

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

July 14, 2014

RECEIVED

JUL 16 2014

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

RE: Michael A. Smith, 311064 v. State of South Carolina; 2012-CP-09-0174; *Austin* Review of Order issued in PCR case docketed at 2010-CP-09-0088.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. I would appreciate your returning two (2) clocked copies to me in the stamped self-addressed envelope provided. This is an *Austin* appeal from a 2010 PCR case which was not appealed following the Order of Dismissal. Inasmuch as I was court-appointed in this matter, I will now be turning this file over to the South Carolina Commission on Indigent Defense, Appellate Division for perfection of this appeal. As always, I will provide that office with all the documents from my file necessary for this appeal. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Megan Harrigan, Assistant Attorney General
Loriene French, Legal Services Coordinator, SCCID, Appellate Division
Michael A. Smith, 311064
Tommy Smith

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July 14, 2014

Megan Harrigan, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-

RE: Michael A. Smith, 311064 v. State of South Carolina; 2012-CP-09-0174; *Austin* Review of Order issued in PCR case docketed at 2010-CP-09-0088.

Dear Ms. Harrigan:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. I was court-appointed in this matter and will now forward this file to the Appellate Division of the South Carolina Commission on Indigent Defense in the next few days. Therefore, please direct any further questions to that office after this date. It was a pleasure working with you on this case. Thank you. I remain

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with a large initial "T".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina

RECEIVED

JUL 16 2014

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CALHOUN)
)
MICHAEL A. SMITH, 311064)

IN THE SUPREME COURT

Applicant,
v.

NOTICE OF APPEAL

THE STATE,
Respondent.

2012-CP-09-0174
2010-CP-09-0088 (*Austin* Review granted)

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of appeal from the Consent Order for *Austin* Review issued by the Honorable Maite Murphy, Circuit Court Judge, and filed on June 27, 2014. This Order was received by Applicant's PCR Counsel on July 2, 2014. This Consent Order granted *Austin* review of the Order of Dismissal filed in the Petitioner's previous Post-Conviction Relief action docketed at 2010-CP-09-0088.



TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 15th day of July, 2014.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

2012-CP-09-0174, Judge Maite Murphy
2010-CP-09-0088, Judge Diane S. Goodstein

MICHAEL A. SMITH,

Applicant,

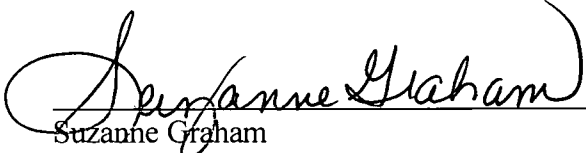
v.

THE STATE,

Respondent.

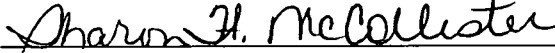
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Megan E. Harrigan, by mailing in an envelope properly addressed with postage prepaid on this 15th day of July, 2014.



Suzanne Graham
Paralegal

SWORN TO BEFORE me this 15th day
of July, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

IN THE COURT OF COMMON PLEAS)
FOR THE FIRST JUDICIAL CIRCUIT)

MICHAEL A. SMITH, 311064)
Applicant,)

2012-CP-09-0174)

v.)

CONSENT ORDER)
FOR AUSTIN REVIEW)

State of South Carolina,)
Respondent.)

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
STATISTICAL
SERVICES, SC

2014 JUN 27 P 1:10

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief dated September 14, 2012. The Respondent filed its Return on November 27, 2012. A hearing is currently scheduled for Thursday, May 29, 2014. The Applicant is represented in this matter by his court-appointed attorney, Tara Dawn Shurling, Esquire. The State is represented by Megan E. Harrigan, Assistant Attorney General.

The Applicant previously filed a Post-Conviction Relief action docketed at 2010-CP-09-0088. That application was denied by Order of Dismissal filed in this case on September 26, 2011. This Court is now advised that due to an oversight by Applicant's PCR attorney, Nicole Singletary, a Notice of Appeal was not filed from the Order of Dismissal in Applicant's first PCR action. An Affidavit signed by Attorney Singletary is attached to this order.

In the Applicant's current PCR Application, which was filed *pro se*, he alleges the following:

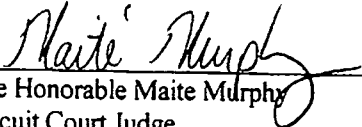
1. "Constitutional Violations."
 - a. "Ineffective Assistance of Counsel."
 - b. "Transfer (sic) of Jurisdiction."
 - c. "Prosecutor misconduct."

