

**NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A
POST CONVICTION RELIEF (PCR) ACTION**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2011-CP-22-614

RECEIVED

MAR 11 2015

S.C. Supreme Court

The State of South Carolina, Respondent,

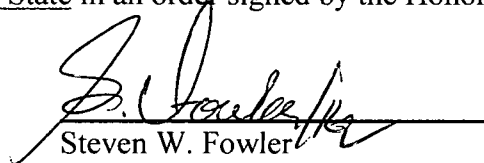
v.

Ronnie W. Wilson, #235803, Appellant.

NOTICE OF APPEAL

Ronnie W. Wilson appeals the order of the Honorable Thomas A. Russo dated September 10, 2012, which denied and dismissed his Post-Conviction Relief application. The Appellant was granted the right to appeal pursuant to Austin v. State in an order signed by the Honorable G. Thomas Cooper, Jr. dated February 26, 2015.

March 9, 2015



Steven W. Fowler
1019 Highway 17 South
North Myrtle Beach, South Carolina 29582
(843) 663-0006
Attorney for Appellant

Other Counsel of Record:
Joshua L. Thomas
Assistant Attorney General
S.C. Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

PROOF OF SERVICE OF A NOTICE OF APPEAL

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2011-CP-22-614

The State of South Carolina,

Respondent,

v.

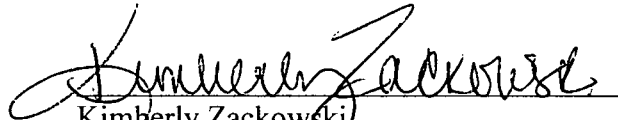
Ronnie W. Wilson, #235803,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State of South Carolina, via the Attorney General's office, by depositing a copy of it in the United States Mail, postage prepaid, on March 9, 2015, addressed to the attorney of record, Joshua Thomas, Assistant Attorney General, SC Attorney General's Office, Rembert C. Dennis Building, 1000 Assembly St., Columbia, SC 29201.

March 9, 2015


Kimberly Zackowski
Paralegal to Steven W. Fowler
Attorney for Appellant
1019 Highway 17 South
North Myrtle Beach, SC 29582
(843)663-0006

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

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

Ronnie W. Wilson, #235803,)

Case No. 2014-CP-22-137)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

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

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 19, 2014. Respondent made a timely Return on or about May 29, 2014. The Court convened an evidentiary hearing into the matter on February 5, 2015, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Steven W. Fowler, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The Court had before it the general sessions records of the Georgetown County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the records from Applicant's prior post-conviction relief action. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In July 2007, the Georgetown County Grand Jury indicted Applicant for criminal domestic violence of a high and aggravated nature ("CDVHAN") (2007-GS-22-737), kidnapping (2007-GS-22-740), first degree burglary (2007-GS-22-739), and possession of a weapon during the commission of a violent crime (2007-GS-22-738). C. Reuben Goude, Esquire, represented Applicant. On November 26, 2007, Applicant proceeded to trial

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before the Honorable Paul M. Burch and a jury. The jury found Applicant guilty of CDVHAN and kidnapping. The jury found Applicant not guilty of first degree burglary and possession of a weapon during the commission of a violent crime. Judge Burch sentenced Applicant to concurrent terms of ten (10) years for CDVHAN and twenty-two (22) years for kidnapping.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on August 11, 2010. State v. Wilson, 389 S.C. 579, 698 S.E.2d 862 (Ct. App. 2010). The Court of Appeals returned the remittitur to the circuit court on September 2, 2010.

Applicant filed his initial Application for Post-Conviction Relief on May 4, 2011 (2011-CP-22-614). In that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Forged Signature
2. Newly Discovered Evidence
3. Judicial error by trial judge
4. Judicial error by Court of Appeals
5. Improperly introduced evidence

On August 31, 2012, the Honorable Thomas A. Russo convened an evidentiary hearing into the application. Applicant was present at the hearing and represented by Louis H. Hutto, III, Esquire. Judge Russo denied and dismissed Applicant's application by written order dated September 10, 2012, and filed September 24, 2012. Applicant did not appeal Judge Russo's order.

