

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

JAN 09 2015

The Honorable Clifton Newman, Circuit Court Judge

S.C. SUPREME COURT

Case No. 14-CP-43-212

Troy Pearson, #328627,.....Petitioner,

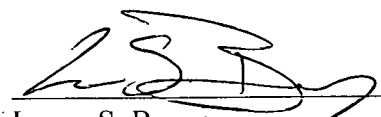
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Now comes the Petitioner, by and through his undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Final Order of the Honorable Clifton Newman which granted an *Austin* review of the Honorable W. Jeffrey Young's Final Order dated October 23, 2012, in Case No. 2010-CP-43-1449. The Petitioner received written notice of the Final Order granting an *Austin* review on January 5, 2015. A copy of the Final Order is attached herewith.

Respectfully submitted,



Lance S. Boozer
The Boozer Law-Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201
Tele: 803-608-5543

Columbia, South Carolina
January 8, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 14-CP-43-212


Troy Pearson, #328627,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Daniel Gourley, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 8th day of January, 2015.



Lance S. Boozer
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
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Tele: 803-608-5543

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

Troy L. Pearson # 328627,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

RECORDED
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
2014 DEC 31
CERTIFIED TRUE COPY
OF ORIGINAL FILE
JAMES C. CAMPBELL
CLERK OF COURT 2014-CP-43-212
SUMTER COUNTY, S.C.
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated February 3, 2014. The Respondent made its return on May 13, 2014. An evidentiary hearing on the matter was convened on October 2, 2014 at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Applicant testified during the hearing. The Court had before it the guilty plea transcript, the Sumter County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, and South Carolina Court of Appeals records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Murder and (2) Possession of a Firearm During Commission of a Violent Crime (2007-GS-43-0849). Jack Howle, Esquire, represented him. On May 29, 2008, the Applicant pled guilty to the lesser offense of Voluntary Manslaughter before the Honorable R. Ferrell Cothran, Jr. Applicant was sentenced to thirty (30) years imprisonment.

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A notice of appeal was filed and an appeal perfected. The appeal was dismissed following submission of an Anders brief. State v. Pearson, Op. No. 2010-UP-042 (S.C. Ct. App. filed January 26, 2010). The Remittitur was sent on February 12, 2010.

Applicant subsequently filed for post-conviction relief on July 9, 2010 (2010-CP-43-1449). In his application, Applicant asserted claims of ineffective assistance of counsel and prosecutorial misconduct. An evidentiary hearing was convened on September 7, 2012, at the Sumter County Courthouse before the Honorable w. Jeffrey Young. Applicant was present at the hearing and was represented by J. David Weeks, Esquire. By written Order filed October 23, 2012, Judge Young denied and dismissed Applicant's post-conviction relief action.

ALLEGATIONS

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

1. Ineffective Assistance of PCR Counsel
 - a. PCR Counsel failed to file 59(e) motion and appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant alleges that he 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 (2010-CP-43-1449). The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial

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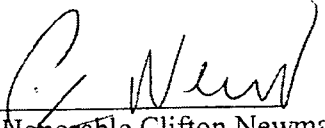
and dismissal of the Applicant's application for post-conviction relief. Counsel for the Applicant has indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the application.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2010-CP-43-1449) 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.

IT IS THEREFORE ORDERED:

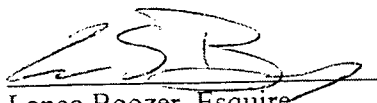
1. That the Applicant remain in the custody of the South Carolina Department of Corrections and/or the South Carolina Parole and Community Corrections Department if under the supervision of either agency; and
2. That the Applicant be granted an appeal of case 2010-CP-43-1449 pursuant to Austin v. State.

AND IT IS SO ORDERED this 10th day of December, 2014.


The Honorable Clifton Newman
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina.

I CONSENT:


Lance Boozer, Esquire
Attorney for Applicant

Troy Pearson 11/20/2014
Troy Pearson, Applicant

D. Gourley
Daniel Gourley,
Assistant Attorney General
Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF

Troy Pearson

Plaintiff(s),

-vs-

State of South Carolina

Defendant(s).

RECORDED
IN THE COURT OF (Select one.)
 COMMON PLEAS FAMILY COURT
JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
CASE NO. 14-CP-43-210
SUMTER COUNTY, SC

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

ORDER

AMENDED ORDER

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Campbell
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

TYPE OF CASE/PROCEEDING: (Check one).

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other:
- Juvenile
- Abuse and Neglect

It appears that *Troy Pearson*, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: *Lance Boozer
1331 Park St
Columbia, SC 29201*
- counsel lead counsel (if capital PCR case) guardian ad litem

Therefore, it is ordered that *Boozer*, hereby is appointed as (Select one.)
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(if Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 14th DAY OF APRIL, 2014.

James C. Campbell

Circuit Judge

Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

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JAN 09 2015

THE BOOZER LAW FIRM, LLC

S.C. SUPREME COURT

Lance S. Boozer, Esq.*
*Also admitted in Florida

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Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

January 8, 2015

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

JAN 09 2015

The Honorable James C. Campbell
Clerk, Sumter County
215 N. Harvin Street
Sumter, SC 29150

S.C. SUPREME COURT

RE: Troy Pearson, #328627 v. State of South Carolina
2014-CP-43-212

Dear Mr. Shearouse and Mr. Campbell:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal;
- (2) A copy of the Order which is to be challenged on appeal; and
- (3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Pearson in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Pearson in this appeal.

Yours very truly,



Lance S. Boozer

Enclosure

cc: Daniel Gourley, AAG
Loriene French, OAD
Troy Pearson, #328627

THE BOOZER LAW FIRM, LLC

807 Gervais Street, Suite 203
Columbia, SC 29201



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29201

