

THE LAW OFFICE OF NATHAN J. SHELDON,
LLC
Working on your behalf

331 E. Main St., Suite 200
Rock Hill, SC 29730
www.nathansheldonlaw.com
(803)909-9343

RECEIVED

OCT 03 2016

S.C. SUPREME COURT

September 29, 2016

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

Re.: Johnell Porter v. State
2011-CP-46-2620

Dear Clerk Shearouse:

Please find enclosed the original and one copy of the Notice of Appeal and Proof of Service on the above referenced case along with a copy of the order granting the *Austin v. State* belated appeal. Please file the original and mail the filed copies back to me in the also enclosed self-addressed stamped envelope. Please contact me with any additional questions or concerns.
Thank you.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 03 2016

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Michael Baxley, Circuit Court Judge

Case No. 2011-CP-46-2620

State of South Carolina,

Respondent,

v.

Johnell Porter,

Appellant.

NOTICE OF APPEAL

Johnell Porter appeals the order of the Honorable J. Michael Baxley dated March 14, 2014 denying his request for post-conviction relief. This appeal is filed pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). The *Austin* relief was granted by the Honorable Letitia Verdin by order dated August 30, 2016. Appellant received written notice of entry of this order on September 27, 2016.

September 29, 2016



Nathan J. Sheldon
SC Bar #: 0074943
331 E. Main St., Suite 200
Rock Hill, South Carolina 29730
(803) 909-9343
Attorney for Appellant

Other Counsel of Record:
Justin J. Hunter, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Attorney for Respondent
(803) 734-3970

RECEIVED

OCT 03 2016

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2011-CP-46-2620

State of South Carolina, Respondent,

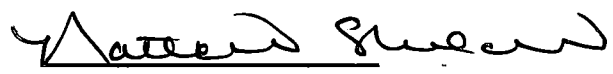
v.

Johnell Porter, Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin J. Hunter with the Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on September 29, 2016 mailed to Post Office Box 11549, Columbia, South Carolina 29211-1549.

September 29, 2016



Nathan Sheldon
331 E. Main St., Suite 200
Rock Hill, SC 29730
803-909-9343
Attorney for Appellant

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4601186**

Johnell Porter		South Carolina State Of	
-----------------------	--	--------------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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
ORDER GRANTING AN APPEAL**

This order ends does not end the case.
Additional Information for the Clerk: _____

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.**

S/ Letitia Verdin	2162	9/12/2016
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on 09/12/2016, and a copy mailed first class or placed in the appropriate attorney's box on 09/12/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan James Sheldon PO Box 36682 Rock Hill, SC 29732

Justin James Hunter PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - 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 YORK)
)
 Johnell Porter,)
 S.C.D.C. No. 166280)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-1186

ORDER GRANTING AN APPELLATE
 PURSUANT TO AUSTIN

FILED-RECEIVED
 2016 SEP 22 AM 10:14
 DANIEL A. MILLER
 CLERK OF COURT
 YORK COUNTY S.C.

This matter comes before the Court by way of an application for post-conviction relief filed April 20, 2015. Respondent made its Return on or about June 27, 2016, 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 August 1, 2016, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the June 2007 term of General Sessions for Armed Robbery (2007-GS-46-01687), entering a bank with intent to steal (2007-GS-46-01688), kidnapping (2007-GS-46-01689), possession of a firearm during the commission of a violent crime (2007-GS-46-01690), and Conspiracy to commit armed robbery (2007-GS-46-01691). Applicant appeared pro se. Daniel D'Agostino served as stand-by counsel for applicant.

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

On July 26, 2007, Applicant was convicted of these charges by a jury. The Honorable John C. Hayes, III sentenced Applicant to confinement for life for kidnapping, life for armed robbery, life for entering a bank with intent to steal, five years for Possession of a firearm during the commission of a violent crime, and five years for conspiracy to commit armed robbery, all running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. A Petition for Rehearing was filed by the Applicant and denied by the Court on July 7, 2010. A Petition for Writ of Certiorari was filed by the Applicant and denied by the Court on February 16, 2011. The Remittitur was issued on February 23, 2011.

