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Aug 28 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge  
Honorable Diane S. Goodstein, Circuit Court Judge

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ANTONIO O. SIMMONS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001091

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**Motion to Cure Deficiency in Notice of Intent to Appeal**

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Pursuant to this Court's request on August 19, 2025, counsel for Petitioner, Antonio Simmons, respectfully moves to cure the deficiency in the notice of intent to appeal regarding the date Petitioner received the written notice of entry of the order on appeal, specifically, the order signed by the Honorable Diane S. Goodstein on April 10, 2023, granting belated Austin review of an order signed by the Honorable Michael G. Nettles on October 1, 2019. Respectfully, this Court should find Petitioner received the written notice of entry of the order on July 6, 2023, making the July 10, 2023, notice of appeal timely served and filed. The interests of fairness and judicial economy support the finding.

1. In December of 2014, the Charleston County Grand Jury indicted Petitioner, Antonio Orlando Simmons, for five counts of armed robbery, indictments #2014-GS-10-0711, 07123, 07142, 07145, 07147. On March 20, 2018, Petitioner appeared before the Honorable R. Markley Dennis and pled guilty pursuant to a negotiated sentencing range between seventeen (17) and twenty-eight (28) years. Michael Apicella represented Petitioner. David Osborne prosecuted the case. On the lead indictment, #2014-GS-10-0711, Judge Dennis sentenced Petitioner to thirty (30) years, provided upon the service of eighteen (18) years the balance was suspended. Judge Dennis sentenced Petitioner to eighteen (18) years concurrent on the remaining indictments. Petitioner did not file a notice of intent to appeal.
2. On September 18, 2018, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return and motion for more definite statement on January 10, 2019. On July 23, 2019, an evidentiary hearing was held before the Honorable Michael G. Nettles. Christopher L. Murphy represented Petitioner. Jacob A. Isenberg represented the State. In a written order filed October 1, 2019, Judge Nettles granted relief in part and dismissed in part. Judge Nettles found that the suspended sentence for the lead indictment was illegal and remanded for re-sentencing. (Exhibit # 1). PCR counsel did not file a notice of intent to appeal.
3. On December 10, 2019, Petitioner filed a second PCR application requesting an “Austin hearing.” On January 10, 2020, prior to the State filing the return to the second PCR application, Petitioner appeared before Judge Dennis for re-sentencing pursuant to Judge Nettles’ order. Christopher R. Geel represented Petitioner. David L. Osborne

represented the State. Instead of re-sentencing only on the lead indictment where the sentence was found to be illegal, Judge Dennis re-sentenced Petitioner to twenty-eight years concurrent for all five indictments. A timely notice of intent to appeal was filed. On October 22, 2021, however, Petitioner signed an affidavit asking to drop the direct appeal. On February 9, 2022, the South Carolina Court of Appeals dismissed the appeal.

4. On February 22, 2021, over a year after Petitioner filed the second PCR application, the State filed a return and motion to dismiss. On November 3, 2022, an evidentiary hearing was held before the Honorable Diane S. Goodstein. James K. Falk represented Petitioner pursuant to a Rule 608 appointment. Samantha J. Weidauer represented the State. This second PCR hearing was limited to the belated appeal and did not address re-sentencing. In a written order signed April 10, 2023, Judge Goodstein granted a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). (Exhibit # 2).
5. On April 19, 2023, the Charleston County Clerk of Court mailed a copy of Judge Goodstein's order to all parties including James K. Falk, attorney for Petitioner. (Exhibit #3). On May 4, 2023, the Court placed attorney James K. Falk on interim suspension. (Exhibit # ). On May 9, 2023, attorney Falk passed away. It is unclear when attorney Falk received the order, but presumably before he was placed on interim suspension. It does not appear that attorney Falk sent Petitioner a copy of the order. The interim suspension and death happened during the thirty-day time frame in which to file the notice of intent to appeal. Rule 203(b)(1), SCACR.

6. On May 26, 2023, the South Carolina Commission on Indigent Defense [SCCID] received a spreadsheet from the South Carolina Attorney General's Office listing all of attorney Falks's cases. SCCID was involved because attorney Falk had been appointed to represent numerous indigent clients pursuant to his contract with the agency under the Rule 608 Contract Attorney Program. Petitioner's case was included on the spreadsheet with the status listed as Austin v. State grant. (Exhibit #5 – only relevant pages).
7. On May 31, 2023, Assistant Attorney General Danielle Dixon sent Hervery B.O. Young, Deputy Director/General Deputy at SCCID an e-mail with the final order granting the belated appeal pursuant to Austin v. State attached. (Exhibit #6). At this time PCR attorney Falk's files were in the Receiver's Office.
8. On June 12, 2023, SCCID received eight boxes of attorney Falk's appointed cases from the Receiver's Office. Petitioner's file was included in one of the boxes. SCCID reviewed the files to determine which cases needed new counsel appointed. As the evidentiary hearing had been held and the order filed in Petitioner's case, it did not appear that new PCR counsel needed to be appointed. While the order had been filed, the notice of intent to appeal had not been filed.
9. In an email dated July 6, 2023, Assistant Attorney General Danielle Dixon advised Deputy Director/General Counsel Young that Petitioner contacted her about the status of his PCR case and asked about the appointment of counsel. It does not appear that Petitioner received a copy of the order granting the Austin review. Ms. Dixon advised that the PCR matter in the circuit court had ended but the notice of appeal had not been

filed and either Petitioner or an attorney on his behalf needed to serve and file the notice of appeal. (Exhibit #7).

10. The notice of appeal was served and filed on July 10, 2023. (Exhibit #8). A petition for writ of certiorari and petition pursuant to Austin v. State were filed on March 15, 2024. The return was filed on August 29, 2024. In footnote #8 of the return the State questioned the timeliness of the notice of appeal but did not move to dismiss. On September 17, 2024, the case was transferred from the South Carolina Supreme Court to this Court pursuant to Rule 243(1), SCACR. On August 19, 2025, this Court asked Appellate counsel to cure the deficiency with the notice of appeal.

The notice of appeal in a case appealed from the Court of Common Pleas must be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. Under the unusual facts of this case, the date the written order was received is unclear. Respectfully, this Court should find Petitioner received the written notice of entry of the order on July 6, 2023, making the July 10, 2023, notice of appeal timely served and filed. Importantly, Petitioner may not have actually received a copy of the order granting belated Austin review until he received the petition for writ of certiorari and appendix filed March 15, 2024. While the order was mailed to PCR attorney Falk on April 19, 2023, Falk was placed on interim suspension on May 4, 2023, and passed away on May 9, 2023, during the thirty-day time frame in which to serve and file the notice of appeal. While the order was provided to SCCID on May 31, 2023, a new attorney was not re-assigned, and the client files were still with the Receiver's Office at that time. Again, it does not appear Petitioner received a copy of the order. Receipt of

the order by a lawyer, who was suspended and then died within the thirty-day appeal window should not qualify as receipt pursuant to Rule 203(b)(1), SCACR. Receipt by a lawyer who did not represent Petitioner should certainly not qualify as receipt pursuant to Rule 203(b)(1), SCACR.

When SCCID received the files from the Receiver's Office on June 12, 2023, Deputy Director/General Counsel Young, with the help of the Receiver's Office and the Attorney General's Office, worked to determine which cases needed to be re-assigned a new PCR attorney because the evidentiary hearing had not yet been held and an order had not yet been issued. In Petitioner's case, however, a new PCR attorney was not assigned because the evidentiary hearing had been held and the order issued. Again, it does not appear that Petitioner received a copy of the order.

Deputy Director/General Counsel Young was not appointed to represent Petitioner. However, when Young first learned on July 6, 2023, that the notice of appeal had not been served and filed, he acted on Petitioner's behalf, by serving and filing the notice on July 10, 2023. Respectfully, this Court should view July 6, 2023, as the date Petitioner received the written notice of entry of the order. The July 10, 2023, notice of appeal should be deemed timely served and filed.

In Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004), the South Carolina Supreme Court held, “ The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice. Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).” Despite the jurisdictional nature of the service of notice of appeal, the unusual facts of this case warrant flexibility if not equitable tolling.

Counsel submits that the time period to file the notice of appeal should be stayed from the time PCR counsel Falk was placed on interim suspension, May 4, 2023, until the time SCCID learned that the notice of intent to appeal had not been filed, July 6, 2023. During this time frame Petitioner was without counsel due to no fault of his own. As discussed above, it does not appear that Petitioner received a copy of the order. Instead, in July Petitioner contacted the Attorney General's office asking about the status of his case and the appointment of counsel.

