

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS
L. CASEY MANNING, CIRCUIT COURT JUDGE
CASE NO. 2003-CP-32-1983

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FEB 24 2014

SC Court of Appeals

FRED R. RUTLAND APPELLANT,

v.

STATE OF SOUTH CAROLINA RESPONDENT.

NOTICE OF APPEAL

Fred R. Rutland, appeals the order of the Honorable L. Casey Manning, dated August 28, 2007, appellant received written Notice of entry of this order on February 6, 2014, at the Broad River Correctional Institution mail room.

s/ Fred Rutland
Fred R. Rutland, #197903
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, SC 29210

sworn to and subscribed before me
this 20th day of February 2014

Auson H. Dye
Notary Public For South Carolina My Commission Expires
My Commission Expires: _____ March 5, 2018

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS
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CASE NO. 2003-CP-32-1983

FRED R. RUTLAND APPELLANT,

V.

STATE OF SOUTH CAROLINARESPONDENT.

PROOF OF SERVICE

I, Certify that I have served the Notice of Appeal of Fred R. Rutland, #197903, by depositing a copy of it in the United States mail, postage prepaid, on _____ 2014, addressed to the Office of the Attorney General Alan Wilson, Post Office Box 11549, Columbia, South Carolina 29211-1549.

s/ Fred Rutland,
Signature

sworn to and subscribed before me
this 20th day of February 2014

Susan H. Dye
Notary Public For South Carolina

My Commission Expires: _____

My Commission Expires
March 5, 2018,

The post-conviction relief was dismissed by the Honorable L. Casey Manning, Judge on August 28, 2007. That a motion to reconsider Alter or Amend was timely filed by counsel Jennifer N. Williams, Esquire. The order denying the motion to Alter or Amend in this matter was dismissed August 12, 2013, on or about February 3, 2014, the order had originally been sent to her attention at the address of her Civilian employer, 1807 Hampton Street, Columbia, South Carolina 29201 and later to her previous apartment address of 1505 Crystal Drive, Apt. 1005, Arlington, Va 22202-4120. That letters was then forwarded and received by her at her current address of 1600 S. Eads St. Apt. 637s. Arlington, Va 22202-2946.

Counsel Jennifer N. Williams, attorney licensed to practice Law in South Carolina swear and affirm to her affidavit concerning this matter is true. Counsel has informed the appellant that she was a reservist who is presently on active duty with the Army, and she have been since April of 2012. She is precluded from engaging in the private practice of Law she want to ensure any rights to appeal that appellant may have is protected. Counsel advised appellant that she is presently activated in the Armed Forces and precluded from the private practice of Law. As this is a denial of a motion to reconsider a final adjudication in a post-conviction relief matter, I have a right to appeal. She have written the Lexington County Clerk of Court and submitted an affidavit about her delayed receipt of this order and her status.

The appellant was represented by Jennifer N. Williams, Esquire counsel fail to file the Notice of intent to appeal in this case. The appellant have been informed by the Clerk of the Supreme court the Honorable Daniel E. Shearouse, since relief under Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), (exhaustion requirement satisfied only when appellant's has exhausted remedies available in State court). Rustv. Zent, 17 F. 155, 160 (6th cir. 1994) (exhaustion requirement satisfied by filing required application in State appellate and Supreme court.

Wayne v. Missouri, Bd. of probation & parole, 83 F. 3d 994 996 (8th cir. 1996) (exhaustion requirement satisfied when appellant presented Federal claims in full round of litigation before State trial and appellate courts even though relitigation in State forum though another procedural device possible).

After, post-conviction counsel refused to perfect an appeal the applicant began the appeal process pro se, with Notice of intent to appeal, and request for appellate defense assistance with Notice. Note Rule 71.1 is based in part on former Supreme court Rule 50 (1)(8), and has no counterpart in the Federal Rule 71.1 was added by order of the Supreme court on April 17, 1990, and because effective September 1, 1990 South Carolina PCR case Law. Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), state.

The right to seek appellate review of the denial of PCR is expressly authorized by State Law. S.C. code Ann. § 17-27-100 (1995), Supreme court Rule 50 (g). Whether such review is granted is discretionary with the court. Knight v. State, 284 S.C. 138, 325 S.E. 2d 535 (1985).

Since relief is sought by filing an application for post-conviction relief in the circuit court. CF King v. State, 308 S.C. 348, 417 S.E. 2d 868 (1992) (setting forth the appellate procedures to be followed depending on the findings made by the PCR judge regarding the Austin claim).

A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either (1) the applicant requested and was denied an opportunity to seek appellate review, or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. See King, 308 S.C. at 249, 417 S.E. 2d at 868 (outlining the procedure used to seek review pursuant to Austin v. State, Wicker v. State, 310 S.C. 8, 425 S.E. 2d 25 (1992)).

