case law, this court finds that Applicant has failed to establish that he "was denied an opportunity to seek appellate

review" as specified in *Austin,* 305 S.C. at 454, 409 S.E.2d at 396. Consequently, Applicant's request for post-conviction relief is **DENIED** and the application is **DISMISSED** with prejudice.

PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections (SCDC), Perry Correctional Institution, pursuant to orders of commitment from the Greenville County Clerk of Court. A Greenville County grand jury indicted Applicant in January 2013 for kidnapping (2912-GS-23-10568), armed robbery (2012-GS-23-10569) and first-degree assault and battery (2013-GS-23-0087A).

A jury trial was held August 14-15, 2013, with the Honorable Eugene C. Griffith Clifford presiding. (Trial Tr. at 1). Clifford F. Gaddy, Jr., Esq., represented Applicant on the charges and Assistant Solicitor L. Mark Moyer of the Thirteenth Circuit Solicitor's Office prosecuted the case. (Trial Tr. at 1). At the conclusion of trial, the jury found Applicant guilty of armed robbery and first-degree assault and battery but acquitted as to kidnapping. (Trial Tr. at 264). Judge Griffith sentenced Applicant to twenty-five (25) years for armed robbery and ten (10) years for first-degree assault and battery, to be served concurrently with credit for time served. (Trial Tr. at 269). Applicant did not appeal.

Initial PCR Action (2014-CP-23-2474)

Applicant filed his first *pro se* PCR application on May 1, 2014, raising the following ineffective assistance of counsel allegations:

1. Erroneously advised Applicant not to accept a 15-year plea offer;
2. Failed to consult with the Applicant about his right to appeal.

Brian P. Johnson, Esq., was appointed to represent Applicant in the action. An evidentiary hearing was held on February 19, 2015, at the Greenville County Courthouse with the Honorable

Daniel D. Hall presiding. Applicant and trial counsel testified at the hearing. On March 19, 2013, the application was denied and dismissed with prejudice. Applicant did not appeal.

CURRENT ALLEGATIONS AND RELIEF SOUGHT

In the current PCR action, Applicant seeks a hearing to pursue a belated appeal as provided by *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After carefully considering the record and the arguments presented by counsel, this Court now presents the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003). This Court finds that Applicant has failed to meet his burden of proof.

STANDARD OF REVIEW: *AUSTIN* CLAIMS

Under *Austin*, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal. *Austin,* 305 S.C. 453, 409 S.E.2d 395; *see also King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992). "[C]ounsel is required to advise an applicant of the right to appellate review of the denial of PCR." *Bray v. State*, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005). "If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR...." Rule 71.1(g), SCRCP. A PCR applicant is entitled to an *Austin* appeal if, after an evidentiary hearing on the matter, the PCR judge finds that applicant asked for appeal, but "was denied an opportunity to seek appellate review." *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. Applicant has the burden of showing "his entitlement to relief by a preponderance of the evidence." Rule 71.1(e), SCRCP.

MERITS OF APPLICANT'S *AUSTIN* CLAIM

Applicant claims that he did not voluntarily waive his right to appeal the denial of his 2015

PCR application to PCR counsel and seeks a belated appeal to challenge the denial of his ineffective assistance of counsel allegations. This Court finds that Applicant was advised of the opportunity to seek appellate review, was aware of the timeframe to file a notice of appeal, and did not advise counsel that he wished to appeal though he knew he could do so.

At the evidentiary hearing, Applicant testified that he only spoke with Mr. Johnson on the day of the evidentiary hearing and that they did not discuss his allegations prior to appearing in court. He testified that he asked Mr. Johnson to request a continuance because he felt that he was unprepared, and he also wanted his grandmother present at the hearing. Applicant testified that the only correspondence he had with Mr. Johnson after the evidentiary hearing was a letter from Mr. Johnson informing him that he may be able to file a belated appeal pursuant to *White v. State*, 208 S.E.2d 35 (S.C. 1974).[1] (Applicant's Exhibit 1 – Letter to Applicant, dated March 30, 2015). He testified that Mr. Johnson did not contact him again, and Applicant was unsure if Mr. Johnson still represented him. He testified that he thought Mr. Johnson would file a belated appeal, and that he did not relay the timeframe of filing the appeal or that it was Applicant's responsibility to file.