In discussing equitable tolling with regard to a statute of limitations in Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115–16, 687 S.E.2d 29, 32 (2009), the South Carolina Supreme Court wrote:

In addition to these statutory tolling mechanisms, however, “[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.” 54 C.J.S. *Limitations of Actions* § 115 (2005). “Equitable tolling is a nonstatutory tolling theory which suspends a limitations period.” Ocana v. Am. Furniture Co., 135 N.M. 539, 91 P.3d 58, 66 (2004).

Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Rodriguez v. Superior Court, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period ‘to ensure fundamental practicality and fairness.’ ” Id. at 736 (citation omitted).

The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. Ocana, 91 P.3d at 65; *see also* 54 C.J.S. *Limitations of Actions* § 115 (“The party who seeks to invoke equitable tolling bears the devoir of persuasion and must, therefore, establish a compelling basis for awarding such relief.”).

It has been observed that “[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control.” Ocana, 91 P.3d at 66.

In the present case the ends of justice support a finding that the order was received on July 6, 2023. The extraordinary events that took place with Petitioner's PCR counsel were beyond


Petitioner's control and prevented Petitioner from receiving a copy of the order and serving and filing the notice of intent to appeal. This Court should find the July 10, 2023, notice of appeal timely served and filed.

Additionally, the interests of judicial economy support a finding that the order was received on July 6, 2023, making the July 10, 2023, notice of appeal timely served and filed. If this Court finds the notice of appeal was not filed timely and dismisses the Austin belated appeal, Petitioner will be entitled to file another subsequent PCR application, again asking for a belated Austin review. "The right to seek appellate review of the denial of PCR is expressly authorized by state law. S.C.Code Ann. § 17-27-100 (1985); Supreme Court Rule 50(9)." Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991).

Additionally, the notice of appeal was filed over two years ago. The notice of appeal was accepted by the South Carolina Supreme Court when filed on July 10, 2023. The petitions were filed on March 15, 2024. The State filed the return on August 29, 2024. Although the State questioned the timeliness of the notice of appeal, the State did not move to dismiss.

Petitioner may not have received a copy of the order granting belated Austin review until he received the petition for writ of certiorari and appendix filed March 15, 2024. This Court should find Petitioner received the written notice of entry of the order on July 6, 2023, making the July 10, 2023, notice of appeal timely served and filed. The interests of fairness and judicial economy support the finding.

Respectfully submitted,

  
Kathrine H. Hudgins  
Senior Appellate Defender  
Attorney for Appellant

This 28<sup>th</sup> day of August, 2025.

# EXHIBIT 1

ce  
AG  
AT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Antonio Simmons, )  
S.C.D.C. No. 279418, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT

) Case No.: 2018-CP-10-4505

) **ORDER GRANTING RELIEF IN PART AND**  
) **DISMISSAL IN PART**

**FILED**  
2019 OCT -1 AM 10:00  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Antonio Simmons (“Applicant”) on September 18, 2018. Respondent made its return on or about January 10, 2019. The Court convened an evidentiary hearing into the matter on July 23, 2019, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Christopher Murphy, Esquire. Jacob Isenberg, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s plea counsel, John Apicella, Esquire (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. After a thorough review of the evidence and testimony in the record, the Court finds as follows Applicant’s sentence shall be vacated and he shall be granted a new sentencing hearing. However, the Court also finds all other claims brought by Applicant shall be dismissed with prejudice.

## **I. PROCEDURAL HISTORY**

Applicant is presently confined pursuant to orders of the Charleston County Clerk of Court. In December 2014, the Charleston County Grand Jury indicted Applicant for five counts of Armed Robbery (2014-GS-10-07111/2014-GS-10-07123/2014-GS-1007142/2014-GS-10-07145/2014-GS-10-07147).

Michael Apicella, Esquire represented Applicant. Assistant Solicitor David Osborne, Esquire prosecuted the case. On March 20, 2018, Applicant pleaded guilty as indicted to all charges before the Honorable R. Markley Dennis. Judge Dennis sentenced Applicant to a negotiated 28 years suspended on the service of 18 years on indictment 2014-GS-10-01711 and the other indictments were dismissed as part of the plea. Applicant did not appeal his conviction or sentence.

## **II. CURRENT ALLEGATIONS**

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Due Process Violations
2. Prosecutorial Misconduct
3. Ineffective Assistance of Counsel
4. Violation of Equal Protection Law

Applicant requests relief as follows:

- Vacate plea follow by a new trial.

At the evidentiary hearing, Applicant proceeded forward on ineffective assistance of counsel based upon the following: 1) Failure to investigate; 2) Failure to review discovery; and 3) Failure to communicate; and 4) Failure to pursue a double jeopardy claim. Applicant also proceeded forward with a claim that he is serving an illegal sentence. Applicant requested to be resentenced to remedy the illegal sentence.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

#### A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id.

(citing Strickland, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is

subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

#### *1. Failure to Investigate Double Jeopardy Defense*

Applicant contends Counsel failed to investigate material grand jury transcripts. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court’s principle concern is whether the investigation “was itself reasonable.” Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013).

Here, Counsel credibly testified Applicant guaranteed a favorable grand jury transcript was available for their review. Specifically, Counsel credibly recalled Applicant claiming this transcript was the key getting current charges dismissed. Further, Counsel credibly recalled Applicant expressing personal belief this piece of evidence would get his charges thrown out for double jeopardy. However, Counsel credibly testified he advised Applicant the alleged circumstances did not amount to a claim of double jeopardy.

Additionally, Counsel credibly testified Applicant told him investigate relevant records in Horry County. Counsel further credibly recalled Applicant claiming to have several charges dismissed in Horry County. Thereafter, Counsel credibly testified he had an investigator check in Horry County to see if there were any relevant records available. However, Counsel credibly testified his investigator could not find anything related to Applicant.

Accordingly, this Court finds Counsel delivered credibly testimony on this issue. It appears Counsel followed through with investigating relevant evidence in Horry County even though he was suspicious anything existed. The investigator delivered news that confirmed Counsel's suspicions. Therefore, this Court finds Counsel conducted a reasonable investigation into relevant records at the request of Applicant. This Court further finds Applicant has failed to prove Counsel was deficient based upon a failure to investigate.

Applicant contends grand jury transcripts exist which would have led to a dismissal of his charges based upon double jeopardy. To establish counsel failed to adequately investigate a defense, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

Here, Counsel credibly testified there was no transcript available from previous grand jury proceedings based upon charges against Applicant. Further, Counsel credibly testified transcripts are not customarily recorded for grand jury proceedings. On the other hand, Applicant testified his grand jury transcript exists. Applicant further testified this transcript was wrongly withheld from him. However, Applicant did not specify the charges dismissed. Applicant also did not

specify the month or year these charges were dismissed. As a result, this Court finds no credible testimony or evidence in the record corroborates a relevant grand jury transcript exists. Therefore, this Court finds Applicant is merely providing insufficient speculation to support his claim. This Court further finds he has failed to overcome the burden to prove a failure to investigate prejudiced his double jeopardy defense.

Additionally, Applicant contends double jeopardy attaches after a grand jury dismisses an indictment. The submission of an indictment by the government attorney to the grand jury, and the examination of witnesses before them, do not amount to the institution of a prosecution. Post v. United States, 161 U.S. 583 (1896). Moreover, the double jeopardy clause protects against second prosecution for same offense, after conviction or acquittal, and multiple punishment for same offense Jivers v. State, 304 S.C. 556, 406 S.E.2d 154 (1991).

Here, Applicant testified the transcript would be from a grand jury proceeding dismissing previous indictments. He further testified this is sufficient for double jeopardy. However, grand jury indictment are not considered prosecution. The double jeopardy clause provides protection where there has already been previous prosecution. Therefore, this Court finds a grand jury dismissal on any charges would not be sufficient to satisfy the previous prosecution requirement of double jeopardy. Accordingly, this Court finds Applicant did not suffer prejudice in failing to acquire a grand jury transcript for the purposes of arguing double jeopardy.

## **2. *Failure to Communicate***

Applicant contends Counsel deficiently failed to communicate the availability of material evidence throughout his representation.

