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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)
)
Meleik Lamont Roach, # 336878)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS

JAN 27 2014

2011-CP-26-10362

Court of Appeals

**AMENDED
ORDER GRANTING BELATED APPEAL**

HORRY COUNTY
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CLERK OF COURT
MELEIK LAMONT ROACH

This matter came before the Court pursuant to an Application for post-conviction relief filed December 12, 2011, seeking a belated appeal from his PCR. An evidentiary hearing was convened at the Horry County Courthouse on April 24, 2012. The Applicant was present in court and represented by Brana Williams, Esquire. The Respondent was represented by Tyson Andrew Johnson, Sr., Assistant Attorney General.

The Court issued an Order Granting Belated Appeal. Upon appeal from that order, the parties discovered a scrivener's error in the procedural history of the order. On November 19, 2013, the South Carolina Supreme Court remanded the case pursuant to Rule 60(a), SCRCPP, for this Court to correct the error in the original order. Pursuant to the directives of the Supreme Court, this Order sets forth the correct procedural history of this case and supersedes the Court's prior order signed May 28, 2013, and filed June 5, 2013.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Horry County. In August 2006, the Applicant was indicted for assault and battery of a high and aggravated nature ("ABHAN") (2006-GS-26-3680). In April 2009, the Applicant was indicted for two counts of armed robbery (2009-GS-26-1720; -1722). On September 8, 2009, the Applicant pled guilty before the Honorable Steven H. John. The Applicant was

represented by James C. Galmore, Esquire. The State recommended a total sentence of eighteen (18) years and agreed to dismiss all of the other pending charges against the Applicant, including another count of ABHAN; two counts of possession of a weapon during the commission of a violent crime; two counts of bank fraud; two counts of forgery in an amount over \$5,000; and use of a vehicle without the owner's permission. Judge John imposed a sentence of 15 years on each count of armed robbery and 10 years for ABHAN, with the sentences to run concurrently. No direct appeal was filed.

The Applicant filed his first PCR application on August 26, 2010 (2010-CP-26-7929). In this application, he raised the following issues:

- (1) Ineffective assistance of counsel; and
- (2) Involuntary guilty plea.

Respondent made a Return on October 25, 2010. An evidentiary hearing was convened at the Horry County Courthouse on January 31, 2011, before the Honorable Benjamin H. Culbertson. The Applicant was present in court and represented by J. Marshall Biddle, Esquire, who took over the case for appointed counsel Michael W. Eisenrauch, Esquire. On February 23, 2011, Judge Culbertson issued an Order Denying Post-Conviction Relief. The order was filed with the clerk of court on March 1, 2011. No appeal was timely filed, although the Applicant attempted to file a pro se appeal on July 25, 2011. The notice of appeal was dismissed on August 30, 2011, and the matter was remitted to the circuit court on September 15, 2011.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Regarding claims against PCR counsel, "the contention that prior PCR counsel was ineffective is not per se a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). The only

recognized exception to the rule barring claims of ineffective assistance of post conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Austin recognizes a general exception to this rule where prior post conviction relief counsel fails to appeal the denial of the application. Id. Austin “is limited to its particular factual situation...” Aice, supra. Pursuant to Austin, a post conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Aside from this exception there is no currently recognized right to allege PCR claims against PCR counsel.

In order to receive a belated appeal, an applicant must prove that he asked his attorney to file an appeal, but his attorney’s deficient performance caused him to lose his opportunity for a timely appeal. Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant had a previous PCR in which relief was denied on February 23, 2011. At the start of the hearing, the Court ruled that all Applicant’s claims other than the request for a belated appeal are denied as successive, and as filed outside the statute of limitations. In considering the Applicant’s belated appeal claim, this Court had before it the PCR pleadings, the records of the Florence County Clerk of Court regarding the convictions, the Applicant’s records from the South Carolina Department of Corrections, and the transcript. The Applicant, and the Applicant’s former counsel testified at the hearing.

Summary of the Testimony

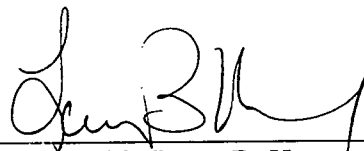
The Applicant was represented by Marshall Biddle, Esquire at his first PCR. Applicant testified that he asked attorney Biddle to file an appeal and that none was filed. Counsel could not recall Applicant asking him to file an appeal. No appeal was filed. This Court finds that the

Applicant did not knowingly and voluntarily waive his right to appeal from his denial of his first PCR action, and that he is entitled to petition the South Carolina Supreme Court for review of his PCR appeal issues.

CONCLUSION

Accordingly, the Applicant's request to petition for belated direct review of his convictions is hereby **GRANTED**. Within **thirty (30) days** of service of this Order, counsel for the Applicant must file a notice of belated appeal with the South Carolina Supreme Court to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), and Rule 243(i), South Carolina Appellate Court Rules, for the appropriate procedure for a belated appeal. See also Rules 203, 206, and 243, South Carolina Appellate Court Rules.

AND, IT IS SO ORDERED this 2 day of Dec., 2013.



The Honorable Larry B. Hyman, Jr.
Presiding Judge
Fifteenth Judicial Circuit

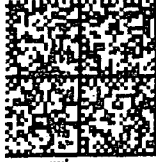
Coxway, South Carolina



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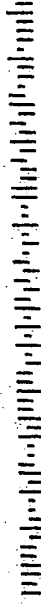


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