

MURPHY LAW OFFICES, LLC

POST OFFICE BOX 2008
MT. PLEASANT, SOUTH CAROLINA 29465
TELEPHONE: 843-278-9025 FACSIMILE: 843-278-8988

PCR

April 22, 2014

The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

Re: *Kandy Gilliard v. State of South Carolina*
Case No.s: 2005 CP-10-0619; 2012-CP-10-0383

Dear Mr. Shearouse:

Enclosed for filing, please find an original and two copies of Ms. Gilliard's Notice of Appeal the denial of her application for Post Conviction Relief. If you find everything in order, please file the original and return the clocked in copies in the enclosed self addressed envelope.

Please note I was appointed and copy the Office of Appellate Defense who will handle the appeal. Please call if you have any questions.

With kindest regards, I am

Sincerely,



Christopher L. Murphy

CLM:ah

Enclosures

c: Ms. Kandy Gilliard
Robert M. Dudek, Esq.
PO Box 11433
Columbia, SC 29211-1433

RECEIVED

APR 24 2014

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger Young, Stephanie McDonald and Markley Dennis Circuit Court Judges

Case Nos.: 2005 CP-10-0619; 2012-CP-10-0383

Kandy Gilliard Appellant

v.

State of South Carolina Respondent

NOTICE OF APPEAL

Kandy Gilliard was granted the right to file a belated appeal of the order the Honor Roger Young dated July 20, 2007 denying her PCR application. Attached is order of the Honorable Stephanie McDonald granting such a right and the denial of her second PCR application by the Honorable Markley Dennis. All orders are attached.

April 22, 2014


CHRISTOPHER L. MURPHY
MURPHY LAW OFFICES, LLC
Post Office Box 2008
Mt. Pleasant, South Carolina 29465
Phone: (843) 278-9025
Facsimile: (843) 278-8988
Email: chris@chrismurphyfirm.com

Other Counsel of Record

Ashleigh R. Wilson
Assistant Attorney General
South Carolina Office of the Attorney General
1000 Assembly Street
Columbia, SC 29201
(803) 734-3737
ARWilson@SCAG.gov

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APR 24 2014

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
County of Charleston Berkeley)
KANDY GILLIARD)
Applicant / Petitioner)
vs.)
State of South Carolina,)
Respondent.)

COURT OF COMMON PLEAS
Case No. 2012-CP-10-0383

ORDER

FILED
2014 APR 16 PM 3:21
JULIA HARRIS, CLERK OF COURT
BY

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: _____ denied _____ granted _____ under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby _____ granted _____ denied _____ under advisement, based upon the _____ statute of limitations and/or _____ the successive nature of the application or _____ other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:
_____ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
_____ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

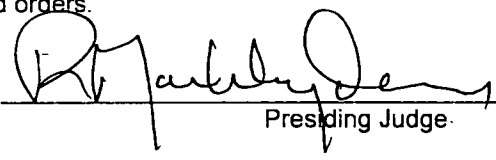
4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.

5. Other: motion granted in part formal order to follow to be prepared by Mr Wilson

6. The court further orders:
_____ The _____ Attorney General _____ Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within _____ days.
_____ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.
_____ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 04 / 15 / 2014
Charleston, S.C.


Presiding Judge.

Court Reporter: Deborah Garrison
Attorney for Plaintiff: Christopher L. Murphy
Attorney for Defendant: Ashleigh R. Wilson

cc
AG
AT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Kandy Gilliard, #275605,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
)

IN THE COURT OF COMMON PLEAS

2012-CP-10-0383

FILED
2014 JAN 15 AM 11:36
JULIE STRONG
CLERK OF COURT

**CONSENT ORDER GRANTING AN
APPEAL PURSUANT TO AUSTIN V. STATE**

Presiding Judge: The Honorable Stephanie P. McDonald
Applicant's Attorney: Christopher L. Murphy, Esquire
Respondent's Attorney: Ashleigh R. Wilson, Esquire
PCR Counsel: William Runyon, Esquire
Date of Hearing: November 21, 2013
Court Reporter: Sharon Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 17, 2012. The Respondent made its Return on January 15, 2013. An evidentiary hearing on the matter was convened on November 21, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent. Also present was William Runyon, Esquire.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2000 term of the Charleston County Grand Jury for murder (2000-GS-10-2467) and armed robbery (2000-CP-10-2468). Melissa Gay, Esquire, represented the Applicant.

dm

On June 1, 2001, the Applicant proceeded to trial and was found guilty as indicted. The Honorable James Lockemy sentenced him to confinement for life for murder and 10 years for armed robbery.