Here, Counsel credibly testified he met with Applicant about seventy time about this case. Furthermore, Counsel credibly testified they discussed the transcript issue numerous times.

Finally, Counsel credibly testified he advised Applicant the transcript from a grand jury did not exist. Contrarily, Applicant testified a transcript existed from the grand jury who dismissed his charges. Applicant testified Counsel failed to meet with him about the status of collecting this transcript. Applicant further testified he believed he was supposed to get the relevant transcript. However, Applicant testified the state withheld it.

Accordingly, this Court finds Counsel delivered credible testimony on this issue. It appears Counsel entertained the issue in several meetings, but always responded with accurate legal advice. Therefore, this Court finds Counsel reasonably communicated with Applicant about grand jury transcripts. This Court further finds Applicant has failed to overcome the burden to prove Counsel was deficient based upon a failure to communicate.

Applicant contends he was not able to notify Counsel about material evidence that would have resulted in his charges being dismissed. Mere speculation as to what might have happened had defense counsel independently investigated is not sufficient for prejudice, where the record indicates an investigation would have resulted differently. Kibler v. State, 267 S.C. 250, 256, 227 S.E.2d 199, 202 (1976) (finding applicant suffered no prejudice where he could not corroborate an investigation would have produced evidence he did not possess necessary intent to commit the crime).

Here, Applicant reiterated the material evidence was this grand jury transcript. Further, Applicant testified this transcript was violating his due process based upon double jeopardy. Finally, Applicant testified the Assistant Solicitor withheld the transcripts in an effort to get him to plead guilty. On the other hand, Counsel credibly testified grand jury proceedings are not traditionally recorded with a transcript. Further, Counsel credibly testified a previous failure to indict was not, by itself, material evidence.

Accordingly, the issue is whether this alleged grand jury transcript can be considered material evidence. Applicant has not provided any context about the basis for these alleged grand jury proceedings. Applicant has not provided any evidence about the basis for this alleged dismissal. Therefore, no credible evidence in the record corroborates this alleged transcript would contain material evidence. Accordingly, this Court finds the record indicates an investigation into the alleged grand jury transcript would not have produced material evidence sufficient for dismissal.

Additionally, the South Carolina Supreme Court has found deficient counsel does not prejudice an applicant where the basis for their decision to avoid trial was a favorable plea. Goins v. State, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012). (finding no prejudice where evidence showed Applicant accepted the plea after State offered to dismiss certain charges).

Here, Counsel credibly testified the Assistant Solicitor was ready to go to trial any of the ten armed robbery charges. Thereafter, Counsel credibly recalled the Assistant Solicitor intended to prosecute Applicant as many times as it took to get life without parole. Counsel credibly testified he notified Applicant of the Assistant Solicitor's LWOP intention. Counsel credibly testified the Assistant Solicitor offered a range of twenty to twenty five years. Subsequently, Counsel credibly testified Applicant said he would accept a negotiated range contingent upon lowering the minimum to seventeen years. Counsel credibly testified the Assistant Solicitor agreed to seventeen years contingent upon raising the potential maximum to twenty eight years. Finally, Counsel credibly testified all parties agreed to a negotiated range of seventeen to twenty eight years on five armed robbery charges. Counsel also credibly testified the agreement further stipulated the other fifteen charges would be dismissed.

Accordingly, this Court finds Counsel has provided credibly testimony on the issue. The testimony indicates Applicant pled with the motivation to avoid LWOP exposure. Further it indicates Applicant pled with the motivation to potentially receive the lower end of a negotiated range. Finally, it indicates Applicant pled with the motivation to have fifteen other charges dismissed. Therefore, this Court finds Applicant has failed to overcome the burden to prove he pled in reliance upon any deficient behavior by Counsel.

### 3. *Failure to Conduct Mental Evaluation*

Applicant contends Counsel deficiently failed to have him evaluated for legal incompetency based upon mental health issues.

At the plea hearing, Counsel notified the court of mental health concerns. (Tr. 33-4). He made the court aware Applicant had a longstanding illness of schizophrenia. (Tr. 34). Counsel also indicated he hired had two mental health experts evaluate Applicant. (Tr. 34). Counsel further stated Applicant was fine when he took his medication. (Tr. 34).

Here, Counsel credibly testified he suspected Applicant had mental health issues during their first meeting. Thereafter, Counsel credibly testified he pulled previous documents on Applicant which indicated mental health issues. Counsel credibly testified he had a mental health evaluation conducted where Applicant was found to be incompetent. Counsel credibly recalled improvements after medical experts gave Applicant appropriate medication. Subsequently, Counsel credibly testified Applicant was found to be competent in October 2017. The plea hearing was not until March 20, 2018. Accordingly, this Court finds Counsel took reasonable steps in evaluating competency. This Court further finds Applicant has failed to overcome the burden to prove Counsel was deficient in having him mentally evaluated.

Applicant contends he was legally incompetent to voluntarily enter into a negotiated sentence. The test for competency to stand trial or continue trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as a factual, understanding of the proceedings against him. McLaughlin v. State, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003). The defendant bears the burden of proving his incompetence to stand trial by a preponderance of the evidence. Id.

Here, Counsel credibly recalled Applicant became competent after he was put on the proper medication. This is consistent with his mitigation statements at the plea hearing. (Tr. 34). Further, this is consistent with one expert's evaluation which was submitted to the plea court. (Tr. 34).

On the other hand, Applicant testified he was incompetent on the day of the plea hearing. However, this is not consistent with the record. An expert originally found Applicant to be legally incompetent on April 28, 2017. (Tr. 12). Thereafter, the same expert found Applicant to be legally competent on October 16, 2017. (Tr. 12). Further, Applicant was found to be criminally responsible in a report compiled on November 3, 2017. All three of these evaluations were submitted to the plea court on March 20, 2018. Accordingly, this Court finds Applicant has provided insufficient evidence to conclude he would have successfully been found incompetent when the negotiated sentence was entered. Therefore, this Court finds Applicant has failed to overcome the burden to prove he was prejudiced by not being evaluated for competency before entering a negotiated sentence.

#### **IV. ILLEGAL SENTENCE**

Applicant contends the plea court imposed an illegal sentence. A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon,

or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, *no part of which may be suspended* or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence S.C. Code Ann. § 16-11-330 (a) (emphasis added). The issue regarding whether an applicant is serving an illegal sentence is a question of law. Bordeaux v. State, 410 S.C. 495, 765 S.E.2d 143 (2014). Post-conviction relief may be tailored to remedy the precise prejudice resulting from constitutional violations. Boan v. State, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010).

At the plea hearing, Applicant entered into a negotiated sentencing range of seventeen to twenty eight years based upon the charge of armed robbery. (Tr. 35). However, Applicant was sentenced to thirty years suspended upon the service of eighteen. (Tr. 37). As a matter of law, Applicant's sentence for armed robbery cannot be suspended. Accordingly, this Court finds Applicant is serving an illegal sentence. This Court finds the appropriate remedy is to vacate the sentence and afford Applicant a new sentencing hearing.

#### V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has established the sole constitutional violation in that he is serving an illegal sentence. Therefore, this application for post-conviction relief must be granted in-part and denied in-part.

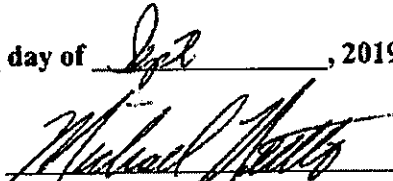
This Court notifies both parties they must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453,

409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Applicant's sentence be vacated; Applicant be remanded to Charleston County Detention Center; and Applicant be re-sentenced.
2. That the other claims in this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 19 day of Sept, 2019.

  
MICHAEL G. NETTLES  
Presiding Judge  
Ninth Judicial Circuit

Florence, South Carolina

# EXHIBIT 2

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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Antonio Simmons, SCDC# 279418, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-6370

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

This matter was before this Court on November 4, 2022 for an evidentiary hearing on Applicant's Post-Conviction application. The hearing was conducted in person with the assistance of WebEx, which the Applicant consented to. Samantha Weidauer, Esquire and Lauren Mims, Esquire were present representing the State. Applicant's counsel, James Falk, Esquire, and Applicant were both present.

**Procedural History**

On December 2014, the Charleston County Grand Jury indicted Applicant for five counts of Armed Robbery (2014-GS-10-07111/2014-GS-10-07123/2014-GS-1007142/2014-GS-10-07145/2014-GS-10-07147).

