

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

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Case No. 13-CP-02-1623

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Tyrone Wade, #284384.....Petitioner,

v.

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

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**NOTICE OF APPEAL**

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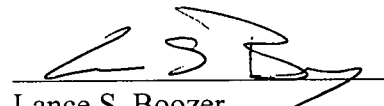
Now comes the Petitioner, by and through his undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Final Order of the Honorable D. Craig Brown which granted an *Austin* review of the Honorable Paul M. Burch's Final Order dated July 25, 2012, in Case No. 2011-CP-02-2045. The Petitioner received written notice of the Final Order granting an *Austin* review on February 6, 2015. A copy of the Final Order is attached herewith.

**RECEIVED**

FEB 10 2015

**S.C. SUPREME COURT**

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  
February 9, 2015

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM AIKEN COUNTY  
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The Honorable D. Craig Brown, Circuit Court Judge

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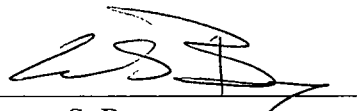
State of South Carolina,.....Respondent.

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**PROOF OF SERVICE**

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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 9th day of February, 2015.



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

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN )	) FOR THE SECOND JUDICIAL CIRCUIT
Tyrone Wade # 284384, )	2013-CP-02-1623
Applicant, )	
vs. )	<b>CONSENT ORDER GRANTING AN</b>
)	<b>APPEAL PURSUANT TO <u>AUSTIN V. STATE</u></b>
State of South Carolina, )	
Respondent. )	

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated July 19, 2013. The Respondent made its return and motion to dismiss on September 15, 2013. An evidentiary hearing on the matter was convened on January 16, 2015, at the Aiken County Courthouse. The Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the guilty plea transcript, the Aiken 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 Aiken County Clerk of Court. The Applicant was indicted for Murder (2009-GS-1582); Burglary, First Degree, (2009-GS-02-1584); and Possession of a Firearm During Commission of a Violent Crime (2009-GS-02-1589). Wallis Alves, Esquire, represented him. On March 28, 2011, the Applicant pled guilty as indicted before the Honorable Edgar W. Dickson. Applicant was sentenced to thirty (30) years imprisonment for Murder, five

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(5) years imprisonment for Possession of a Weapon and fifteen (15) years for Burglary, First Degree, all sentences to run concurrently.

A notice of appeal was filed and an appeal perfected. The appeal was dismissed by the Court of Appeals pursuant to Rule 302(d)(1)(B)(iv). The Remittitur was sent on June 6, 2011.

Applicant subsequently filed for post-conviction relief on September 19, 2011 (2011-CP-02-2045). In his application, Applicant asserted claims of involuntary guilty plea and subject matter jurisdiction. An evidentiary hearing was convened on December 6, 2011, at the Aiken County Courthouse before the Honorable Paul M. Burch. Applicant was present at the hearing and was represented by Courtney Pope, Esquire. By written Order filed July 25, 2012, Judge Burch denied and dismissed Applicant's post-conviction relief action. No appeal was filed.

### 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. Counsel was ineffective for not filing a notice of appeal.
  - b. "Ineffective assistance of PCR lawyer at PCR hearing failed to appeal PCR."
    - i. "Failed to seek mental health medical paper work on Applicant's behalf for timely PCR, didn't appeal dismissal."

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## 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, all present at the hearing, have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2011-CP-02-2045). The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief. Prior PCR counsel for the Applicant has indicated she could not recall whether she was asked by Applicant to appeal his prior application for post-conviction relief. Furthermore, the Applicant presented evidence in the form of a letter from the South Carolina Commission on Indigent Defense acknowledging Applicant's prior inquiry into the status of his appeal. The letter confirmed to the Applicant no appeal had been filed and his proper course of action was through a subsequent application for post-conviction relief.

Based upon the foregoing and with the consent of all parties present at Applicant's PCR hearing, this Court finds that the granting of an appeal of the Applicant's first PCR (2011-CP-02-2045) pursuant to Austin v. State is warranted.

### 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

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P. 3019

2. That the Applicant be granted an appeal of case 2011-CP-02-2045 pursuant to Austin v. State.

AND IT IS SO ORDERED this 26 day of June, 2015.



The Honorable D. Craig Brown  
Presiding Judge  
Third Judicial Circuit

Flom, South Carolina.

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STATE OF SOUTH CAROLINA )  
 COUNTY OF AIKEN )  
 Tyron Wade, )  
 Plaintiff(s), )  
 -vs- )  
 South Carolina State Of, )  
 Defendant(s). )

IN THE COURT OF COMMON PLEAS  
 JUDICIAL CIRCUIT  
 CASE NO.: 2013CP0201623  
 APPOINTMENT OF COUNSEL OR GAL  
 (Select one.)

ORDER  
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case     Adoption     Juvenile  
 SVP case     Custody and/or Visitation     Abuse and Neglect  
 Minor Name Change     Other: Post Convict Rel 500

It appears Tyron Wade, 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:

Therefore, it is ordered that Lance Boozer hereby is appointed as (Select one.)

- counsel     lead counsel (if capital PCR case)     guardian ad litem  
 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  
 July 24, 2013

*L. Hodard*  
 Circuit Judge     Clerk of Court

Plaintiff Attorney:

Lance Boozer	Tyron Wade # 284384
1331 park street	
columbia, sc 29201	

Defendant Attorney:

Daniel Francis Gourley	
P.O Box 11549	
Columbia, SC 29211	

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](http://www.sccid.sc.gov), and further direct that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)  
 SCCA/267 (03/07)

*L. Hodard*  
 CC, C.P. & G.S.  
*Dharmendra*  
 Deputy Clerk

# THE BOOZER LAW FIRM, LLC

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

807 Gervais Street, Suite 203  
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Email: [lsb@boozerlawfirm.com](mailto:lsb@boozerlawfirm.com)  
Website: [www.boozerlawfirm.com](http://www.boozerlawfirm.com)

February 9, 2015

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

The Honorable Liz Godard  
Clerk, Aiken County  
P.O. Box 583  
Aiken, SC 29802-0583

**RECEIVED**

FEB 10 2015

**S.C. SUPREME COURT**

**RE: Tyrone Wade, #284384, v. State of South Carolina**  
**2013-CP-02-1623**

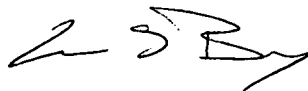
Dear Mr. Shearouse and Ms. Godard:

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. Wade in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Wade in this appeal.

Yours very truly,



Lance S. Boozer

Enclosure

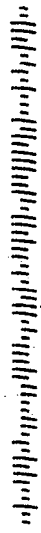
cc: Daniel Gourley, AAG  
Loriene French, OAD

**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 29211

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POSTAGE WILL BE PAID BY ADDRESSEE  
NO POSTAGE NEEDED IF MAILED IN THE UNITED STATES