II. CURRENT APPLICATION

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

1. "Violation of U.S. Constitution Rights 5th, 6th, 12th, and 14th Amendments."
 - a. "Unsign Warrants, Ineffective Assistance Counseling, Prosecutorial misconduct, Perjury, Inflammatory statement, Impression on the mind

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of the jurors”

In an attachment to his application, Applicant also alleged prior collateral counsel “failed to file a notice of appeal to the Supreme Court pursuant to Rule 243, SCACR.” At the evidentiary hearing on this application, Applicant attempted to re-raise the arguments raised in his prior application. He also alleged he did not knowingly and voluntarily waive his right to an appeal from the denial of his prior application.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Appeal Pursuant to Austin v. State

This Court finds meritorious Applicant’s allegation he was denied an appeal from the decision in his prior post-conviction relief action. “The right to seek appellate review of the denial of PCR is expressly authorized by state law.” Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. § 17-27-100). “A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived.” Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted). Even if the post-conviction court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine “whether he was prejudiced by his failure to obtain review of a meritorious issue.” Odom, 337 S.C. at 263, 523 S.E.2d at 756 (1999).

Applicant’s prior post-conviction counsel was present at the hearing on this matter, but did not

testify. Applicant testified he did not receive a copy of Judge Russo's order denying relief until well past the deadline for filing an appeal. He also testified Judge Russo's order did not properly address the issues raised in the application and at the initial hearing. Based on this testimony, the Court finds Applicant did not knowingly and voluntarily waive the right to seek appellate review of Judge Russo's order. Accordingly, the Court hereby grants Applicant's request for appellate review of his prior post-conviction relief action pursuant to Austin v. State.

B. All Other Allegations

To the extent Applicant seeks to further explore the issues raised in his initial application, the Court finds those issues cannot be revisited in a successive application. S.C. Code Ann. § 17-27-90 requires that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Here, the allegations in Applicant's successive application were raised in his initial application. Judge Russo's order demonstrates many of those issues were raised at the prior evidentiary hearing. This Court will not second-guess prior collateral counsel's decision to not raise any further issues at that time. Id. at 450, 409 S.E.2d at 394 ("We will not engage in an exploration of why the grounds were not raised, it is sufficient that they could have been raised, but were not."). Accordingly, the Court finds all remaining

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grounds for relief should be denied and dismissed because Applicant has not shown a sufficient reason why these grounds should be re-raised in a successive application.

V. CONCLUSION


Based on the foregoing, the Court finds and concludes Applicant is entitled to an appeal of his prior post-conviction relief action pursuant to Austin v. State.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Counsel and Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), for the appropriate procedure for securing appellate review pursuant to Austin v. State.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief seeking an appeal pursuant to Austin v. State is granted; and
2. All other grounds for relief are denied; and
3. Applicant shall be remanded to the custody of the Department of Corrections.

AND IT IS SO ORDERED this 13 day of February, 2015.



THE HONORABLE G. THOMAS COOPER, JR.
Presiding Judge

COLUMBIA, South Carolina

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843.663.0006
myfowlerlaw@gmail.com

March 9, 2015

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

Re: Case No. 2011-CP-22-614
Ronnie W. Wilson v. State of South Carolina

RECEIVED

MAR 11 2015

S.C. Supreme Court

Dear Mr. Shearouse,

Enclosed for filing are two (2) copies of a Notice of Appeal in the above referenced Post-Conviction Relief case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondent.
2. A copy of the order granting the right to appeal.

Please return a clocked copy of the notice to my office in the self-addressed stamped envelope provided.

Thank you for your cooperation in this matter. Please feel free to contact my office if you have any questions or concerns.

Kindest regards,


Steve Fowler

Cc: Joshua Thomas, Assistant Attorney General

Enclosures: As stated

SF/kz



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