Michael Apicella, Esquire represented Applicant before the Charleston County court of General Sessions, and Assistant Solicitor David Osborne, Esquire prosecuted the case. On March 20, 2018, Applicant pleaded guilty as indicted to all charges before the Honorable R. Markley Dennis. Judge Dennis sentenced Applicant to a negotiated 28 years suspended on the service of 18 years on indictment 2014-GS-10-01711 and the other indictments were dismissed as part of the plea. Applicant did not appeal his conviction or sentence.

FILED  
2023 APR 14 PM 3:03  
JULIE J. ARMSTRONG  
CLERK OF COURT  
DSR

*Applicant's Initial Post-Conviction Relief Action (2018-CP-10-4505)*

Applicant filed his first application for post-conviction relief on September 18, 2018. In that application, Applicant alleged he was being held in custody unlawfully based on:

1. Due Process Violations
2. Prosecutorial Misconduct
3. Ineffective Assistance of Counsel
4. Violation of Equal Protection Law

Respondent made its return on January 10, 2019, requesting an evidentiary hearing be held. An evidentiary hearing was held on July 23, 2019, before the Honorable Michael G. Nettles, circuit court judge. Applicant was represented by Christopher Murphy, Esquire. Following the evidentiary hearing, Judge Nettles granted relief in part and denied relief in part. The order was filed on October 1, 2019. Applicant did not file an appeal.

On January 10, 2020 and pursuant to Judge Nettles' October 1, 2019 order the court convened a re-sentencing hearing. The Applicant was present and represented by Christopher R. Geel, Esquire. Defense counsel argued that the court was constrained to sentence the defendant to 28 year's incarceration, in light of North Carolina v. Pearce, 395 U.S. 711 (1969). During the hearing, the Applicant indicated that he did not want to be re-sentenced, but instead wanted to withdraw his guilty plea. Additionally, the Applicant requested a jury trial on all of his charges. Defense counsel indicated to the court that he did not believe the court was authorized to grant the defendant's request, given the procedural posture of the case. The State agreed. The Court sentenced Applicant to 28 years on each of the above warrants. Applicant, through counsel, filed a timely notice of appeal on January 17, 2020. On February 1, 2022 Applicant advised the Court of Appeals that he would withdraw his appeal. On February 9, 2022 the Court of Appeals entered an order dismissing Applicant's appeal.

### Current Application

In his second and current application for post-conviction relief, Applicant alleges he is entitled 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). At the evidentiary hearing, Applicant's original PCR counsel acknowledged that he did not file a Notice of Appeal from Judge Nettles' October 1, 2019 order.

### FINDINGS OF FACT AND CONCLUSION OF LAW

Based on Mr Murphy's testimony the court finds that Applicant did not knowingly and voluntarily waive his right to appeal. Therefore, Applicant is entitled to belated PCR appeal pursuant to Austin v. State. Thus, this Application for post-conviction Relief is granted.

#### 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

3. Applicant's other post-conviction relief claims in the PCR regarding resentencing are stayed pending a resolution of <sup>the</sup>~~the~~ Austin appeal.

AND IT IS SO ORDERED this 10 day of April, 2023



The Honorable Diane Schafer Goodstein

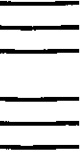
Presiding Judge

# EXHIBIT 3

**JULIE J. ARMSTRONG**  
CLERK OF COURT, C.P. & G.S.  
100 BROAD STREET, SUITE 106  
CHARLESTON, SC 29401-2258  
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org



5



JAMES KRISTIAN FALK  
PO BOX 1058  
CHARLESTON SC 29402-1058

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC**

**Order Granting Belated PCR Appeal Under Austin & Other PCRs**

**CASE NO: 2019CP1006370**

**Antonio O Simmons VS South Carolina State of**

This judgment was entered on the 14th day of April, 2023, and notice mailed first class on Wednesday, April 19, 2023, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

# EXHIBIT 4

The Supreme Court of South Carolina

In the Matter of James Kristian Falk, Respondent

Appellate Case Nos. 2023-000662 and 2023-000663

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ORDER

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The Office of Disciplinary Counsel asks this Court to place Respondent on interim suspension pursuant to Rule 17(b) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of the Receiver to protect the interests of Respondent's clients pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that Respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Peyre T. Lumpkin, Esquire, is hereby appointed to assume responsibility for Respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Respondent's clients. Except as authorized by Rule 31(d)(5), RLDE, Rule 413, SCACR, Mr. Lumpkin may not practice law in any federal, state, or local court, including the entry of an appearance in a court of this State or of the United States. Mr. Lumpkin may make disbursements from and close Respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of Respondent, shall serve as an injunction to prevent Respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Peyre T. Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre T. Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive Respondent's mail and the authority to direct that Respondent's mail be delivered to Mr. Lumpkin's office.

s/Donald W. Beatty

C. J.

FOR THE COURT

Columbia, South Carolina  
May 4, 2023

# EXHIBIT 5

20195962	SIMMONS Antonio	State of South Carolin	Common Pleas	PC
2020107	ROOKS-MCBEAN Julius	State of South Carolin	Common Pleas	PC
2020131	SINGLETON John Anthony	State of South Carolin	Common Pleas	PC
2020894	GANTT Chellis B.	State of South Carolin	Common Pleas	PC
2020899	WALKER Newitt R	State of South Carolin	Common Pleas	PC
2020930	FERRELL William L	State of South Carolin	Common Pleas	PC
2020985	ANCRUM Gerald	State of South Carolin	Common Pleas	PC
20202717	LEGETTE Roger Syntell	State of South Carolin	Common Pleas	PC
20202827	JAMES Jarrell	State of South Carolin	Common Pleas	PC
20202843	WALKER Lavar Terrell	State of South Carolin	Common Pleas	PC
20203282	KINSEY Byron	State of South Carolin	Common Pleas	PC
20203797	SHABAZZ Minister B. L.	State of South Carolin	Common Pleas	PC
20204543	COLLINS Samuel T.	State of South Carolin	Common Pleas	PC
20205126	PERKINS Justin	State of South Carolin	Common Pleas	PC
20205234	OPENLANDER Tessa	State of South Carolin	Common Pleas	PC
20205465	SMITH Jeremiah Jermaine, Jr.	State of South Carolin	Common Pleas	PC
20205620	BLOMQUIST Joshua Allen	State of South Carolin	Common Pleas	PC
202173	WISE Quinn Maurice, Jr.	State of South Carolin	Common Pleas	PC
2021187	WALLACE Joshua Deluge	State of South Carolin	Common Pleas	PC
2021660	SHEWTZUK Thomas	State of South Carolin	Common Pleas	PC
20211270	MILLER Qhuan	State of South Carolin	Common Pleas	PC
20212068	WILLIAMS Jaycoby	State of South Carolin	Common Pleas	PC
20212764	GREEN Darre	State of South Carolin	Common Pleas	PC
20212884	BROWN Dominick Alexander	State of South Carolin	Common Pleas	PC
20212988	POACHER Joshua	State of South Carolin	Common Pleas	PC
20213314	ADAMS Charles Everett	State of South Carolin	Common Pleas	PC
20213358	WAKEFIELD Jeffrey William	State of South Carolin	County Criminal	PC
20213360	WHITE Aaron Jordan	State of South Carolin	Common Pleas	PC
20213766	HOPKINS Rohaime Jamar	State of South Carolin	Common Pleas	PC
20213767	WASHINGTON Jamaa Ato Jr.	State of South Carolin	Common Pleas	PC
20213948	JONES Bobby Sr.	State of South Carolin	Common Pleas	PC
20214191	ANDERSON Charles S.	State of South Carolin	Common Pleas	PC
20215175	CAMPBELL David	State of South Carolin	Common Pleas	PC
20215241	LOCKLEAR Sandy Lee	State of South Carolin	Common Pleas	PC
2022494	SMILEY Samuel	State of South Carolin	Common Pleas	PC
2022677	YOUNG Aneisha	State of South Carolin	Common Pleas	PC
2022921	ANCRUM Derrick	State of South Carolin	Common Pleas	PC
20221393	WASHINGTON Donnel	State of South Carolin	Common Pleas	PC
20221437	EVANGELISTA Nick Russell	State of South Carolin	Common Pleas	PC
20221617	GANTT Kelvin	State of South Carolin	Common Pleas	PC
20222488	LEMON Ishmel Jayvan	State of South Carolin	Common Pleas	PC
20222534	WALLS Brian	State of South Carolin	Common Pleas	PC
20222554	WRIGHT Chauncey Antonio	State of South Carolin	Common Pleas	PC
20222708	NIEVES Jonathan A.	State of South Carolin	Common Pleas	PC
20222715	GRANT Dexter	State of South Carolin	Common Pleas	PC
20222943	FLUDD Daniel	State of South Carolin	Common Pleas	PC
20223209	CAMPBELL Samuel L.	State of South Carolin	Common Pleas	PC

