

Timothy L. Griffith Attorney at Law
360 West Wesmark Blvd, 2nd Floor, Sumter, SC 29150

Phone: (803) 607-9087 Fax: (803) 728-3375

April 26, 2016


Clerk of Court, South Carolina Supreme Court
Case # 2015-CP-43-1008

Please see the included Notice of Appeal. I have also forwarded by separate mail copies to:

The Sumter County Clerk of Court
The Office of the Attorney General of South Carolina
SC Office of Indigent Defense / Commission of Indigent Defense

Please file the included NOTICE OF APPEAL for the case captioned.

Thank You,



Timothy L. Griffith, Esquire

RECEIVED

APR 29 2016

S.C. SUPREME COURT

NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case # 2015-CP-43-1008

RECEIVED

APR 29 2016

The State,

Respondent,

v.

S.C. SUPREME COURT

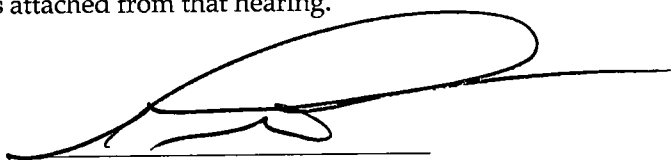
Wayne Wells #314139

Appellant.

NOTICE OF APPEAL

Wayne Wells #314139, appeals his denial of PCR request in this case. The PCR was denied by the Honorable R. Ferrell Cothran, Jr., on July 11, 2014. The Attorney General's office consented under *Austin v State* for Mr. Gregg to file out of time on March 18, 2016, and the order was recorded April 8, 2016 and received by his attorney and the appeal is noticed herein a copy of which is also forwarded to the SCCID Appellate Division. The order of appeal is attached from that hearing.

April 26, 2016



Timothy L. Griffith, Esquire
360 W. Wesmark Blvd,
Sumter, South Carolina 29150
Telephone: (803)607-9087
Attorney for Appellant

Other Counsel of Record:
Daniel Gourley, Esquire
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case # 2015-CP-43-1008

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S.C. SUPREME COURT

The State,

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Wayne Wells #314139

Appellant.

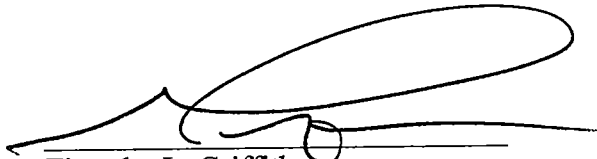
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Office of the Attorney General of South Carolina, PCR Division, by U.S. Postal Service, postage prepaid, to P.O. Box 11549, Columbia, S.C. 29211, on April 26, 2016.

April 26, 2016

I received a copy of the Notice of Appeal
on this ____ day of _____, 2016

Office of the Attorney General
PCR Division



Timothy L. Griffith
2338 Mount Vernon Dr.
Sumter, SC 29154
Telephone: (803) 499-2012
Attorney for Appellant

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER **2015CP4301008**

RECORDED

Wayne Wells Jr

2016 APR -8 PM 10:57

South Carolina State of

Fulton Casey Dale
Cornwell

JAMES L. WELLS
CLERK OF COURT
SUMTER COUNTY, S.C.

VERIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: See attached Order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If here is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2131

Judge Code

4/8/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Wayne Jr #314139 Wells Turbeville Correctional Inst/Seloc
A-234 P O Box 205 Turbeville, SC 29162
Timothy Lee Griffith 360 W Wesmark Blvd Second Floor
Sumter, SC 29150.

Daniel Goutry
~~Alan McCrory Wilson~~ PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

James C. Campbell - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



RECORDED

2016 APR -7 PM 3:05

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

ALAN WILSON
ATTORNEY GENERAL

April 4, 2016

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

Re: Wayne Wells, Jr., #314139 v. State of South Carolina
2015-CP-43-1008

Dear Mr. Campbell:

Enclosed please find the original **Order Granting an Appeal Pursuant to Austin v. State**, signed by the Honorable Brooks P. Goldsmith, in the above-captioned case for filing in your office. Please forward a **time stamped** copy back to our office for our files.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC/cc
Enclosure(s)

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2016 APR - 7 PM 3

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Wayne Wells, Jr., #314139

J. WELLS
CLERK OF COURT
SUMTER COUNTY, S.C.

2015-CP-43-1008

Applicant,

v.

