

FALK LAW FIRM, LLC.

James K. Falk

(843) 606-6007

(843) 972-9005 Fax Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

RECEIVED

March 25, 2016

MAR 28 2016

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

Re: Roshod Baker v. State, 2015-CP-26-00475


Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order Granting an Appeal pursuant to Austin v. State, in the above Horry County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,

James K Falk



Thank you for your assistance.

Cc: Jessica Kinard, Esq.; Roshod Baker, 318851.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable D. Craig Brown, Circuit Court Judge

Case No.: 2015-CP-26-00475

Roshod Baker 318851.....Petitioner

v.

State of South Carolina.....Respondent

NOTICE OF APPEAL

The Petitioner Roshod Baker appeals the Honorable D. Craig Brown's March 7, 2016 Order Granting an Appeal Pursuant to Austin v State. Undersigned counsel received notice of entry of the order on March 25, 2016. A copy of the order on appeal is attached to this notice.

Respectfully submitted



James Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402
Attorney for Petitioner

March 25, 2016

Other counsel of Record
Jessica Kinard, Esq
S.C. Attorney General's Office
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM Horry COUNTY

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Court of Common Pleas

Honorable D. Craig Brown, Circuit Judge

S.C. SUPREME COURT

Case No.: 2015-CP-26-00475

Roshod Baker 318851.....PETITIONER

V.

State of South Carolina.....RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Jessica Kinard, Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this March 25, 2016.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Roshod M. Baker, #318851,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-26-0475

HORRY COUNTY
CLERK OF COURT
16 MAR 14 PM 2:23

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

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 21, 2015. The Respondent made its return on or about May 29, 2015. The Court convened a hearing in Horry County on February 11, 2016, at which time Applicant was present and represented by James K. Falk, Esquire. Respondent was represented by Jessica E. Kinard of the South Carolina Attorney General's Office. The sole issue before the Court was whether Applicant was entitled to a review of his prior PCR claim pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The State consented to granting this relief without presentation of any testimony.

The Court had before it the Horry 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

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. He was indicted during the May 2002 term of the Horry County Grand Jury for murder (2002-GS-26-2040). Johnny Gardner, Esquire, represented Applicant. Applicant proceeded to trial, and a jury found him guilty as indicted. On November 15, 2006, the Honorable Steven H. John sentenced Applicant to a term of imprisonment

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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 of the Applicant's first post-conviction relief application (2012-CP-43-1286) pursuant to Austin v. State. 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, Tristan Shaffer, 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.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2010-CP-26-7814) pursuant to Austin v. State is warranted.

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 2010-CP-26-7814 pursuant to Austin v State.

AND IT IS SO ORDERED this 7 day of March, 2016.



THE HONORABLE D. CRAIG BROWN
PRESIDING JUDGE

Florence, South Carolina.

FALK LAW FIRM

PO Box 1058

Charleston, SC 29402

CHARLESTON SC 294

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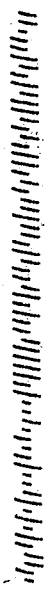
Clerk of Court.

Supreme Court of South Carolina

PO Box 11330

Columbia, SC 29211-1549

29211+1330



Handwritten markings and a large stylized signature or stamp at the bottom of the envelope, including the letters "SA" and "V".