SAMMIEWEIDAUE	Julie J. Armstrong	Scarlett A. Wilson	Charleston
MHARRIGAN	Jerri Ann Roseneau	Isaac McDuffie Stone, I	Beaufort
LAURENMIMS	Julie J. Armstrong	Scarlett A. Wilson	Charleston
SAMMIEWEIDAUE	Julie J. Armstrong	Scarlett A. Wilson	Charleston
Chelsey Marto	Alma Y. White	Jimmy A. Richardson	Georgetown
Chelsey Marto		Jimmy A. Richardson	Horry
LAURENMIMS	Julie J. Armstrong	Scarlett A. Wilson	Charleston
taylorSmith	Renee N. Elvis	Jimmy A. Richardson	Horry
Chelsey Marto	Renee N. Elvis	Jimmy A. Richardson	Horry
SAMMIEWEIDAUE	Julie J. Armstrong	Scarlett A. Wilson	Charleston
MHARRIGAN	Cheryl L. Graham	David M. Pascoe, Jr.	Dorchester
ZACHARYJ	James C. Campbell	Ernest A. Finney, III	Sumter
MHARRIGAN	Jerri Ann Roseneau	Isaac McDuffie Stone, I	Beaufort
MHARRIGAN	Jerri Ann Roseneau	Duffie Stone	Beaufort
MHARRIGAN	Margaret Bostick	Isaac McDuffie Stone, I	Jasper
CRUISEMITCHELL	Beulah G. Roberts	Ernest A. Finney, III	Clarendon
MHARRIGAN	Jerri Ann Roseneau	Duffie Stone	Beaufort
CMITCHELL	Julie J. Armstrong	Scarlett A. Wilson	Charleston
CRUISEMITCHELL	Sharon W. Stagers	Ernest A. Finney, III	Williamsburg
MHARRIGAN	Cheryl L. Graham	David M. Pascoe, Jr.	Dorchester
Chelsey Marto	Renee N. Elvis	Jimmy A. Richardson	Horry
WHITNEYOKELLY	Elaine Sabb	Isaac McDuffie Stone, I	Allendale
William Ray			Horry
DANIELLEDIXON	Julie J. Armstrong	Scarlett A. Wilson	Charleston
MHARRIGAN	Margaret Bostick	Isaac McDuffie Stone, I	Jasper
Chelsey Marto	Renee N. Elvis	Jimmy A. Richardson	Horry
DANIELLEDIXON	Julie J. Armstrong	Scarlett A. Wilson	Charleston
DANIELLEDIXON	Julie J. Armstrong	Scarlett A. Wilson	Charleston
WHITNEYOKELLY	Margaret Bostick	Isaac McDuffie Stone, I	Jasper
LAURENMIMS	Julie J. Armstrong	Scarlett A. Wilson	Charleston
WHITNEYOKELLY	Elaine Sabb	Isaac McDuffie Stone, I	Allendale
CRUISEMITCHELL	James C. Campbell	Ernest A. Finney, III	Sumter
taylorSmith	Renee N. Elvis	Jimmy A. Richardson	Horry
Chelsey Marto	Renee N. Elvis	Jimmy A. Richardson	Horry
LAURENMIMS	Julie J. Armstrong	Scarlett A. Wilson	Charleston
WHITNEYOKELLY	Margaret Bostick	Isaac McDuffie Stone, I	Jasper
LAURENMIMS	Julie J. Armstrong	Scarlett A. Wilson	Charleston
taylorSmith	Alma Y. White	Jimmy A. Richardson	Georgetown
WHITNEYOKELLY	Jerri Ann Roseneau	Isaac McDuffie Stone, I	Beaufort
WHITNEYOKELLY	Rebecca Hill	Isaac McDuffie Stone, I	Colleton
DANIELLEDIXON	Julie J. Armstrong	Scarlett A. Wilson	Charleston
MHARRIGAN	Jerri Ann Roseneau	Isaac McDuffie Stone, I	Beaufort
CRUISEMITCHELL	James C. Campbell	Ernest A. Finney, III	Sumter
MHARRIGAN	Margaret Bostick	Isaac McDuffie Stone, I	Jasper
taylorSmith	Renee N. Elvis	Jimmy A. Richardson	Horry
MHARRIGAN	Myllinda D. Nettles	Duffie Stone	Hampton
WHITNEYOKELLY	Rebecca Hill	Isaac McDuffie Stone, I	Colleton

armed robbery x5
Attempted Armed Robbery; Assault and Battery with Intent to Kill; Firearms Provision
CSC w/minor 2nd, CSC w/minor 3rd, lewd act upon a child
dist cocaine 3rd, trafficking crack 3rd
Trafficking in heroin 4-14 Grams, 1st Offense
Armed Robbery
dist heroin 3rd (x3); dist crack 3rd
Murder
Armed Robbery, Kidnapping, Attempted murder
voluntary manslaughter, pos weapon during viol crime, intimidation of witness (x3)
Murder, Armed Robbery, Possession of Firearm/Ammo by Felon
Distribution of Cocaine-2 counts, Shoplifting-4 counts, Financial Card Theft, Simple Larceny
Murder, Possession of a Weapon During a Violent Crime
Criminal sexual conduct with minor or attempt.
2019-GS-27-00259
Attempted Murder
trafficking methamphetamine
trafficking cocaine, possession of a weapon during violent crime, PWID MJ
Murder, Possession of a weapon during a violent crime
Murder, Possession of a weapon during a violent crime, kidnapping x3
Burglary 2nd Degree,
Murder
Drug trafficking meth or cocaine
Stalking
Murder (x2), Attempted Armed Robbery, Firearm Provision
3 counts of burglary 1st degree, grand larceny, breaking into a motor vehicle, and failure blue
Felony DUI
Murder, Attempted Murder
Murder - LWOP
Possession of a Weapon During Commission of Violent Crime, Attempted Murder
Criminal Sexual Conduct w/minor 2nd degree
Armed Robbery, Poss. of Weapon During Violent Crime
Trafficking Cocaine 10-128 grams, Failure to Stop for Blue Light, Criminal Domestic Violence
Murder
Accessory Before the Fact to Armed Robbery
2016-GS-27-00241; 00251; 00569
Trafficking Cocaine; Trafficking Ice, Crank or Crack; Manufacturing/Dist. Cocaine 2nd Offense
1st Degree Burglary
Murder
Weapon possession during violent crime; assault/attempted murder
Burglary 1st Degree
Murder
Armed Robbery, Attempted Murder, Common Law Robbery, & Possession of a Weapon during the Commission of Poss. Weapon During Violent Crime; Murder (x2)
Trafficking Heroin
Voluntary Manslaughter, Poss. Weapon During Violent Crime
Burglary/safe-cracking; Burglary 2nd Degree(x7); Grand Larceny; Larceny(x2); Accessory after the fact

