

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-43-2446

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-43-2446

RECEIVED

APR 29 2016

The State,

Respondent,

S.C. SUPREME COURT

v.

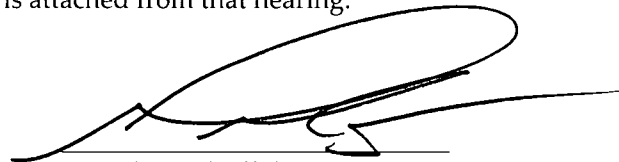
William Gregg #274507,

Appellant.

NOTICE OF APPEAL

William Gregg #274507, appeals his denial of PCR request in this case. The PCR was denied by the Honorable J. Cordell Maddox, on May 16, 2015. 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-43-2446

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S.C. SUPREME COURT

The State,

Respondent,

v.

William Gregg #274507,

Appellant.

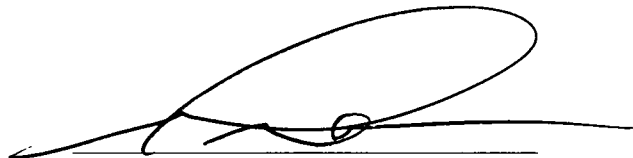
PROOF OF SERVICE

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

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP4302446

RECORDED

William Gregg

2016 APR -8 AM 10:59

South Carolina State of

CLERK OF COURT
 SUMTER COUNTY, S.C.

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 there 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:

William #274507 Gregg Broad River Correctional Inst/M1-A
1084 4460 Broadriver Road Columbia, SC 29210
Timothy Lee Griffith 360 W Wesmark Blvd Second Floor
Sumter, SC 29150

Douglas Gorty
~~Alan McCroary Wilson~~ PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

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.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
2015 APR -7) PM 3:50
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

William Gregg, #274507,

2015-CP-43-2446

Applicant,

v.

State of South Carolina,
Respondent.

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

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed November 2, 2015. The Respondent made its Return on December 30, 2015, 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 incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the October 2007 term of the Sumter County Grand Jury for (1) Murder, (2) Possession of a Firearm During Crime of Violence, and (3) Possession with Intent to Distribute Heroin (2007-GS-43-0796). Christopher Hart, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr., on July 28-30, 2008. Applicant was found guilty of

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

Murder and Possession of a Firearm During Crime of Violence.² Applicant was sentenced to thirty-five (35) years imprisonment for Murder and a concurrent term of five (5) years imprisonment for Possession of a Firearm During Crime of Violence. Applicant did not appeal his conviction and sentence.

Applicant subsequently filed for post-conviction relief on October 27, 2008 (2008-CP-43-2479). In his application, Applicant asserted claims of ineffective assistance of counsel, due process violation, and prosecutorial misconduct. An evidentiary hearing was convened on December 17, 2014, at the Sumter County Courthouse before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and was represented by John S. Keffer, Esquire. By written Order filed May 16, 2015, Judge Maddox denied and dismissed Applicant's post-conviction relief action.

Applicant submitted a *pro-se* notice of appeal to the South Carolina Supreme Court on August 21, 2015. The South Carolina Supreme Court dismissed the appeal due to Applicant's failure to establish that it had been timely served under Rule 243(b) and 203(b). The Remittitur was issued October 16, 2015.

ALLEGATIONS

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:³

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

² As a result of a pre-trial motion by the defense, the charge of Possession with Intent to Distribute Heroin was not tried during this trial.

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 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 (2008-CP-43-2479) 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.

[Signature to follow]

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER)

2016 APR -7 PM CASE NO.: 2015-CP-43-2446

WILLIAM GREGG, #274507)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

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: \$ _____



RECORDED

2016 APR -7 PM 3:05

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

ALAN WILSON
ATTORNEY GENERAL

April 5, 2016

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

Re: William Gregg, #274507 v. State of South Carolina
2015-CP-43-2446

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.

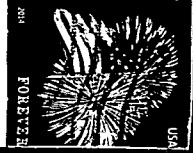
Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC/cc
Enclosure(s)

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

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



29211133030