The Applicant filed a timely Notice of Appeal. Applicant's appellate counsel Robert Dudek, Esquire, petitioned to be relieved as counsel and filed an Anders brief with the Court. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Gilliard, Op. No. 2004-UP-296 (S.C. Ct. App. filed May 5, 2004). The Applicant subsequently filed a petition for writ of certiorari, which was denied by the South Carolina Supreme Court on July 8, 2004. On August 19, 2004, the South Carolina Supreme Court denied the Applicant's petition for rehearing.

Applicant subsequently filed an application for post-conviction relief (PCR) on February 15, 2005. In his application for PCR, the Applicant requested relief on the following grounds:

1. "Trial counsel was ineffective in preparing and representing me at trial."
2. "Lackadaisical effort by Appellate Defender Attorney Robert M. Dudek."

The Respondent made its Return on August 16, 2005. An evidentiary hearing into the matter was convened on March 14, 2007 and reconvened on June 14, 2007 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by William Runyon, Esquire. Jeanette Van Ginhoven, Esquire, of the South Carolina Attorney General's Office represented the Respondent. The Honorable Roger M. Young denied and dismissed the application with prejudice by written Order filed July 23, 2007.

ALLEGATIONS

In her current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Subject Matter Jurisdiction

2. "Dismissal of indictment, pre-indictment delay 18 USCA"
3. Entrapment
4. "Nolle Pross. 5th Amendment USCA"
5. "Self-Incrimination"
6. Ineffective Assistance of Counsel
 - a. "Attorney failed to charge jury on Nolle Pross. and indictments."

On January 15, 2013, the Respondent submitted a Return and Motion to Dismiss the application as successive and filed outside of the statute of limitations. The Honorable Roger Young, Sr. signed an Conditional Order of Dismissal on January 17, 2013. In response to the Conditional Order of Dismissal signed by Judge Young, the Applicant alleges that she was denied the right to appeal the dismissal of his previous post-conviction relief application. An evidentiary hearing was held to solely address whether or not the Applicant freely and voluntarily waived her right to appeal the denial of her application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant alleges that she was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties below have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2005-CP-10-0619). The parties agree that the Applicant did not voluntarily waive her right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief. Counsel for the Applicant has indicated the Applicant did not freely and voluntarily waive the right to appeal her first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the

application.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2005-CP-10-0619) pursuant to Austin v. State is warranted. It is appearing the below listed individuals all consent to the granting of a PCR appeal in this matter. This Court also finds that all other allegations raised in this application will be addressed in a separate order.

IT IS THEREFORE ORDERED:

1. That the Applicant remain in the custody of the South Carolina Department of Corrections and/or the South Carolina Parole and Community Corrections Department if under the supervision of either agency; and
2. That the Applicant be granted an appeal of case 2005-CP-10-0619 pursuant to Austin v. State.


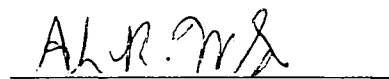
AND IT IS SO ORDERED this 9 day of January, 2014.

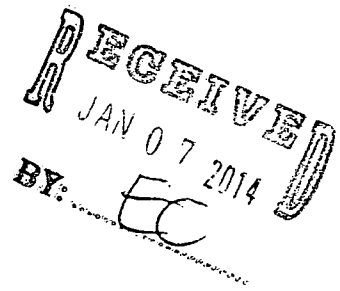


The Honorable Stephanie P. McDonald
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.

I CONSENT:


Christopher Murphy, Esquire
Attorney for Applicant
Ashleigh R. Wilson, Asst. Attorney General
Attorney for Respondent



ALAN WILSON
ATTORNEY GENERAL

January 2, 2014

The Honorable Stephanie P. McDonald
Charleston County Judicial Center
100 Broad Street, Suite 427
Charleston, SC 29401

Re: Kandy Gilliard v. State, 2012-CP-10-0383

Dear Judge McDonald:

Enclosed is a Consent Order Granting and appeal pursuant to Austin v. State in the above referenced post-conviction relief matter. If this Order meets your requirements, please sign and return to the Charleston County Clerk of Court for filing. Please let me know if anything else is needed with regard to this matter.

Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

Enclosure: Consent Order

Cc: Christopher L. Murphy, Esquire