James K. Falk	2019-CP-10-0637	Charleston	R. Markley Dennis, Jr	Amanda K. Haffenden
James K. Falk	2019-CP-07-0272	Beaufort	Roger L. Couch	Pamela E. Green
James K. Falk	2019-CP-10-0654	Charleston	Roger L. Couch	Ruth Weese
James K. Falk	2020-CP-10-647	Charleston	Jennifer B. McCoy	Denise Lauder
James K. Falk	2020-CP-22-0225	Georgetown	Steven H. John	Kay H. Richardson
James K. Falk	2020-CP-26-1048	Horry	Steven H. John	Grace L. Hurley
James K. Falk	2020-CP-10-902	Charleston	William P. Keesley	Karen Anderson
James K. Falk	2020-CP-26-0347	Horry	Larry B. Hyman, Jr.	Teresa Bautz
James K. Falk	2020-CP-26-3530	Irmo Magistrate	Steven H. John	Kay H. Richardson
James K. Falk	2020-CP-10-2661	Charleston	R. Markley Dennis, Jr	Phyllis H. Norton
James K. Falk	2020-CP-18-1059		Maite D. Murphy	Heather Landry
James K. Falk	2020-CP-43-1015	Sumter	Kristi F. Curtis	Frances B. Ray
James K. Falk	2020-CP-07-0151	Beaufort	Brooks P. Goldsmith	Cheryl A. Smith
James K. Falk	2020-CP-07-0226	Beaufort	G. Thomas Cooper, Jr	Mona L. Manley
James K. Falk	2020-CP-27-0062	Beaufort	Carmen T. Mullen	Mona L. Manley
James K. Falk	2020-CP-14-0043	Sumter	D. Craig Brown	Bonnie H. Kelly
James K. Falk	2020-CP-07-0244	Beaufort	Brooks P. Goldsmith	Mona L. Manley
James K. Falk	2020-CP-10-5683	Charleston	Kristi F. Curtis	Cynthia Weaver
James K. Falk	2020-CP-45-0034		Clifton Newman	Melissa R. Singletary
James K. Falk	2021-CP-18-0023		Maite D. Murphy	Heather Landry
James K. Falk	2020-CP-26-0706	Horry	Michael G. Nettles	Grace L. Hurley
James K. Falk	2021-CP-03-0009	Beaufort	Perry M. Buckner, III	M. Rebecca Hill
James K. Falk	2016-CP-26-0217		William H. Seals Jr.	
James K. Falk	2019-CP-10-5342	Charleston	Roger M. Young	Joyce C. Rueger
James K. Falk	2020-CP-27-0016	Beaufort	R. Lawton McIntosh	Mona L. Manley
James K. Falk	2021-CP-26-0515	Horry	Steven H. John	Kay H. Richardson
James K. Falk	2021-CP-10-3720		R. Markley Dennis, Jr	Digital Court Reporter Progr
James K. Falk	2021-CP-10-3718	Charleston	R. Markley Dennis, Jr	Phyllis H. Norton
James K. Falk	2021-CP-27-0037	Beaufort	Perry M. Buckner	Mona L. Manley
James K. Falk	2021-CP-10-4062		R. Scott Sprouse	Amanda K. Haffenden
James K. Falk	2021-CP-03-0017	Beaufort	Brooks P. Goldsmith	Mona L. Manley
James K. Falk	2021-CP-43-1662	Sumter	R. Ferrell Cothran, Jr.	Francis Ray
James K. Falk	2021-CP-26-0779	Horry	Thomas A. Russo	Kay H. Richardson
James K. Falk	2021-CP-26-7958	Horry	Benjamin H. Culberts	Grace L. Hurley
James K. Falk	2021-CP-10-5463		Roger M. Young	Amanda K. Haffenden
James K. Falk	2022-CP-27-047	Beaufort	Carmen T. Mullen	Wanda H Rowe
James K. Falk	2022-CP-10-770		Roger L. Couch	Amanda K. Haffenden
James K. Falk	2022-CP-22-0023	Georgetown	Larry B. Hyman, Jr.	Sallie Beth Todd
James K. Falk	2022-CP-07-0362	Beaufort	Deadra L. Jefferson	Karen Anderson
James K. Falk	2022-CP-15-0008	Beaufort	Steven H. John	Rebecca Hill
James K. Falk	2022-CP-10-0104		W. Jeffrey Young	Karen Anderson
James K. Falk	2022-CP-07-0089		G. Thomas Cooper, Jr	Sharon Hardoon
James K. Falk	2022-CP-43-817	Sumter	R. Ferrell Cothran, Jr.	Frances B. Ray
James K. Falk	2022-CP-27-0024		Carmen T. Mullen	Kymerlee M. Williams
James K. Falk	2022-CP-26-3313	Horry	Benjamin H. Culberts	Keshia Reed
James K. Falk	2022-CP-25-0014		Perry M. Buckner	Rebecca Hill
James K. Falk	2019-CP-15-0014	Beaufort	Brooks P. Goldsmith	Mona L. Manley

N	N	Tyger River Correctional Institution	Y	01:30 PM	N
N	N	McCormick Correctional Institution	N	09:30 AM	Y
N	N	Broad River Correctional Institution	N	09:30 AM	Y
N	N	Allendale Correctional Institution	Y	09:30 AM	N
N	N	Lieber Correctional Institution	Y	09:30 AM	N
N	N	J. Ruben Long Detention Center	Y	09:30 AM	N
N	N	Kershaw Correctional Institution	Y	09:30 AM	Y
N	N	McCormick Correctional Institution	N	09:30 AM	Y
N	N	Lee Correctional Institution	Y	01:30 PM	N
N	N	MacDougall Correctional Institution	Y	01:30 PM	N
N	N	Evans Correctional Institution	N		Y
N	N	NOT Incarcerated	Y	01:30 PM	N
N	N	Kirkland Correctional Institution	N	09:30 AM	Y
N	N	Broad River Correctional Institution	Y	09:30 AM	N
N	N	Camille Griffin Graham Correctional	Y	09:30 AM	N
N	N	Ridgeland Correctional Institution	N	02:00 PM	Y
N	N	Lieber Correctional Institution	Y	01:30 PM	N
N	N	Manning Correctional Institution	Y	09:30 AM	N
N	N		Y		N
N	N	Lieber Correctional Institution	N		Y
N	N	Tyger Correctional Institution	Y	09:00 AM	N
N	N	Lieber Correctional Institution	N	09:30 AM	Y
N	N	Turbeville Correctional Institution	N		N
N	N		Y	09:30 AM	N
N	N	Lee Correctional Institution	N	09:30 AM	Y
N	N	Ridgeland Correctional Institution	Y	09:00 AM	N
N	N	Turbeville Correctional Institution	Y		N
N	N	Lee Correctional Institution	Y	01:30 PM	N
N	N	Lee Correctional Institution	N	09:30 AM	Y
N	N	Lieber Correctional Institution	N		Y
N	N	Allendale Correctional Institution	N	09:30 AM	Y
N	N	Evans Correctional Institution	Y	01:30 PM	N
N	N	Kershaw Correctional Institution	N	09:30 AM	Y
N	N	Camille Griffin Graham Correctional	N	09:00 AM	Y
N	N	Lee Correctional Institution	N		Y
N	N	Graham Correctional Institution	N	09:30 AM	Y
N	N	Allendale Correctional Institution	N		Y
N	N	Broad River Correctional Institution	N	09:00 AM	Y
N	N	Perry Correctional Institution	N	09:30 AM	Y
N	N	Ridgeland Correctional Institution	N	09:30 AM	Y
N	N	Allendale Correctional Institution	N		Y
N	N	Allendale Correctional Institution	N		Y
N	N	Turbeville Correctional Institution	N	01:30 PM	Y
N	N	Evans Correctional Institution	N		Y
N	N	Lieber Correctional Institution	Y	09:30 AM	N
N	N	Evans Correctional Institution	N		Y
N	N	Evans Correctional Institution	Y	09:30 AM	N

279418	N	9th		N
368432	N	14th		N
258481	N	9th		N
346723	N	9th		N
302395	N	15th		N
330595	N	15th		N
267401	N	9th		N
243366	N	15th		N
356399	N	15th		N
333567	N	9th		N
306190	N	1st		N
Not Incarc	N	3rd		N
374299	N	14th		N
364126	N	14th		N
382494	N	14th		N
336698	N	3rd		N
378326	N	14th		N
280282	N	9th		N
354075	N	3rd		N
369687	N	1st		N
308451	N	15th		N
294469	N	14th		N
249354	N	15th		N
589490	N	9th		N
372249	N	14th		N
309187	N	15th		N
384605	N	9th		N
382747	N	9th		N
235915	N	14th		N
380066	N	9th		N
377012	N	14th		N
384121	N	3rd		N
265686	N	15th		N
360304	N	15th		N
361602	N	9th		N
375749	N	14th		N
319659	N	9th		N
361295	N	15th		N
374941	N	14th		N
380542	N	14th		N
310411	N	9th		N
286020	N	14th		N
381094	N	3rd		N
386247	N	14th		N
319388	N	15th		N
378414	N	14th		N
360837	N	14th		N

