

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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SC SUPREME COURT

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Appeal from Clarendon County  
Honorable George C. James, Circuit Court Judge

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CHARLES JUNIOUS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001498

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S U P P L E M E N T A L  
A P P E N D I X

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

Charles Junious, #332874, )  
Applicant, )

2013-CP-14-507

2015 JUN 26 PM 3:12

BEULAH G. SMITHERS  
CLERK OF COURT  
CLARENDON COUNTY, SC

vs. CERTIFIED TRUE COPY OF ORIGINAL FILED IN THIS OFFICE ORDER GRANTING AN APPEAL PURSUANT TO AUSTIN V. STATE

State of South Carolina, )  
DATE 6/20/15

Respondent Deborah S. Roberts

CLERK OF COURT  
CLARENDON COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief

(PCR) dated December 13, 2013. 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 April 14, 2014. An evidentiary hearing on the matter was convened on April 15, 2015 at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Helena Seamour, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the guilty plea transcript, the Clarendon 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 South Carolina Supreme Court records.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the March 2008 term of the Clarendon County Grand Jury for two counts of Murder, Burglary First Degree, Possession of a Firearm During Commission of Violent Crime, and Unlawful Carrying of a Pistol (2008-GS-14-0095). Applicant was represented by Shaun

Kent, Esquire. On January 26, 2009, the Applicant pled guilty but mentally ill before the Honorable R. Ferrell Cothran, Jr., Applicant was sentenced to life imprisonment for each count of Murder, life imprisonment for Burglary First Degree, five (5) years imprisonment for Possession of a Firearm During Commission of Violent Crime, and one (1) year imprisonment for Unlawful Carrying of a Pistol. Applicant did not appeal his conviction and sentence.

Applicant subsequently filed for post-conviction relief on October 6, 2009 (2009-CP-14-0574). In his application, Applicant asserted claims of ineffective assistance of counsel and mental incompetency. An evidentiary hearing was convened on March 19, 2012, at the Sumter County Courthouse before the Honorable W. Jeffrey Young. Applicant was present at the hearing and was represented by William H. Johnson, Esquire. By written Order filed July 21, 2012, Judge Young denied and dismissed Applicant's post-conviction relief action.

Thereafter, Applicant filed a *pro se* Notice of Appeal, which was dismissed by the South Carolina Supreme Court for failure to timely serve and file. The Remittitur was issued on January 9, 2014

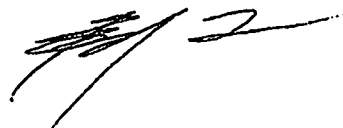
### **ALLEGATIONS**

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

1. "Trial Counsel rendered inadequate assistance for not letting his client no about an Direct Appeal."
2. "Trial Counsel waived applicant Insanity Defense."
3. "Constitutional Violations."
4. "Post-Conviction Relief Counsel rendered ineffective assistance for not advising client that his post-conviction relief application was denied. Petitioner hopes to seek an belated appeal of the denial of his initial PCR."

### **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 (2009-CP-14-0574). 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, William Johnson, 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-43-1449) pursuant to Austin v. State is warranted. It is appearing the below listed individuals all consent to the granting of a PCR appeal in this matter.

IT IS THEREFORE ORDERED:

1. That the Applicant remain in the custody of the South Carolina Department of Corrections and/or the South Carolina Parole and Community Corrections Department if under the supervision of either agency; and
2. That the Applicant be granted an appeal of case 2009-CP-14-0574 pursuant to Austin v. State.

AND IT IS SO ORDERED this 17 day of June, 2015.

  
George C. Jones, Jr.  
Presiding Judge  
Third Judicial Circuit

  
Sinter, South Carolina.