The defendant is precluded from exhausting all available State remedies, State remedies are not deemed exhausted until the applicant utilized all procedures available under State Law to raise his claim. See *Id.* § 2254 (c). The applicant satisfies the exhaustion requirement by properly pursuing a claim throughout the entire appellate process of the State. See *Justice of Boston Mun. Court v. Lydon*, 466 U.S. 294, 302-03 (1984) exhaustion requirement satisfied by presentation of claim on appeal to State Supreme court from denial of motion to dismiss). See e.g. *McCandless v. Vaugh*, 172 F. 3d 255, 260 (3d cir. 1999).

Although the South Carolina Supreme court recently held in *Austin v. State*, op. no. 23256 (filed 8/27/90), that post-conviction relief counsel may be found to be ineffective, that decision only addresses post-conviction relief counsel's failure to file a Notice of appeal from the denial of an application for post-conviction relief. The court finds that *Austin* does not extend to general effectiveness of counsel during the course of the post-conviction relief proceeding or appeal there from but rather is limited to counsel's failure to file an appeal from the denial of the application for post-conviction relief. See *Aice v. State*, S. Ct. op. No. 23476 (Filed September 9, 1991).

The counsel must ensure that a criminal defendant is made fully aware of his appeal rights. *White v. State*, 263 S.C. 110, 208 S.E. 26, 35 (1974). A gross miscarriage of Justice. See *Butler v. State*, 297 S.E. 2d 87 (S.C. 1990), in the applicant's case the applicant has not had under Judicial circumstances, a full fair bite at the apple. See *Aice v. State*, 409 S.C. 20395 (S.C. 1991).

Anders requires appellate counsel to brief arguable issues despite counsel's belief the appeal is frivolous, as a safeguard of the rights to appeal. In applying Anders on PCR, we recognized a prisoner's right to the assistance of appellate counsel in seeking review of the denial of PCR.

Supreme court Rule 50 (6) expressly provides for the appointment of competent counsel to seek appellate review of PCR. Because defendant is entitled to the assistance of appellate counsel on PCR, we find his allegations that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance of counsel.

WHEREFORE, APPLICANT PRAYS THIS HONORABLE COURT WILL ALLOW HIM TO HAVE HIS FAIR BITE AT THE APPLE, TO EXHAUST ALL AVAILABLE STATE REMEDIES THROUGH THE APPROPRIATE APPELLATE PROCEDURES AVAILABLE UNDER STATE LAW.

RESPECTFULLY SUBMITTED BY,

s/ *Fred Rutland.*
Signature

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) THE ELEVENTH JUDICIAL CIRCUIT
) CASE NO. 3003-CP-32-1983
FRED R. RUTLAND, #197903)
PETITIONER,)
))
VS.)
) CERTIFICATE OF SERVICE
STATE OF SOUTH CAROLINA)
RESPONDENT.)
_____)

I, Fred R. Rutland, #197903, being duly sworn upon my oath, depose and say I have subscribed to the foregoing NOTICE OF APPEAL, THAT I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence in the above Notice of intent to appeal attached in this request and that the matter and allegations therein set forth are true. I do hereby under oath and penalty of perjury certify that I have served copies of the documents upon the below parties upon this exact date.

Lexington County Clerk of Court
Attn: Mona
205 East Main Street
Lexington, SC 29072

S.C. Court of Appeals
P.O. Box 11629,
Columbia, SC 29211

ATTORNEY General Office
The Honorable Alan Wilson,
P.O. Box 11549
Columbia, SC 29211-1549

s/ Fred Rutland
Signature

sworn to and subscribed before me
this 20th day of February 2014

Susan H. Dryer
Notary Public For South Carolina

My Commission Expires:

My Commission Expires
March 5, 2018

MR. FRED R. RUTLAND, #197903
BROAD RIVER CORRECTIONAL INSTITUTION
4460 BROAD RIVER RD.
COLUMBIA, SC 29210

DATE: Feb 20, 2014

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FEB 24 2014

SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629,
COLUMBIA. SC 29211

SC Court of Appeals

Enclosed please find for filing and processing with your office. Notice to appeal please file the original, once filing is completed please return the clocked stamped copy to me with file date thereof. Defendant has been advised to file the Notice to appeal to secure appellate review. Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of this Notice to appeal. That the post-conviction relief was dismissed by the Honorable L. Casey Manning, judge on August 28, 2007. Immediately after the post-conviction relief hearing proceedings, counsel moved for a motion to reconsider, Alter or Amend on behalf of defendant which was timely filed in this case. The defendant has thirty (30) days to file his appeal, from the order Denying motion to Alter or Amend on February 3, 2014, the defendant now have until March 5, 2014, to file his appeal in the Court for any rights he may as a result of this order.

SINCERELY,

s/ Fred Rutland



97903

DEPARTMENT OF CORRECTIONS - JAIL INSTITUTION

4460 BROAD RIVER RD.
COLUMBIA, SC 29210

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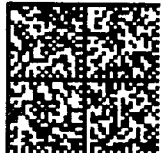
SC Court of Appeals

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S.C. DEPARTMENT OF CORRECTIONS

THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM, THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