Applicant confirmed that he knows how to file a PCR application and knows how to appeal his conviction. He testified that he never called Mr. Johnson concerning questions about filing an appeal. Applicant also acknowledged that he received the Order of Dismissal from his PCR action

[1] PCR Counsel incorrectly stated in the letter that Applicant may be entitled to a belated appeal of his first PCR action pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) which allows for a belated review of direct appeal issues.

PCR Counsel likely meant to state Petitioner may be entitled to a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), which "is used when an applicant is prevented from seeking appellate review of a denial of his or her PCR application, such as when an attorney fails to seek timely review." *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999).

and that the Order notified him that he has thirty (30) days to appeal the denial of relief. Applicant testified that he wrote a letter to Mr. Johnson while he was incarcerated in Mississippi, but he could not locate the letter or confirm Mr. Johnson's receipt of the letter. As to asking Mr. Johnson to file an appeal on his behalf, he testified that he did not ask, nor did he ask his grandmother to notify Mr. Johnson to file an appeal.

Applicant's grandmother, Betty Downs, testified that she spoke with Applicant about filing a Rule 59(e) Motion,[2] and that she followed up with Mr. Johnson twice about doing so.[3] She testified that the second time she followed up with Mr. Johnson was on April 30, 2015, and that Mr. Johnson told her that he would file an appeal on Applicant's behalf. She testified that Mr. Johnson did not tell her that he did not file the appeal and that she did not hear from him again. She testified that she discussed an appeal with Applicant, and that if he had asked her to speak to his lawyer then she would have. She testified that Applicant believed his case was over when he left court after the hearing.

Mr. Johnson testified that he was prepared to go forward with Applicant's PCR action on the day of the hearing. As to the request to file a Rule 59(e) Motion, Mr. Johnson deferred to what was written in his letter to Applicant because he could remember the details of events. The letter states that Mr. Johnson spoke to Ms. Downs who informed him that Applicant wanted to file a Rule 59(e) Motion and that she would call him back with instructions, and as a result Mr. Johnson

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[2] Rule 59(e) Motion to Alter or Amend Judgment, South Carolina Rules of Civil Procedure ("On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.").

[3] The testimony is unclear if Ms. Downs is referring to a request for counsel to file a Rule 59(e) Motion or an appeal. Ms. Downs seems to use a Rule 59(e) Motion and a Notice of Appeal interchangeably throughout her testimony.

held off on filing an notice of appeal. At the PCR hearing, Mr. Johnson notes that Rule 59(e), SCRCP, requires specificity of error while the notice appeal only requires notice. The letter states that Ms. Downs contacted Mr. Johnson on April 30, 2015, and asked Mr. Johnson to file an appeal, but the thirty (30) day deadline had already passed. He testified that Applicant knew his PCR action had been dismissed and had given Applicant a copy of the Order of Dismissal. He testified that it is his understanding that his responsibility ends when an appeal is filed and then the matter is referred to appellate defense. If no appeal is filed, then representation ends. He testified that he did not personally discuss an appeal with Applicant after the Order of Dismissal, but as the letter reflects, he spoke with Applicant's grandmother. He testified that he was concerned that he had not relayed the correct time frame to Applicant's grandmother in regard to timely filing a Rule 59(e) Motion or a notice of appeal, so he sent the letter giving instructions on how to file a belated appeal. He testified that he believed it was clear his representation ended because it required Applicant to allege error against him. He further testified that he did not have any contact with Applicant after he sent him the letter.

Applicant testified that he received the Order of Dismissal which indicated that an appeal must be filed within thirty (30) days. Thus, Applicant knew the time frame in which he had to decide whether he wanted to appeal, and did not ask counsel to file one directly or through his grandmother, until after the deadline had passed. Notably, there is no testimony presented that Applicant directly requested Mr. Johnson to file an appeal on his behalf. Further, the letter states that Mr. Johnson told Applicant he would file an appeal on his behalf, but that Applicant's grandmother told him otherwise, and that Mr. Johnson would wait for Applicant's instructions. It is clear that Applicant was advised of his appellate rights and the timeframe in which to exercise them, yet his failure to inform counsel that he wanted to appeal must be considered as waiver of

appellate review.

AFFIRMATIVE DEFENSE OF LACHES

The doctrine of laches is an affirmative defense against an *Austin* claim that must be raised by the State in the return to the application or within the motion to dismiss the application. *Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002). The statute of limitations set forth in the S.C. Code Ann. § 17-27-45(A) does not apply to *Austin* claims, however laches may independently bar the action. *Id.*, 352 S.C. at 219, 574 S.E.2d at 202. Laches is defined as:

> Neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches.

