

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

COUNTY OF CLARENDON)

CASE NO.: 2013-CP-14-271

WILLIE E. DOW, #326446)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

Plaintiff's Attorney: William H. Johnson, Bar No. _____ Address: PO Box 137 Manning, SC 29102 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
Date submitted: March 3, 2015	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status: <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
COLLECTED BY: _____ DATE FILED: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

FILED
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 CLARENDON COUNTY, SC
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 DATE 3/15/15
Beulah S. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

Willie E. Dow, #326446,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

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

2013-CP-14-271)

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

2015 MAR 25 PM 2:48

BEULAH ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed July 3, 2013. The Respondent made its Return on September 10, 2013, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on December 16, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and represented by William H. Johnson, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Office of the Attorney General represented the Respondent. Also present was James O'Connor, Esquire.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the January 2008 term of the Clarendon County Grand Jury for Criminal Sexual Conduct with a Minor- 2nd Degree (2008-GS-14-0013). Debbie Koon, Esquire, represented Applicant. On January 29, 2008, the Applicant pled guilty before the Honorable R. Ferrell Cothran, Jr., and was sentenced to eighteen years imprisonment. Applicant did not appeal his conviction or sentence.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

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CLARENDON COUNTY, SC

Subsequently, Applicant filed a timely application for post-conviction relief on December 29, 2008. Applicant alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
3. Due Process violation

The Respondent made its return on April 14, 2013, requesting that an evidentiary hearing be held. On September 21, 2012, an evidentiary hearing was convened at the Sumter County Courthouse. The Applicant was present and represented by James O'Connor, Esquire. By Order dated November 1, 2012, the Honorable W. Jeffrey Young denied and dismissed the Applicant's post-conviction relief application with prejudice.

ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel.
 - a. "After requesting an Appeal from my PCR hearing he failed to file my appeal."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. The State explained that they were consenting based off of their discussion with prior PCR Counsel, a review of various letters written to prior PCR Counsel by Applicant, and discussion with Applicant's current PCR

Counsel. The State introduced various exhibits showing Applicant wrote prior PCR Counsel on various occasions requesting an appeal be filed on his behalf.

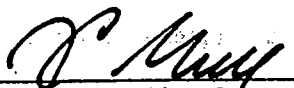
After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the Applicant is entitled to appeal the denial of his first post-conviction relief application (2008-CP-14-0668) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2008-CP-14-0668) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:


1. That the Applicant be granted an appeal of case 2008-CP-14-0668 pursuant to Austin v. State; and
2. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 12 day of March, 2015.

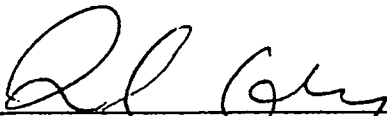

J. Cordell Maddox, Jr.
Presiding Judge
Third Judicial Circuit

Anderson, South Carolina.


WE CONSENT:



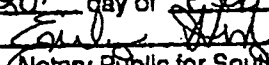
William H. Johnson, Esquire
Attorney for the Applicant



Daniel Gourley, Esquire
Assistant Attorney General
Attorney for the Respondent



Willie E. Dow,
Applicant

SWORN to and subscribed before me this
20th day of Feb, 2015.
 (L.S.)

Notary Public for South Carolina

My Commission Expires: 4-27-2016

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

WILLIE E. DOW, #326446

Applicant,

v.

STATE OF SOUTH CAROLINA,


Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Consent Order Granting an Appeal Pursuant to Austin v. State** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

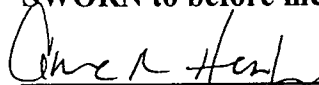
**William H. Johnson, Esquire
Law Office of William H. Johnson, LLC
Post Office Box 137
Manning, South Carolina 29102**

This 31st day of March, 2015.



Caroline Collins, Legal Assistant
For Respondent

SWORN to before me this 31st day of March, 2015.



Notary Public for South Carolina,
My Commission Expires: 7/18/2017