The parties now agree that the only remedy available to the Applicant in response to his current PCR action is a belated PCR appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).¹ Counsel for the Respondent and Counsel for the Applicant have therefore joined in a request that this matter be disposed of without a hearing, and consent to this Court's Order granting a belated PCR appeal as evidenced by their signatures below. This Court is further advised by Counsel for the Applicant that she has met with the Applicant to discuss this matter and he too wishes to waive his right to a hearing in favor of

¹ Counsel for the Applicant has further informed this Court that the Applicant has been advised that claims of ineffective assistance of PCR Counsel do not provide a basis upon which an Applicant may have a successive application heard on its merits if the new allegations raised therein could have been presented in the initial PCR action. *Michael Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991).

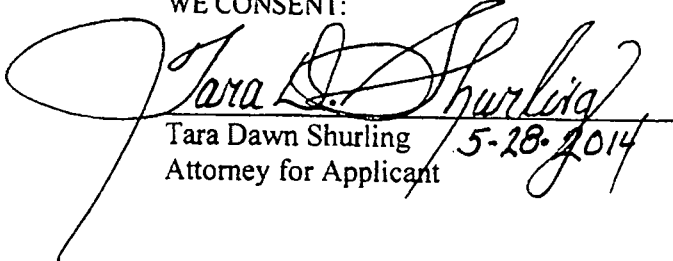
a Consent Order for *Austin Review*. Wherefore it is hereby ordered that the Applicant receive a belated appeal from the denial of his original Post-Conviction Relief action docketed at 2010-CP-09-0088.

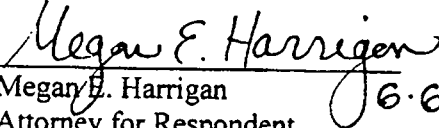
IT IS SO ORDERED.


The Honorable Maite Murphy
Circuit Court Judge
First Judicial Circuit

This 19 day of June, 2014.
St. George, South Carolina

WE CONSENT:


Tara Dawn Shurling
Attorney for Applicant
5-28-2014


Megan E. Harrigan
Attorney for Respondent
6-6-2014

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

MICHAEL A. SMITH, 311064
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2012-CP-09-0174

AFFIDAVIT OF
NICOLE SINGLETARY

2011 JUN 27 P 1:10
JENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
MATHIAS, SC

FILED

PERSONALLY appeared before me, Nicole Singletary, who being duly sworn, deposed and says:

1. I was counsel of record in a previous Post-Conviction Relief action filed by Michael A. Smith which was docketed at 2010-CP-09-0088. An evidentiary hearing was held in that action on June 6, 2011 before the Honorable Diane Goodstein presiding circuit judge. That application for Post-Conviction Relief was denied by Order dated September 14, 2011 and filed on September 26, 2011.
2. Through an oversight on my part, the Applicant's right to appeal the Order of Dismissal entered in his 2010 Post-Conviction Relief action was not preserved. My failure to file a Notice of Appeal from said Order as required by Rule 71.1 (g), SCRCP, was entirely due to my oversight and did not reflect a knowing and voluntary waiver of the client's right to a Post-Conviction Relief appeal.
3. This client advised me of his desire to appeal the Order of Dismissal in this Post-Conviction Relief case.

FURTHER AFFIANT SAYETH NAUGHT:

Nicole S. Singletary
Nicole Singletary

SWORN TO before me this 28th day
of May, 2014.

Quetta V. Chapel (L.S.)
Notary Public for South Carolina
My Commission Expires May 23, 2022

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

MICHAEL A. SMITH, #311064,

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

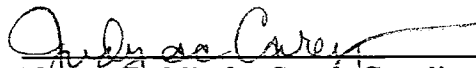
The undersigned hereby certifies that a true copy of the **Consent Order for Austin Review** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

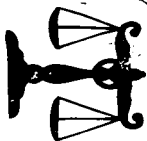
Tara D. Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite A
Columbia, South Carolina 29204

This 30th day of June, 2014.


MEGAN E. HARRIGAN
ATTORNEY FOR RESPONDENT

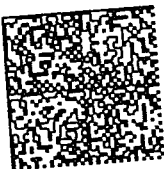
SWORN to before me this 30th day of June, 2014.


Notary Public for South Carolina.
My Commission Expires: 6/5/14/2024



Law Office of
Tara Dawn Shurling, P.A.
Attorney and Counselor at Law
3614 Landmark Dr., Suite A
Columbia, South Carolina 29204

FIRST-CLASS



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The Honorable Daniel E. Shearouse
South Carolina Supreme Court Clerk
Post Office Box 11330
Columbia, South Carolina 29211-1330

RE: Michael A. Smith