On July 7, 2011, Applicant filed his first application for post-conviction relief (2011-CP-46-2620). Respondent made its Return on October 21, 2011. An evidentiary hearing into the matter was convened on January 21, 2014, at the Moss Justice Center in York County before the Honorable J. Michael Baxley. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

During the PCR hearing, Applicant moved to have Ms. Moody relieved as PCR counsel. The PCR Court denied this motion. Applicant then expressed to the Court that he would refused to take the stand or testify during the hearing. The PCR Court instructed Applicant that he had a right to be present during the hearing, but Applicant elected to return to the jail holding cell. The PCR Court also found Ms. Moody well-prepared and well-versed in Applicant's allegations and found no reason to relieve her as counsel. Respondent then moved pursuant to Rule 41(b), SCRCF, to dismiss this matter due to the Applicant's failure to prosecute. The PCR Court

granted Respondent's motion and an Order of Dismissal was signed and filed March 14, 2014. Applicant filed a pro se Motion to Alter or Amend the Judgment on February 4, 2014. This motion was denied by and order filed April 18, 2014.

A notice of appeal was filed but dismissed by the South Carolina Supreme Court for failure to timely serve opposing counsel. The Remittitur was sent May 14, 2014

ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel under *Austin v. State*"
2. Newly discovered evidence

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. Respondent explained that the State was consenting based off of its discussions with prior PCR Counsel and Applicant's current PCR Counsel and due to the fact that Applicant's prior PCR action was not properly appealed.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant is entitled to appeal the denial of his first post-conviction relief application (2011-CP-46-2620) 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 Applicant's first post-conviction relief action (2011-CP-46-2620) pursuant to Austin v. State is warranted. This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2011-CP-46-2620 pursuant to Austin v. State; and
2. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of Aug., 2016.



LETITIA VERDIN
Presiding Judge
Sixteenth Judicial Circuit

Greenville, South Carolina.



Law Office of Nathan J. Sheldon
331 E. Main St., Suite 200
Rock Hill, SC 29730

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

RECEIVED

SEP 28 2016

BRCI MAILROOM

JOHNELL PORTER # 240208
MONTICELLO UNIT - (124)
BROAD RIVER CORR. INST.
4460 BROAD RIVER RD.
COLUMBIA, S.C. 29210

September 28, 2016

The Honorable DANIEL E. SHEAROUSE
South Carolina Supreme Court
Clerk of Court
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

OCT 03 2016

S.C. SUPREME COURT

IN RE: JOHNELL PORTER v. State,
AUSTIN v. State, PETITION
CIVIL ACTION No. #2015-CP-46-1186

Dear Honorable Clerk:

Enclosed, please find a copy of a
Order Granting an Appeal pursuant to Austin
v. State. I was not present at that hearing,
nor did I waive any of my rights to be at
that August 1, 2016 hearing. Also, I do not know,

LEGAL MAIL

RECEIVED

OCT 03 2016

S.C. SUPREME COURT

Johnell Porter # 240208
Monticello Unit - (124)
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C. 29210

September 28, 2016

The Honorable Alan Wilson
South Carolina Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

In Re: Johnell Porter v. State
Austin v. State Petition
Civil Action No. # 2015-CP-46-1186

Dear Honorable Sir:

Enclosed is a copy of the Order
Granting an Appeal Pursuant to Austin v. State. And a
copy of the letter sent to the Honorable Daniel E. Shearouse.

Sincerely,
Johnell Porter

cc:

LEGAL MAIL

Now have I ever seen or spoken to, a Mr. Nathan Sheldon, Esq. Even though, he was appointed to represent me in regards to the Austin v. State, Petition. Well over a year ago !!! (RECEIVED NO LETTERS FROM HIM EITHER).

The "Order" states that an EVIDENT - ANY HEARING WAS HELD ON August 1, 2016, at the Moss Justice Center, in York, S.C. Also, that I was present and represented at the hearing, by Mr. Nathan Sheldon, Esq. For the record, I was NOT present at that hearing and NEVER WAIVED any of my rights not to there !!!

PLEASE, Note, that all South Carolina Department of Corrections Records, will show that on August 1, 2016, I was taken on a Medical Transportation Bus for physical therapy, at Kirkland Corr. Institution. On February 4, 2016, I had a Second Back Surgery, at the Richland Palmetto Hospital, in Columbia, S.C. !!!

Therefore, the Order Granting the Appeal Pursuant to Austin v. State, is Bogus,

LEGAL MAIL

A WILLFUL MISREPRESENTATION OF THE FACTS, AND AN EGRIOUS ACT OF FRAUD UPON THE COURT, IN VIOLATION OF Rule # 6D(13)(3), SCRCV. HOWEVER, THE LETTER (ORDER) WAS MAILED TO THE WRONG ADDRESS (PERRY CORR. INST.) ON SEPTEMBER 15, 2019, AND WAS FORWARDED NEAR BROAD RIVER CORR. INST., ON SEPTEMBER 19, 2016, AND WAS PLACED IN MY HAND ON SEPTEMBER 21, 2016 !!!