2014-GS-10-7123, 7111, 7145, 7142, 7147	N	AUSTIN v. STATE GRAN
2010-GS-07-00972, -00973, -00974	N	WITHDRAWN W/PREJUD
2017-GS-10-04602, 03938, 03937	N	DISMISSED W/PREJUDIC
2017-GS-10-03631, 06803	N	WITHDRAWN W/PREJUD
2018-GS-22-00792	N	DENIED
2018-GS-26-05695	N	DENIED
2015-GS-10-2966 (trial); 2015-GS-10-2970, 2971, 2972 (plea)	N	DENIED
1996-GS-26-02809	N	
2017-GS-26-0945, -0946, -1365	N	DENIED
2018-GS-10-01194, 01195, 01196, 01197, 01198	N	DISMISSED W/PREJUDIC
2015-GS-18-971, -932, -933	N	
2018-GS-43-0975, 0976, 0979, 0980, 1210, 1211, 1212, 1213	N	STATE'S MOT TO DISMI
2015-GS-07-1995	N	WITHDRAWN W/PREJUD
2013-GS-07-01406	N	ROSTER
DUI, Felony driving under the influence, death results	N	WITHDRAWN W/PREJUD
2015-GS-14-0189	N	UNDER ADVISEMENT
2018-GS-07-00159	N	WITHDRAWN W/PREJUD
2017-GS-10-02951, 02952, 02953	N	DISMISSED W/PREJUDIC
2011-GS-45-0132	N	FLAGGED FOR SUMMAR
2015-GS-18-0951, -0952, -0953, -0954; 2016-GS-18-00972	N	
2019-GS-26-06218, -06220, -06222, 06223, -06224, 06225, 06226, 0	N	CONTINUED
2015-GS-03-00086	N	CONTINUED
2014A2610400397,3 98, 399, 400, 401, 402, 403, 404, 405, 406-41	N	
2018-GS-10-04047	N	CONTINUED
2015-GS-27-0378, 0379, 0490, 0491	N	UNDER ADVISEMENT
2018-GS-26-066818, 19, 20, 21, 48, 51	N	DENIED
2020-GS-10-01202	N	
2018-GS-10-02776, 2018-GS-10-02809	N	GRANTED
2015-GS-27-0144	N	CONTINUED
2017-GS-10-06450, 06451	N	
2013-GS-03-00039	N	CONTINUED
2019-GS-43-0810 ; 2018-GS-43-0890	N	CONTINUED
2017-GS-26-00942, 2016-GS-26-00536, 2015-GS-26-02157	N	
2013-GS-26-302; 304	N	UNDER ADVISEMENT
2013-GS-10-00898	N	
Murder, Attempted Murder, Possession of Weapon During Violent C	N	CONTINUED
2016-GS-10-1091; 1092; 1094	N	
2017-GS-22-00802	N	CONTINUED
2014-GS-07-01787	N	CONTINUED
2017-GS-15-00699; 00700	N	CONTINUED
2014-GS-10-01310	N	
2017-GS-07-00328	N	
2018-GS-43-1140	N	CONTINUED
2016-GS-27-00007; 00008; 00009	N	
2021-GS-26-1220	N	CONTINUED
2017-GS-25-00160, 00161	N	
2017-GS-15-00257; 00296-00299; 00301; 00303; 00305; 00307-003	N	ROSTER

# EXHIBIT 6

## Hudgins, Kathrine

---

**From:** Young, Hervery  
**Sent:** Monday, August 25, 2025 3:42 PM  
**To:** Hudgins, Kathrine  
**Subject:** FW: [External] Antonio Simmons PCR - Order granting Austin appeal  
**Attachments:** SIMMONS Antonio - Filed Order Granting Belated Appeal Pursuant to Austin v. State (03267613xD2C78).PDF

\*\*\*\*\*

**Hervery B. O. Young**  
*Deputy Director & General Counsel*  
SC Commission on Indigent Defense  
Post Office Box 11433  
Columbia, South Carolina 29211  
P: (803) 734-1343  
E: [hyoung@sccid.sc.gov](mailto:hyoung@sccid.sc.gov)

---

**From:** Danielle Dixon <[DanielleDixon@scag.gov](mailto:DanielleDixon@scag.gov)>  
**Sent:** Wednesday, May 31, 2023 4:23 PM  
**To:** Young, Hervery <[hyoung@sccid.sc.gov](mailto:hyoung@sccid.sc.gov)>; [plumpkin@sccourts.org](mailto:plumpkin@sccourts.org)  
**Cc:** William Blitch <[wblitch@scag.gov](mailto:wblitch@scag.gov)>; Vickie Hall <[VickieHall@scag.gov](mailto:VickieHall@scag.gov)>  
**Subject:** [External] Antonio Simmons PCR - Order granting Austin appeal

Good afternoon,

I wanted to make you aware of this recently-filed order, which was prepared by Jim Falk, granting Mr. Simmons a belated appeal. Our office received this from the clerk of court in mid-April; I don't know whether the clerk also sent it to Mr. Falk at that time. I've attached the order.

Best,



**Danielle Dixon**

Assistant Attorney General  
Post-Conviction Relief

South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737  
[DanielleDixon@scag.gov](mailto:DanielleDixon@scag.gov)

---

**This communication and any attachment thereto is intended only for use by the addressee(s) named herein, and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, utilization, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error please notify the Commission on Indigent Defense immediately and permanently delete the original and any copy of any e-mail and any printout thereof. SCCID may be reached by using the email address of the sender, or at 803-734-1343.**

# EXHIBIT 7

## Young, Hervery

---

**From:** Danielle Dixon <DanielleDixon@scag.gov>  
**Sent:** Thursday, July 6, 2023 3:59 PM  
**To:** Young, Hervery  
**Cc:** plumpkin@sccourts.org; Vickie Hall  
**Subject:** RE: [External] Antonio Simmons PCR matter

The PCR matter in the circuit court has ended, but no one has filed a NOA at this time. He will need to do that (or an atty on his behalf).

---

**From:** Young, Hervery <hyoung@sccid.sc.gov>  
**Sent:** Thursday, July 6, 2023 3:24 PM  
**To:** Danielle Dixon <DanielleDixon@scag.gov>  
**Cc:** plumpkin@sccourts.org; Vickie Hall <VickieHall@scag.gov>  
**Subject:** Re: [External] Antonio Simmons PCR matter

So he needs counsel to handle his belated appeal correct? The PCR is closed correct

\*\*\*\*\*

**Hervery B. O. Young**  
*Deputy Director/General Counsel*  
SC Commission on Indigent Defense  
Post Office Box 11433  
Columbia, South Carolina 29211-1433  
P: (803) 734-1343  
F: (803) 734-1345  
E: hyoung@sccid.sc.gov

On Jul 6, 2023, at 1:45 PM, Danielle Dixon <DanielleDixon@scag.gov> wrote:

Good afternoon,

I received the attached voice message from an inmate who was previously represented by Jim Falk in a PCR matter. In April of this past year, the circuit court issued an order granting him a late appeal of his first PCR pursuant to Austin; I've attached that order. We have also received an unfiled pro se request for appointment of counsel (also attached). Mr. Simmons left the attached voicemail today, so I am passing this information along to you.

-----Original Message-----

**From:** voicemail@voipmsg.us <voicemail@voipmsg.us>  
**Sent:** Thursday, July 6, 2023 1:18 PM  
**To:** Danielle Dixon <DanielleDixon@scag.gov>  
**Subject:** Voice Message Attached from 8086349759 - WIRELESS CALLER

Time: Jul 6, 2023 1:18:06 PM  
Click attachment to listen to Voice Message  
<8086349759\_20230706\_131806.wav>

<SIMMONS Antonio - Filed Order Granting Belated Appeal Pursuant to Austin v. State  
(03267613xD2C78).PDF>

<SIMMONS Antonio - Unfiled Pro Se Request for Appointment of Counsel (03310567xD2C78).PDF>

---

This communication and any attachment thereto is intended only for use by the addressee(s) named herein, and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, utilization, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error please notify the Commission on Indigent Defense immediately and permanently delete the original and any copy of any e-mail and any printout thereof. SCCID may be reached by using the email address of the sender, or at 803-734-1343.

TO: Ms. Danielle Dixon Date 5/7/2023

~~Seamus~~, office of the Attorney General

Contact I Need Attorney General Mrs,  
Danielle Dixon to Appoint me A

lawyer OR Attorney on my P.C.R.

2019-10-C.P-6370 OR this P.C.R. 2023-10-cp-2278

as soon as possible Thank you!

Please Respond Back?

And Put A Copy on Filed.

