

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

DATE: Feb. 20-2014

LEXINGTON COUNTY CLERK OF COURT
ATTN: MONA
205 EAST MAIN STREET
LEXINGTON, SC 29072

RECEIVED
MAR 14 2014
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

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

DATE: Feb 20, 2014

LEXINGTON COUNTY CLERK OF COURT
ATTN: MONA
205 EAST MAIN STREET
LEXINGTON, SC 29072

RE: FRED R. RUTLAND, VS. STATE OF SOUTH CAROLINA
CASE NO. 2003-CP-32-1983

Enclosed please find for filing and processing with the
Lexington County Clerk of Court Office. NOTICE OF APPEAL, please
file the original, once filing is completed please return the
clocked stamped copy to me with file date thereof. Your
assistance in this matter will be greatly appreciated.

SINCERELY,

s/ Fred Rutland
Signature

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

RECEIVED
MAR 14 2014
SC Court of Appeals

FRED R. RUTLAND APPELLANT,

✓

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

Susan N. 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
L. CASEY MANNING, CIRCUIT COURT JUDGE
CASE NO. 2003-CP-32-1983

RECEIVED
MAR 14 2014
SC Court of Appeals

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.

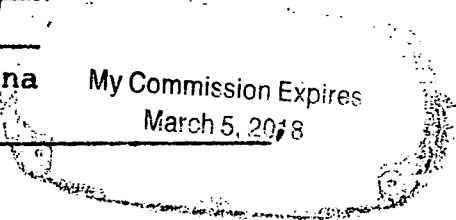
s/ *Fred Rutland*
Signature

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

Auston H. Drye

Notary Public For South Carolina

My Commission Expires: _____



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 became 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

4 February 2014

Fred R. Rutland, SCID 00197903
Broad River Correctional Institution
4460 Broad River Road
Murray Unit, Room 152
Columbia, SC 29210

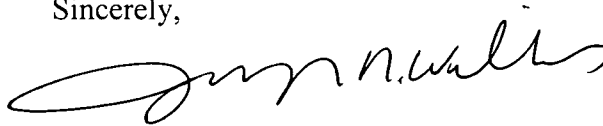
Mailed via both Certified and First Class Mail

Dear Mr. Rutland,

I hope this letter finds you well. Please find enclosed an Order Denying a 2007 Motion to Reconsider, Alter or Amend the dismissal of your Post Conviction Relief Case that I filed on your behalf as your appointed attorney. I am presently activated in 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, you may have a right to appeal. Although I can provide no legal counsel to you, I encourage and advise you to consult an attorney to determine what right to appeal you may have in this matter. I have written the Lexington County Clerk of Court and submitted an affidavit about my delayed receipt of this Order and my status. I have enclosed a copy of this affidavit.

South Carolina Rule of Court 243 dictates review by Writ of Certiorari in Post-Conviction Relief Actions. Appeals from the Court of Common Pleas, which Post-Conviction Relief Actions fall under, must be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. Because a Motion to Reconsider, Alter or Amend was filed, your right to appeal the dismissal of your PCR may have been stayed until written receipt of such notice. I received this notice on or about 3 February 2014 so your time to file may be limited to 30 days after that time. I would again encourage you to consult an attorney and file and serve any such notice by 5 March 2014 or you may be barred (prohibited) from filing any appeal you may have as a result of this order. I wish you the best.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer N. Williams". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jennifer N. Williams

4 February 2013

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

Re: 2003-CP-32-1983 Fred R. Rutland, #197903, vs. State of South Carolina

Dear Mona,

Thank you for speaking with me today about this matter. I am submitting an affidavit about my receipt of the Order Denying Motion to Alter or Amend in this matter on 3 February 2014. I am sending Mr. Rutland a notice of this today, but I would ask the Clerk of Court to send Mr. Rutland official notice of this order to the following address, where he is presently incarcerated:

Fred Rutland, SCID 00197903
Broad River Correctional Institution
4460 Broad River Road
Murray Unit, Room 152
Columbia, SC 29210

As I mentioned, I am a Reservist who is presently on active duty with the Army, and I have been since April of 2012. I am precluded from engaging in the private practice of law. I want to ensure any right to appeal that Mr. Rutland may have is protected. You can contact me at (703) 588-0430 with any questions. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer N. Williams". The signature is fluid and cursive, with a large initial "J" and "W".