I WAS NOT AFFORDED THE RIGHT TO FILE A Rule # 59(A), OR A Rule # 59(E), AND THE YORK COUNTY CLERK OF COURT WAS PROPERLY NOTIFIED OF MY CHANGE OF ADDRESS.

HONORABLE CLERK; THE ORDER GRANTING AN APPEAL PURSUANT TO JUSTIN V. STATE, IS BY DESIGN AND A CONSPIRACY TO DEPRIVE ME OF MY DUE PROCESS RIGHTS TO PUT MY NEWLY DISCOVERED EVIDENCE ON THE RECORD. MY RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE FIFTH (5TH) AND FOURTEENTH (14TH) AMENDMENTS OF THE UNITED STATES CONSTITUTION HAS BEEN WILLFULLY VIOLATED. BY THE HONORABLE JUDGE LESLIE VERDIN, WHO SIGNED THE FRAUDULENT ORDER, ON AUGUST 30, 2016. AS WELL AS MR NATHAN SHELDON, ESQ. AND S.C. ASS. ATTORNEY GENERAL MR JUSTIN HENDER !!!

LEGAL MAIL

In closing, the MISFEASANCE of Justice rendered by the named Court officials. Should make the "Order" null and void, and also "RESCINDED" because to the Applicant I have or had a Constitutional Right to be present at the August 1, 2016 hearing. I also have the right to be present at critical stages of my Defense !!!

South Carolina Dept. of Corrections, was indicated if you or the Court, request information concerning my whereabouts on August 1, 2016..... they would release the information !!!

Also, I wish to appeal to the South Carolina Supreme Court, but if I file the Notice of appeal the Court will say that's Hybrid Representation. Nevertheless, I would like a Constitutional Writ v. State, Thurgood, where I can put my newly discovered evidence on the record !!!

cc:

P.S. Again, I was NEVER present at the August 1, 2016 hearing !!!

Sincerely
Johnell Bull

LEGAL MAIL

RECEIPT OF LEGAL CORRESPONDENCE VERIFICATION

This is to verify that legal correspondence addressed to the following:

Johnell Porter #240208
BROAD RIVER CORR. INST
4460 BROAD RIVER ROAD
COLUMBIA, S.C. 29210

From:

YORK COUNTY CLERK OF COURTS OFFICE
P.O. BOX 1049
YORK, S.C. 29745

was received in the Broad River Correctional Mailroom on Sept. 19, 2016 and delivered to inmate Johnell Porter on SEPTEMBER 21, 2016



BRCI Postal Director

4460 Broadriver Rd

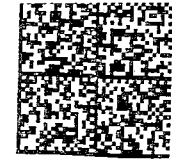
Columbia SC 29210

Date: 9/21/16

York County
south carolina

NC 282
CLERK OF COURT'S OFFICE

Post Office Box 649, York, South Carolina 29745-0649



U.S. POSTAGE PITNEY BOWES



ZIP 29745 \$ 000.67⁵
02 1W
0001403981 SEP. 12. 2016

RECEIVED

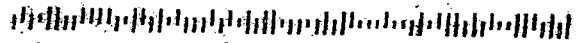
450001

SEP 19 2016
BRCI
MAILROOM

SEP 15 2016
P.C.I. MAILROOM

Johnell Porter #240208 ^{MO} 124 B
Perry Correctional Inst. 4A 114
430 Oaklawn Rd
Pelzer, SC 29669
240208

29669-870499



FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP4601186

Johnell Porter

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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
 ORDER GRANTING AN APPEAL

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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S/ Letitia Verdin

2162

9/12/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK)

Johnell Porter,
S.C.D.C. No. 166280)

2015-CP-46-1186

Applicant,)

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

v.)

State of South Carolina,
Respondent.)

FILED-RECEIVED
2016 SEP 12 AM 10:14
DANIEL D'AGOSTINO
CLERK OF COURT
SOUTH CAROLINA
YORK COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed April 20, 2015. Respondent made its Return on or about June 27, 2016, 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 August 1, 2016, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the June 2007 term of General Sessions for Armed Robbery (2007-GS-46-01687), entering a bank with intent to steal (2007-GS-46-01688), kidnapping (2007-GS-46-01689), possession of a firearm during the commission of a violent crime (2007-GS-46-01690), and Conspiracy to commit armed robbery (2007-GS-46-01691). Applicant appeared pro se. Daniel D'Agostino served as stand-by counsel for applicant.