Antonio Simmons # 279418

9-B-220 room Tyger River C.I.

200 prison Road Enoree, S.C. 29335

*Antonio Simmons*

COURT OF COMMON PLEAS  
AND GENERAL SESSIONS  
100 BROAD STREET, SUITE 106  
CHARLESTON, S.C. 29401-2258  
(843) 958-5000  
(843) 958-5020 FAX  
clerkofcourt.charlestoncounty.org



JULIE J. ARMSTRONG  
CLERK OF COURT  
CHARLESTON COUNTY

The enclosed document is being returned for the following reason(s);

- The document is not signed / notarized.
- The filing fee is insufficient. The correct amount is: \_\_\_\_\_
- The check or money order must be made payable to the Clerk of Court.
- This document is a copy. We must have an original.
- This is not a Charleston County case.
- The case has been transferred/remanded to: \_\_\_\_\_
- Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27.
- The document is refused for filing pursuant to S.C. Code of Laws §30-9-30(B)(1).
- Name of submitting party: \_\_\_\_\_
- There is not a case listed in our system that matches this caption.
- Information may be obtained from our web-site at <http://clerkofcourt.charlestoncounty.org/>
- The required new case coversheet is not included. (SCCA234)
- The required motion/order coversheet is not included. (SCCA/238)
- The required order (Form 4) coversheet is not included. (SCRCP Form 4C)
- Effective October 21, 2019 Charleston County began accepting electronic filings from all South Carolina licensed attorneys. Please re-submit your filing electronically.**
- Other: You need to contact the Attorney General to have an attorney assigned to you.

Staff initials

*JA*

Date

\_\_\_\_\_

## HOW TO GET A LAWYER

1. Hire a member of the private bar.
2. If you are financially unable to hire an attorney, you may apply to have an attorney appointed to represent you in certain cases. To apply you must:

- a. In a criminal case, you should contact either the Public Defender office or the Clerk of Court office in the county the criminal charge is pending to find out where you need to go to complete the Application for Appointed Counsel and the requirements you need.

**NOTE:** To find the County Public Defender office contact information, click on the FIND A DEFENDER button on the home page for SCCID ( [www.sccid.sc.gov](http://www.sccid.sc.gov) )

- b. In a DSS or Termination of Parental Rights case, if you are a defendant, you should go to the Clerk of Court office in the county the case is pending to complete the Application for Appointed Counsel. You will be required to provide proof of employment status and income and pay a non-refundable \$40 application fee. Under some circumstances, the application fee can be waived or reduced.
- c. Public Defenders do not represent people in civil cases. If you need legal assistance for a civil matter and are not able to employ counsel, you may contact the:

**South Carolina Legal Services**

[www.sclegal.org](http://www.sclegal.org)

**1-888-346-5592**

or

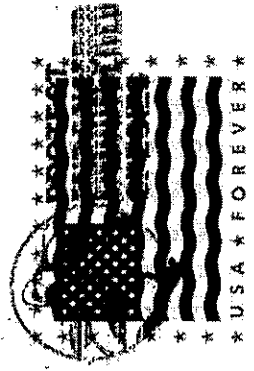
**SC Bar Lawyer Referral Service**

[www.sctbar.org](http://www.sctbar.org)

**1-800-868-2284**

Antonio Simmons #279418  
9-B-220 room  
Tyger River C.I.  
200 Prison Road,  
Endree, S.C. 29335

GREENVILLE SC 296  
7 JUN 2023 PM 3 L



**RECEIVED**

To: **Danie H. Dixon**  
[redacted] office of the Attorney  
General Contact info  
P.O. Box 11549  
Columbia, S.C. 29201

JUN 07 2023

TYRCI MAILROOM

29211-154949




Legal Mail

The Department of Corrections HAS NOT  
INSPECTED THIS ENVELOPE AND ITS CONTENT.

Therefore, The Department does not  
assume responsibility for it's content.

Tyger River Correctional Institution.  
U.S. Department of Corrections



THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT 

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# EXHIBIT 8

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

**Jul 10 2023**

**S.C. SUPREME COURT**

\_\_\_\_\_  
Appeal from Charleston County  
Honorable Michael G. Nettles, Circuit Court Judge  
\_\_\_\_\_

Case No. 2018-CP-10-4505  
\_\_\_\_\_

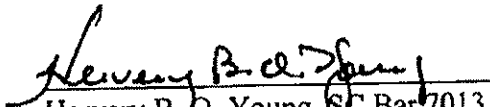
ANTONIO SIMMONS, # 279418 ..... Appellant,

v.

THE STATE ..... Respondent.

\_\_\_\_\_  
NOTICE OF APPEAL  
\_\_\_\_\_

Antonio Simmons, # 279418, appeals the order granting in part and denying in part his Post-Conviction Relief application. The PCR action was heard by the Honorable Michael G. Nettles on July 23, 2019, and the Order was filed on October 1, 2019. The Notice is filed pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) as order in the April 10, 2023, order granting belated PCR Appeal (2019-CP-10-6370) of the Honorable Diane Schafer Goodstein.

  
\_\_\_\_\_  
Hervey B. O. Young, SC Bar 7013  
Post Office Box 11433  
Columbia, South Carolina 29211  
(803) 734-1343

Other Counsel of Record:  
Danielle Dixon  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

**Jul 10 2023**

S.C. SUPREME COURT

---

Appeal from Charleston County  
Honorable Michael G. Nettles, Circuit Court Judge

---

Case No. 2018-CP-10-4505

---

ANTONIO SIMMONS, # 279418 ..... Appellant,

v.

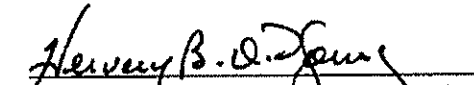
THE STATE ..... Respondent.

---

PROOF OF SERVICE

---

I certify that I have served the Notice of Appeal on Danielle Dixon by depositing a copy of it in the United States Mail, postage prepaid, on July 10, 2023, addressed to her at Post Office Box 11549, Columbia, SC 29211-1549.

  
Hervey B. O. Young, SC Bar 7013  
Post Office Box 11433  
Columbia, South Carolina 29211  
(803) 734-1343

July 10, 2023



1330 Lady Street, Suite 401  
Post Office 11433  
Columbia, South Carolina 29211-1433  
Telephone: (803) 734-1343  
Facsimile: (803) 734-1345

J. Hugh Ryan, *Executive Director*  
Hervey B. O. Young, *Deputy Director and General Counsel*  
Lori Frost, *Assistant Director*

July 10, 2023

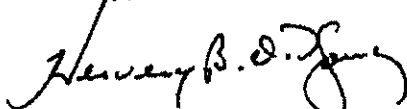
Julie J. Armstrong  
Clerk of Court - Charleston County  
100 Broad St Ste 106  
Charleston, SC 29401-2210

RE: Simmons, #279418 v. The State  
Case No.: 2018-CP-10-4505

Dear Mrs. Armstrong:

Enclosed for filing is a Notice of Appeal in the above case.

Sincerely,



Hervey B. O. Young

Enclosure: As stated

cc: Danielle Dixon, Assistant Attorney General  
Antonio Simmons, SCDC # 279418

**RECEIVED**

**Aug 28 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge  
\_\_\_\_\_

ANTONIO O. SIMMONS,

PETITIONER

V.


STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001091  
\_\_\_\_\_

CERTIFICATE OF SERVICE  
\_\_\_\_\_

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Motion to Cure the Deficiency in the above referenced case has been served on Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 28<sup>th</sup> day of August, 2025.

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Senior Appellate Defender

ATTORNEY FOR APPELLANT

**From:** [Stock, Chris](#)  
**To:** [Mark Farthing](#); [SC - COLLINS CAROLINE](#)  
**Cc:** [Hudgins, Kathrine](#)  
**Subject:** 2023-001091 - Antonio Simmons v State - Motion to Cure Deficiency  
**Date:** Thursday, August 28, 2025 11:24:00 AM  
**Attachments:** [2023-001091 - Antonio Simmons v State - Motion to Cure Deficiency.pdf](#)

---

Mr. Farthing,

Please find attached for service the Motion to Cure Deficiency in Notice of Intent to Appeal for Antonio Simmons' appeal which will be filed with the Court of Appeals today.

If you have any questions, please let me know.

Thank you,

**Chris Stock**  
Administrative Coordinator  
Commission on Indigent Defense  
Appellate Division  
(803) 734-1330