

# THE BOOZER LAW FIRM, LLC

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December 16, 2015

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

**RECEIVED**

DEC 17 2015

The Honorable James C. Campbell  
Clerk, Sumter County  
215 N. Harvin Street  
Sumter, SC 29150

**S.C. SUPREME COURT**

**RE: Derrick Harriott, #331760, v. State of South Carolina**  
**2014-CP-43-2334/2013-CP-43-168**

Dear Mr. Shearouse and Mr. Campbell:

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

**RECEIVED**

DEC 17 2015

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable Steven H. John, Circuit Court Judge

Case No. 14-CP-43-2334

Derrick Harriott, #331760,.....Petitioner,

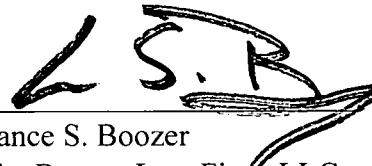
v.

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 Steven H. John which granted an *Austin* review of the Honorable R. Ferrell Cothran, Jr.'s Final Order dated July 11, 2014, in Case No. 2013-CP-43-168. The Petitioner received written notice of the Final Order granting an *Austin* review on December 16, 2015 . A copy of the Final Order is attached herewith.

Respectfully submitted,



Lance S. Boozer  
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807 Gervais Street, Suite 203  
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Tele: 803-608-5543

Columbia, South Carolina  
December 16, 2015

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

DEC 17 2015

The Honorable Steven H. John, Circuit Court Judge

**S.C. SUPREME COURT**

Case No. 14-CP-43-2334

Derrick Harriott, #331760,.....Petitioner,

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 16th day of December, 2015.



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

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Derrick Damon Harriott, #331760, )

2014-CP-43-2334

Applicant, )

vs. )

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

State of South Carolina, )

Respondent. )

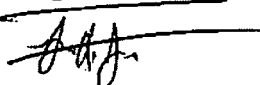
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JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated November 3, 2014. The Respondent made its return and motion to dismiss all claims except for failure to file an appeal from the denial of his PCR action on January 6, 2015. An evidentiary hearing on the matter was convened on July 15, 2015 at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the Sumter 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 the prior PCR records.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2008 term of the Sumter Grand Jury for Murder and Possession of a Firearm During the Commission of a Violent Crime (2008-GS-43-257). William Land, Esquire represented Applicant. Applicant proceeded to a jury trial and was found guilty but mentally ill



on November 13, 2008. The Honorable George C. James, Jr., sentenced Applicant to life imprisonment without parole.

A timely Notice of Appeal was filed. The South Carolina Court of Appeals affirmed lower court's decision. State v. Harriott, Op. No. 2012-UP-427 (S.C. Ct. App. filed July 18, 2012). The Remittitur was issued on August 3, 2012.

Applicant subsequently filed for post-conviction relief on January 31, 2013 (2013-CP-43-168). In his application, Applicant asserted claims of ineffective assistance of counsel. An evidentiary hearing was convened on May 29, 2014, at the Sumter County Courthouse before the Honorable R. Ferrell Cothran, Jr. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. By written Order filed July 11, 2014, Judge Cothran denied and dismissed Applicant's post-conviction relief action.

### **ALLEGATIONS**

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

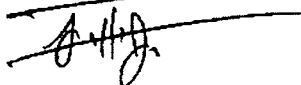
1. Ineffective Assistance of PCR Counsel
  - a. Failure to file a notice of appeal.

Applicant filed his first amendment to his PCR application on July 1, 2015 alleging that he was being held in custody unlawfully based on the following allegations:

1. Trial Counsel was ineffective for failing to petition the court, prior to the petit jury being sworn, for a 'motion to quash' indictment No: 2008-GS-43-257, as being defective, was prejudicial to defense.
2. Trial Counsel was ineffective for failing to object to the Court's verdict form 'not' including all four forms of verdict, when presented to the jury, as required by the statute, was prejudicial to the defense, especially when the affirmative defense of a mental defect was sufficiently raised by the defense.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Applicant alleges that he was denied the right to appeal the dismissal of his previous



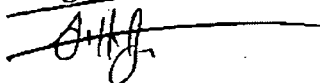
post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

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 have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2013-CP-43-168). 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, Casey Cornwell, indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the application.

As to Applicant's amended allegations, this Court finds the allegations must be summarily dismissed because they are successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305



S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

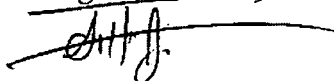
This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court additionally finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 . S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on November 13, 2008. The South Carolina Court of Appeals affirmed his conviction on August 3, 2012. Therefore, the Applicant was required to file his application by August 4, 2013. This Application was filed on November 3, 2014, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of

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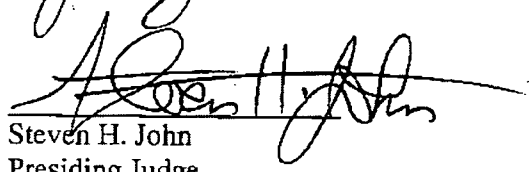
limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the allegations raised in his amended application for post-conviction relief are summarily dismissed for failure to file within the time mandated by statute and for being successive.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2013-CP-43-168) pursuant to Austin v. State is warranted. This Court further finds that the allegations raised in the amended application are successive and barred by the statute of limitations.

**IT IS THEREFORE ORDERED:**

1. That the Applicant remain in the custody of the South Carolina Department of Corrections; and
2. That the Applicant be granted an appeal of case 2013-CP-43-168 pursuant to Austin v. State.
3. The remaining allegations filed in Applicant's amended application are successive and barred by the statute of limitations.

AND IT IS SO ORDERED this 27th day of July, 2015.

  
Steven H. John  
Presiding Judge  
Third Judicial Circuit

  
Attorney at Law, South Carolina.

STATE OF SOUTH CAROLINA  
COUNTY OF

RECORDED  
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IN THE COURT OF (Select one.)  
 COMMON PLEAS  FAMILY COURT  
JUDICIAL CIRCUIT

Derrick Damon

JAMES G. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

CASE NO.: 2014-CP-43-2334

Plaintiff(s),

-vs-

SC. State

Defendant(s).

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

ORDER

AMENDED ORDER

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

TYPE OF CASE/PROCEEDING: (Check one.)

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

It appears that Derrick Damon, 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:

Lance Boozer  
1331 Park St  
Columbia, SC 29201

counsel  lead counsel (if capital PCR case)  guardian ad litem

Therefore, it is ordered that Damon hereby is appointed as (Select one.)  
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 THIS 18<sup>th</sup> DAY OF Dec, 20 14.

**THE BOOZER LAW FIRM, LLC**

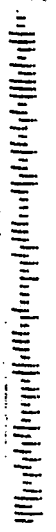
807 Gervais Street, Suite 203  
Columbia, SC 29201

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

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FOREVER



FOREVER

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