Id., 352 S.C. at 219, 574 S.E.2d at 202 (citing *Hallums v. Hallums*, 296 S.C. 195, 198-199, 371 S.E.2d 525, 527 (1988)). "The determination of whether laches has been established is largely within the discretion of the [circuit] court." *Brown v. Butler*, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001) (citing *Grossman v. Grossman*, 242 S.C. 298, 130 S.E.2d 850 (1963)).

APPLICANT'S CLAIM IS BARRED BY LACHES

This Court finds that Applicant's *Austin* claim is likewise barred by the doctrine of laches. The State properly asserted the defense in its responsive pleading, arguing that Applicant's *eight* (8) year delay in filing after receiving Mr. Johnson's letter likely bars the action. After receiving testimony, this Court finds that Applicant has failed to justify the unreasonable length of time in which he waited to assert an *Austin* claim, despite being notified that he could do so shortly after the deadline to file the notice of appeal concluded.

Applicant offers no explanation for the delay other than that he was incarcerated in SCDC

from 2015 to 2018 and was subsequently transferred to Mississippi in 2018, where he remained incarcerated until 2024, when he was transferred back to SCDC. He testified that he did not have access to South Carolina case law while he was incarcerated in Mississippi. He testified that he waited so long to file this action because he believed he was procedurally barred from being heard, and that a fellow inmate looked over his case and told him the action was tolled, not barred, and that he should file a PCR application referencing *Austin*. Despite Applicant's explanation, the letter Applicant references and presents at the evidentiary hearing from Mr. Johnson, contradicts the assertion that he did not know he could seek a belated appeal. The letter explicitly informs Applicant that he can file an application for relief against PCR hearing counsel. Further, Applicant did not reach out to Mr. Johnson to inquire about the letter, though he contends he wrote him a letter in 2018 – three (3) years later – while he was incarcerated in Mississippi.

Mr. Johnson testified that he wrote Applicant the letter because he was concerned that he didn't notify Ms. Downs, Applicant's grandmother, of the time frame for filing a Rule 59(e) Motion or a notice of appeal. He testified that he believed the letter made clear that Applicant would be filing a claim against him for not filing an appeal, and that he did not receive any contact from Applicant after sending the letter.

Applicant's first PCR evidentiary hearing was on February 19, 2015, and the Order denying and dismissing the action was filed on March 19, 2015. The letter from Mr. Johnson sent to Applicant advising him of his right to pursue a belated appeal is dated April 30, 2015. No further action was taken which would require retention of the PCR transcript, thus the transcript is unavailable. *See* Rule 607(i), SCACR (allowing allows court reporters to reuse or destroy tapes of a proceeding after five years). The unavailability of the PCR transcript is prejudicial to Respondent, as well as Applicant. Additionally, reconstruction of the record would not be feasible

as Applicant's trial counsel is deceased, and the claims of error are ineffective assistance of counsel allegations that require trial counsel's testimony.

This Court finds that Applicant's claim is barred by laches based on Applicant's failure to pursue the claim in a diligent manner. Applicant was given the opportunity to act sooner and was notified by counsel that he could file an *Austin* claim *eight* (8) years prior to pursuing this action. *See Bray v. State*, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (applying laches where applicant delayed seven years in seeking appellate review pursuant to *Austin*). Applicant's delay in asserting this right frustrates the critical need for finality and "only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice." *Aice v. State*, 305 S.C. 448,451,409 S.E.2d 392, 394 (1991); *Williams v. Ozmint*, 380 S.C. 473,479,671 S.E.2d 600, 603 (2008) (same). "[T]he principle of finality ... is essential to the operation of our criminal justice system" because "[w]ithout finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). *See also Williams v. United States*, 401 U.S. 667, 691 (1971) ("If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all.") (Harlan, J., concurring in judgments in part and dissenting in part).

Therefore, in addition to Applicant's failure to establish that relief is warranted under the merits of *Austin*, Applicant's claim is additionally barred by the doctrine of laches, and the application for post-conviction relief must be denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established that he is entitled to the relief which *Austin* can provide. Therefore, this PCR application must be **DENIED** and **DISMISSED** with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules and *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and

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

AND IT IS SO ORDERED this 6th **day of** May **, 2025.**

PATRICK C. FANT, III
Thirteenth Judicial Circuit, Presiding Judge

Greenville, South Carolina

Copy mailed to
Attorney General / App. Atty
on 5 / 6 / 2025.