State of South Carolina,
Respondent.

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

GENUINE TRUE COPY
OF ORIGINAL FILED

W. JEFFREY YOUNG
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed April 21, 2015. 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 March 18, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy Griffith, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's orders of commitment. The Applicant was true billed indicted at the October 2010 term of the Sumter County Grand Jury for Criminal Sexual Conduct with a Minor-Second Degree (2010-GS-43-337). Calvin Hastie, Esquire, represented him. Applicant proceeded to a jury trial and found guilty November 9, 2010. The Honorable W. Jeffrey Young sentenced Applicant to a twenty year imprisonment.

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

A timely Notice of Appeal was filed on Applicant's behalf by Susan Hackett, Esquire. The South Carolina Court of Appeals dismissed the appeal. State v. Wells, Op. No. 2012-UP-621 (Ct. App. filed November 21, 2012). The Remittitur was issued on December 10, 2012.

Applicant filed his first application for post-conviction (2013-CP-43-675) relief on April 18, 2013, alleging the following grounds for relief:

1. "Rule Canon 3B(5). C.S.C. Rule 501, SCACR;
 - i. "A judge shall perform judicial duties without bias or prejudice."
2. Ineffective assistance of counsel;
3. Due Process Violation
 - i. "Due process was violated deprive Applicant of fair trial."
 - ii. "6th Amendment."
 - iii. "14th Amendment."

An evidentiary hearing was held at the Sumter County Courthouse on May 29, 2014. The Applicant was present and represented by Casey Cornwell, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office represented the Respondent. The Honorable R. Ferrell Cothran, Jr., denied and dismissed the application in written order filed July 11, 2014.

Applicant filed a timely *pro se* Notice of Appeal. The South Carolina Supreme Court dismissed Applicant's appeal in an order dated October 29, 2014, for failure to provide correspondence showing that the transcript had been ordered as required by Rules 243(b) and 207 of the South Carolina Appellate court Rules. The remittitur was issued on November 14, 2014.

ALLEGATIONS

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:²

1. Ineffective Assistance of PCR Counsel
 - a. Failure to file an appeal from the denial of his first PCR application.

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 the various documents filed by Applicant to the South Carolina Supreme Court, and their 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 (2013-CP-43-675) 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

² Respondent initially filed a return and motion to dismiss Applicant's current application as it was filed beyond the statute of limitations and successive to his prior application. The Honorable George C. James, Jr issued a conditional order of dismissal provisionally denying the PCR application. Applicant filed a timely response alleging PCR Counsel was ineffective for failing to file an appeal following the denial of his first PCR application.

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

WAYNE WELLS, JR., #314139)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASE NO.: 2015-CP-43-1008

2015 APR -7) PM 3:05

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff) COURT
SUMTER COUNTY, S.C

Plaintiff's Attorney:
Timothy Lee Griffith, Bar No. _____
Address:
360 W Wesmark Blvd, Second Floor
Sumter, South Carolina 29150
Phone: _____ Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
Daniel Gourley, Bar No. _____
Address:
PO Box 11549
Columbia, SC 29211
Phone: _____ Fax _____
E-mail: _____ Other: _____

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 - 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 Plaintiff / Defendant March 25, 2016
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
- EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - 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: _____
- Other: _____

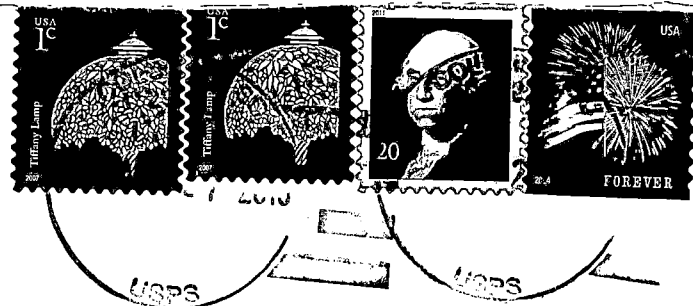
JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____
JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

Timothy L. Griffith, Attorney at Law
360 West Wesmark Blvd, 2nd Floor
Sumter, SC 29150



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