

The Supreme Court of South Carolina

Kandy Gilliard, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000931

Lower Court Case No. 2012-CP-10-00383

ORDER

In this 2012 post-conviction relief (PCR) case, petitioner raised various issues including a claim seeking a belated appellate review regarding his first application for post-conviction relief filed in 2005. On January 9, 2014, the circuit court issued an order determining that petitioner is entitled to a belated review of the 2005 PCR case pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). This order indicated that all remaining allegations raised in this case would be addressed in a separate order.

In a form order dated April 15, 2014, the circuit court indicates that a formal order is to be prepared, but this formal order has apparently not been filed. Petitioner has now filed a notice of appeal seeking a belated review in the 2005 PCR case.

To obtain an *Austin* review in the 2005 case, petitioner must appeal in this case. *Cf. King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (discussing appellate procedure to be followed depending on findings of PCR judge on the *Austin* claim). By statute and rule, only a final decision or judgment in a post-conviction relief case is subject to appellate review, and a decision or judgment is not final unless it completely fixes the rights of the parties leaving the court with nothing further to do. *Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006).

Since another order is in the process of being prepared and filed, no final decision or judgment has been issued in this case. Accordingly, the notice of appeal is premature, and it is hereby dismissed without prejudice to petitioner's ability to

serve and file a new notice of appeal once a final decision or judgment is entered in this case.


C.J.
FOR THE COURT

Columbia, South Carolina

May 16, 2014

cc: Christopher L. Murphy, Esquire
Ashleigh Rayanna Wilson, Esquire