

Lowcountry Law Office

4000 Faber Place Drive, Suite 300
Charleston, SC 29405

Phone: 843-323-4353 Fax: 843-323-4101

E-Mail: Davis@LowcountryLawOffice.com

November 30, 2015

RECEIVED

DEC 04 2015

S.C. SUPREME COURT

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

RE: Quentin Jenkins v. State of South Carolina, Appellate Case No.: 2015-002181

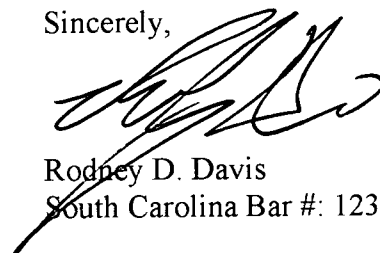
Dear Mr. Shearhouse:

I spoke with Joyce Johnson, of your office, today. Coincidentally, I received the Order from Chief Justice Toal today, also. As I explained to Miss Johnson, while the Court granted the Austin v. State request and an order was filed on September 10, 2015. However, the filed Order is confusing. While there is reference to an Austin appeal, the conclusion section of the Order references a White appeal. Your office asked me to provide justification for a direct appeal. There is none. The Order intended an Austin appeal.

I submitted a proposed Amended Order to Judge Henderson for his review (and a copy to the State) correcting the language to make it clear that an Austin appeal was granted. In the final coincidence, I received (and filed) the Amended Order, today. I am including the Amended Order indicating that relief was granted for an Austin appeal.

I apologize for the delay in responding to your first letter. However, in the interim, I have remedied the language error in the Order that gave rise to your initial letter. I hope the Amended Order resolves the issue: Mr. Jenkins was granted an appeal from his original Post Conviction Relief dismissal, only. Finally, I hope the explanation, that I was working to correct the original order is sufficient explanation for the delay in my reply. If you need anything further from me, please do not hesitate to contact me.

Sincerely,



Rodney D. Davis
South Carolina Bar #: 12396

Enclosure

CC: J. Rutledge Johnson
Assistant Attorney General

Kimberly McCall
Appellate Division, SCCID

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Quentin Jenkins,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

RECEIVED

DEC 04 2015

S.C. SUPREME COURT

AMENDED ORDER
 Case No.: 2012-CP-10-7980

FILED
 2015 NOV 30 PM 1:33
 JULIE J. ARMSTRONG
 CLERK OF COURT

Date of Hearing: July 20, 2015
 Presiding Judge: The Honorable Roger Henderson
 Applicant's Attorney: Rodney D. Davis
 Respondent's Attorney: J. Rutledge Johnson
 Court Reporter: Phyllis Norton

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed December 7, 2012. The Respondent made its Return and Partial Motion to Dismiss on or about February 4, 2015. An evidentiary hearing into the matter was convened on July 20, 2015, at the Charleston County Courthouse. Applicant was present along with Applicant's PCR attorney, Mark Peper ("PCR counsel"). In addition, the Court had before it the records of the Charleston County Clerk of Court, the Supreme Court of South Carolina and the transcript of the proceedings against the Applicant.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections. In April 2007, the Applicant was indicted by a Charleston County Grand Jury for two counts of Murder and two counts of Possession of a Weapon during a Violent Crime. A trial was commenced and the Applicant was convicted of the charges. The Honorable Deadre Jefferson

[Handwritten signature]
 #1

sentenced the Applicant to concurrent terms of imprisonment for forty (40) years on each count of Murder and five (5) years for each weapon charge. Applicant appealed his conviction and the South Carolina Court of Appeals dismissed.


Applicant filed a PCR claim on October 27, 2010. Respondent filed a Return on February 10, 2011. An evidentiary hearing occurred on November 18, 2011, before the Honorable Kristi L. Harrington. The Applicant was represented by Mark Peper of the Charleston County Bar. Following the hearing, Applicant's PCR was dismissed with prejudice on December 20, 2011. Applicant filed a pro se Motion for a Belated Writ of Certiorari on October 12, 2012. PCR Counsel filed a Notice of Appeal on October 23, 2012. The South Carolina Supreme Court dismissed the matter on November 5, 2012, and issued the remittitur on November 26, 2012. Applicant filed the current PCR application on December 12, 2012 and amended the application on June 6, 2013.

At the evidentiary hearing, Applicant sought relief as to a belated appeal from his PCR dismissal, only. Based on the documents in the record and the waiver of any other potential PCR claims, the State conceded the Applicant's request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety. In a PCR action the Applicant bears the burden of proving each of the allegations raised by the application in order to receive any relief. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

This Court finds the Applicant is entitled to an appeal of his PCR dismissal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to


#2

counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When a criminal defendant requests an appeal, but counsel fails to file an appeal, counsel is deemed deficient. Flemming v. State, 309 S.C 380, 381, 731 S.E.2d 889 (2012). In such a case, the defendant is entitled to a belated appeal without showing the appeal would likely have had merit. Id.

In White v. State, the South Carolina Supreme Court held “[T]he right to seek appellate review of the denial of PCR is expressly authorized by state law. S.C.Code Ann. § 17-27-100 (1985); Supreme Court Rule 50(9). Whether such review is granted is discretionary with this Court. Knight v. State, 284 S.C. 138, 325 S.E.2d 535 (1985).” Therefore, where an Applicant establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to appeal the dismissal of his PCR action, the South Carolina Supreme Court, will grant discretionary review of that decision.

Based off of the forgoing, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal. This Court concludes the Applicant is entitled to a review of his plea pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has withdrawn all complaints against PCR counsel with the exception of the request for a belated appeal. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an

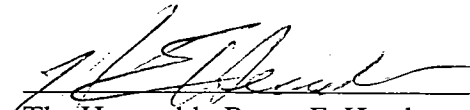
Handwritten signature
#3

Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Applicant is granted an appeal pursuant to Austin v. State. Within thirty (30) days of receipt of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions;
2. All other claims raised in the application for Post-Conviction Relief must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to the custody of the Respondent.

IT IS SO ORDERED.


The Honorable Roger E. Henderson
Circuit Court Judge

11-25, 2015

#4

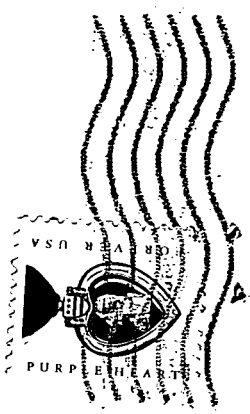
Lowcountry Law Office

Rodney D. Davis
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

CHARLESTON SC 294

01 DEC 2015 PM 2 T

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



29211+1330

