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FEB 09 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Darlington County
Paul M. Burch, Circuit Court Judge

S.C. SUPREME COURT

DARNELL HUNTER,

PETITIONER,

V.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2014-002268

Explanation of Appeal Pursuant to Rule 243(c), SCACR

Pursuant to Rule 243(c), SCACR, Counsel would provide the following explanation concerning the above captioned Post-Conviction Relief (PCR) appeal:

1. Counsel does not believe he ever received proper service of the Final Order of Dismissal (FOD), although Counsel has received an electronic copy of the FOD via e-mail.
2. Respondent has indicated that the FOD was mailed to Counsel on October 29, 2014. Counsel was unable to locate the hard copy, and Counsel's paralegal indicates that she never received it.
3. Petitioner filed this appeal *pro se* without consulting with Counsel.
4. In his PCR application, Petitioner asserts that he was denied Appellate review of certain issues because his first PCR Counsel failed to file a motion pursuant to Rule 59(e), SCACR. Petitioner asserts that his first PCR Counsel rendered

deficient performance. *See Pruitt v. State*, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992) (“Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRPC, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80 and Rule 52(a), SCRPC.”).


5. As Counsel pointed out to the Circuit Court, Counsel is unable to address what issues Petitioner claims were unpreserved issues because his present PCR action was summarily dismissed.
6. Petitioner had a right to appellate counsel in his first PCR appeal to brief “*all* arguable issues”. *See Wade v. State*, 348 S.C. 255, 263, 559 S.E.2d 843 (2002) (“Courts treat PCR differently than traditional civil cases. For example, PCR actions are the only type of case which *this Court mandates appellate counsel must brief all arguable issues*, despite counsel's belief the appeal is frivolous.”) (emphasis added).
7. Petitioner was denied the right to have his appellate counsel brief “*all*” non-frivolous issues due to his first PCR Counsel’s failure to file a motion pursuant to Rule 59(e), SCRPC.
8. In a PCR, the failure to file a Rule 59(e) motion is tantamount to failing to failing to file a notice of appeal. The failure to file a Rule 59(e) motion creates a procedural bar that prohibits appellate review of any issues not addressed in the order of dismissal. *See Marlar v. State*, 375 S.C. 407, 453 S.E.2d 266 (2007) (“Because respondent did not make a Rule 59(e) motion asking the PCR judge to make specific findings of fact and conclusions of law on his allegations, the

issues were not preserved for appellate review, and the Court of Appeals erred in addressing the merits of the issues and remanding the matter to the PCR judge.”).

9. On behalf of Petitioner,¹ Counsel asserts that *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991) should be extended to provide a remedy for Petitioner and other similarly situated individuals who were unable to raise issues before this Court due to the deficient performance of their PCR counsel.

Therefore, Counsel respectfully requests that this is an issue that should be addressed by this Court.

Respectfully submitted,



Tristan M. Shaffer
AXELROD & ASSOCIATES
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Phone: (843) 916-9300
SC Bar #: 77565

February 6, 2015

1. In a letter dated November 13, 2014, Applicant directed Counsel not to argue that *Austin* should be extended to his case. Applicant instead asserts that he is entitled to relief pursuant to *Martinez v. Ryan*, --- U.S. ---, 132 S.Ct. 1309 (2012). Counsel has not included this issue based on the Court’s holding in *Kelly*. See, *Kelly v. State*, 404 S.C. 365, 365, 745 S.E.2d 377, 377 (2013) (“Like other states, we hereby recognize that the holding in *Martinez* is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.”).

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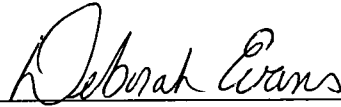
RESPONDENT.

Appellate Case No. 2013-001220

CERTIFICATE OF MAILING

I, Deborah Evans, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Explanation of Appeal, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Josh Thomas, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211



Deborah Evans
Paralegal to Tristan M. Shaffer

February 6, 2015
Myrtle Beach, South Carolina

AXELROD & ASSOCIATES, P.A.

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"Success is all that matters"

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February 6, 2015

Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Darnell Hunter v. State of South Carolina
Case No.: 2014-002268

Dear Clerk of Court:

Enclosed please find an original and one copy of an Explanation of Appeal Pursuant to Rule 243(c), SCACR in the above referenced matter. If you would, please file it and return a clocked copy to me in the envelope provided.

Thank you for your assistance in this matter. If you have any questions or concerns, please feel free to contact my office.

With kind regards,



Tristan M. Shaffer

TMS/dke
Encl.

cc: Joshua L. Thomas, Esquire
Appellate Defense
Darnell Hunter

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S.C. SUPREME COURT

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