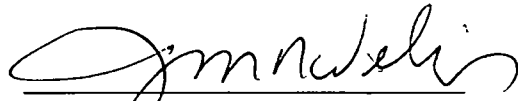
Jennifer N. Williams
1600 S. Eads St. Apt. 637 S
Arlington, VA 22202

I, Jennifer N. Williams, attorney licensed to practice law in South Carolina swear and affirm the following:


1. That I was appointed to and represented Fred R. Rutland, #197903, in his 2003-CP-32-1983, Post-Conviction Relief.
2. That the Post- Conviction Relief was dismissed by the Honorable Judge L. Casey Manning on or about August 28, 2007.
3. That a Motion to Reconsider, Alter or Amend was timely filed by myself in this matter.
4. That I was activated as a Reservist in the Armed Forces on or about 29 April 2012. I remain activated and I am precluded from engaging in the private practice of law.
5. That I received a final Order Denying Motion to Alter or Amend dated 13 August 2013 on or about 3 February 2014. The Order had originally been sent to my attention at the address of my civilian employer, 1807 Hampton Street, Columbia South Carolina, 29201 and later to my previous apartment address of 1505 Crystal Drive, Apt. 1005, Arlington, VA 22202-4120. That letter was then forwarded and received by me at my current address of 1600 S. Eads St. Apt. 637S. Arlington, VA 22202-2946
6. That on or about 4 February 2014 I forwarded this Order to Mr. Rutland at the following address via first class and certified mail:

Fred Rutland, SCID 00197903
Broad River Correctional Institution
4460 Broad River Road
Murray Unit, Room 152
Columbia, SC 29210

7. That in this letter I notified him that he had 30 days of the time of receipt of the notice to file any appeal in this matter and that, out an abundance of precaution, he should file it no later than 5 March 2014, 30 days from the date I received the letter.


Jennifer N. Williams

Sworn and subscribed to me this 4th day of February 2014.


Robert M. Sneed, LIC JSAR
Notary under 10 USC §1044 a

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
) **IN THE COURT OF COMMON PLEAS**
)

2013 AUG 13 A 11:06
) 2003-CP-32-1983

Fred R. Rutland, #197903,

BETH A. CAIRRIGG
CLERK OF COURT
LEXINGTON, SC

) Applicant.
)

**ORDER DENYING MOTION TO
ALTER OR AMEND**

) v.
)

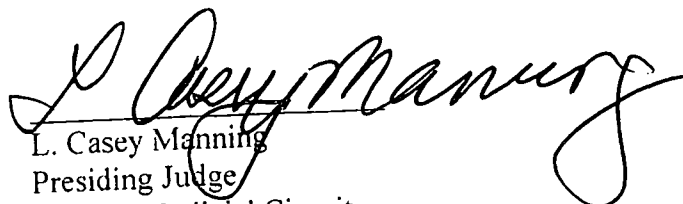
) State of South Carolina,
)

) Respondent.
)
)

This matter comes before the Court by way of Applicant's Motion to Alter or Amend. The Respondent made its Return to this motion on October 4, 2007. The Order of Dismissal in this matter was signed by me on August 28, 2007.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment.

AND IT IS SO ORDERED this 6 day of Aug, 2011. (13th)


L. Casey Manning
Presiding Judge
Eleventh Judicial Circuit


_____, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
FRED R. RUTLAND, #197903)
PETITIONER,)
VS.)
STATE OF SOUTH CAROLINA)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
THE ELEVENTH JUDICIAL CIRCUIT
CASE NO. 3003-CP-32-1983

CERTIFICATE OF SERVICE

RECEIVED
MAR 14 2014
SC Court of Appeals

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

Jessica W. Dye
Notary Public For South Carolina
My Commission Expires: _____

My Commission Expires
March 5, 2018

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

FILED IN THE COURT OF COMMON PLEAS

2007 AUG 13 A 11:04
2003-CP-32-1983

Fred R. Rutland, #197903,

Applicant.)

v.)

State of South Carolina,)

Respondent.)

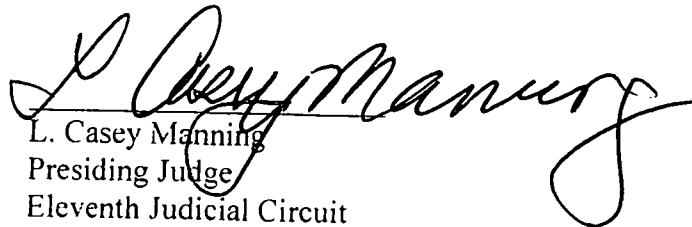
BETH A. CALHIGG
CLERK OF COURT
LEXINGTON, SC


**ORDER DENYING MOTION TO
ALTER OR AMEND**

This matter comes before the Court by way of Applicant's Motion to Alter or Amend. The Respondent made its Return to this motion on October 4, 2007. The Order of Dismissal in this matter was signed by me on August 28, 2007.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment.

AND IT IS SO ORDERED this 6 day of Aug, 2011. 3rd


L. Casey Manning
Presiding Judge
Eleventh Judicial Circuit


_____, South Carolina.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2003CP3201983

Fred R Rutland	State Of South Carolina
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	8/23/2013	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **23rd of August 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **23rd of August 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Jennifer Niles Williams
1505 CRYSTAL DR APT 1005
ARLINGTON, VA 222024120

Lakesha W. Jeffries
PO Box 646 Orangeburg, SC 29116.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Beth A. Carrigg - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.