

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
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October 6, 2015

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

RECEIVED

OCT 08 2015

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

S.C. SUPREME COURT

RE: Toryast Johnson, #256772, v. State of South Carolina
2014-CP-02-558/2012-CP-02-1423

Dear Mr. Shearouse and Ms. Godard:

Enclosed for filing is a Notice of Appeal pursuant to *Austin v. State* 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. Johnson in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Johnson in this appeal.

Yours very truly,



Lance S. Boozer

cc: Daniel Gourley, AAG
Loriene French, OAD

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

RECEIVED

OCT 08 2015

Case No. 14-CP-02-558

S.C. SUPREME COURT

Toryast Johnson, #256772.....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 Edgar W. Dickson which granted an *Austin* review of the Honorable R. Ferrell Cothran's Final Order dated August 23, 2013, in Case No. 2012-CP-02-1423. The Petitioner received written notice of the Final Order granting an *Austin* review on October 5, 2015 . A copy of the Final Order is attached herewith.

Respectfully submitted,



Lance S. Boozer
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Tele: 803-608-5543

Columbia, South Carolina
October 6, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
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Case No. 14-CP-02-558

OCT 08 2015

Toryast Johnson, #256772.....Petitioner,

S.C. SUPREME COURT

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 6th day of October, 2015.


Lance S. Boozer
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Tele: 803-608-5543

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Toryast J. Johnson, # 256772,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

2014-CP-02-00558

**ORDER GRANTING AN APPEAL
 PURSUANT TO AUSTIN V. STATE¹**

This matter comes before the Court by way of an application for post-conviction relief filed March 10 2014. The Respondent made its Return on May 28, 2014, 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 September 11, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Office of the Attorney General represented the Respondent. Also present was Marsha Banks, Esquire.

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 during the February 2010 term of the Aiken County Grand Jury for Armed Robbery (2010-GS-02-0296). Applicant was represented by Ola A. Johnson, Esquire. On August 31, 2011, the Applicant pled guilty as indicted. The Honorable Doyet A. Early, III, sentenced the Applicant to confinement for a period of thirty years. The Applicant did not appeal his conviction or sentence.

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

FILED 10.5.15

 Deputy Clerk
 Anita Kincaid 1235
 Deputy Clerk

Applicant subsequently filed for post-conviction relief on June 11, 2012 (2012-CP-02-1423). In his application, Applicant asserted claims of ineffective assistance of counsel, Belated Appeal, and Involuntary Guilty plea. An evidentiary hearing was convened on July 10, 2013, at the Aiken County Courthouse before the Honorable R. Ferrell Cothran, Jr. Applicant was present at the hearing and was represented by Marsha M. Banks, Esquire. By written Order filed August 23, 2013, Judge Cothran denied and dismissed Applicant's post-conviction relief action.

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. "Failed to file a timely Notice of Appeal of Intent to 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.

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 (2012-CP-

02-1423) 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 (2012-CP-02-1423) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2012-CP-02-1423 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 21st day of Sept., 2015.



EDGAR W. DICKSON
Presiding Judge
Second Judicial Circuit

Orangeburg, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF AIKEN) Second JUDICIAL CIRCUIT
 Toryast J Johnson,) CASE NO.: 2014CP0200558
 Plaintiff(s),) APPOINTMENT OF COUNSEL OR GAL
 -vs-) (Select one.)
 South Carolina State of,) ORDER
 Defendant(s).) 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 Toryast J Johnson, 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
 March 14, 2014

L. Godard by Anita Knoepfle
 Circuit Judge Clerk of Court

Plaintiff Attorney:

Lance Boozer	Toryast J Johnson # 256772
1331 Park Street	PCI - Q4B # 109
Columbia, SC 29201	430 Oaklawn Rd
	Pelzer SC 29669

Defendant Attorney:

Daniel Francis Gourley II	<i>3.14.14</i>
P.O Box 11549	<i>L. Godard</i>
	<i>SCCP & G.S.</i>
Columbia, SC 29211	<i>Anita Knoepfle</i>

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.secid.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.

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

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