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

~~On July 26, 2007, Applicant was convicted of these charges by a jury. The Honorable John C. Hayes, III sentenced Applicant to confinement for life for kidnapping, life for armed robbery, life for entering a bank with intent to steal, five years for Possession of a firearm during the commission of a violent crime, and five years for conspiracy to commit armed robbery, all running concurrently.~~

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. A Petition for Rehearing was filed by the Applicant and denied by the Court on July 7, 2010. A Petition for Writ of Certiorari was filed by the Applicant and denied by the Court on February 16, 2011. The Remittitur was issued on February 23, 2011.

On July 7, 2011, Applicant filed his first application for post-conviction relief (2011-CP-46-2620). Respondent made its Return on October 21, 2011. An evidentiary hearing into the matter was convened on January 21, 2014, at the Moss Justice Center in York County before the Honorable J. Michael Baxley. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

During the PCR hearing, Applicant moved to have Ms. Moody relieved as PCR counsel. The PCR Court denied this motion. Applicant then expressed to the Court that he would refused to take the stand or testify during the hearing. The PCR Court instructed Applicant that he had a right to be present during the hearing, but Applicant elected to return to the jail holding cell. The PCR Court also found Ms. Moody well-prepared and well-versed in Applicant's allegations and found no reason to relieve her as counsel. Respondent then moved pursuant to Rule 41(b), SCRCF, to dismiss this matter due to the Applicant's failure to prosecute. The PCR Court

granted Respondent's motion and an Order of Dismissal was signed and filed March 14, 2014.

Applicant filed a pro se Motion to Alter or Amend the Judgment on February 4, 2014. This motion was denied by and order filed April 18, 2014.

A notice of appeal was filed but dismissed by the South Carolina Supreme Court for failure to timely serve opposing counsel. The Remittitur was sent May 14, 2014

ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel under *Austin v. State*"
2. Newly discovered evidence

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. Respondent explained that the State was consenting based off of its discussions with prior PCR Counsel and Applicant's current PCR Counsel and due to the fact that Applicant's prior PCR action was not properly appealed.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant is entitled to appeal the denial of his first post-conviction relief application (2011-CP-46-2620) 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 Applicant's~~

first post-conviction relief action (2011-CP-46-2620) pursuant to Austin v. State is warranted. This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2011-CP-46-2620 pursuant to Austin v. State; and
2. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of Aug, 2016.



LETITIA VERDIN
Presiding Judge
Sixteenth Judicial Circuit

Greenville, South Carolina.

This judgment was entered on 09/12/2016, and a copy mailed first class or placed in the appropriate attorney's box on 09/12/2016, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan James Sheldon PO Box 36682 Rock Hill, SC 29732

Justin James Hunter PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

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

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

South Carolina State Of

Johnell Porter

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

Submitted by:

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.
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 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- 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: **ORDER DENYING APPLICANT'S PRO SE 59(e) MOTION**

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.

s/ *J. Michael Baxley*
Circuit Court Judge

2121
Judge Code

3/21/2014
Date

ATTORNEY GENERAL'S OFFICE

RECEIVED 4/21/14

ADMINISTRATIVE INSTRUCTIONS

JRJ
4/22/14

FILE OPEN END

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INDEXED

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PEN RECORDS CLERK RECORDS

OTHER: *LB; scan; closing letter & close*

For Clerk of Court Office Use Only

This judgment was entered on **April 18, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **April 18, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Johnell Porter Perry Corr. Inst. (Q2B-111) 430 Oaklawn
Road Pelzer, SC 29669
Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock
Hill, SC 29730

James Rutledge Johnson PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - 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.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Johnell Porter, # 240208,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C/A NO. 2011-CP-46-2620

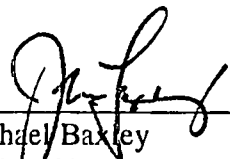
**ORDER DENYING APPLICANT'S
 PRO SE 59(e) MOTION**

FILED-RECEIVED
 2014 APR 18 PM 2:36
 CLERK OF COURT
 S.C.C.P. & CS
 YORK COUNTY, SC

This matter comes before the Court by way of the Applicant's *pro se* Motion to Alter or Amend Judgment, filed February 4, 2014. The Court finds that this motion is not currently ripe for adjudication because at the time of the filing of the present motion, the Order of Dismissal had not yet been filed and served upon Applicant or Applicant's counsel. In addition, there is no right to hybrid representation in South Carolina. *State v. Stuckey*, 333 S.C. 56, 58, 508 S.E.2d 564, 564 (1998). As Applicant is still represented by Leah B. Moody, Esquire, this *pro se* motion will not be considered by this Court unless signed by Applicant's counsel.

IT IS THEREFORE ORDERED that Applicant's *pro se* Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCPC be DENIED and DISMISSED.

IT IS SO ORDERED.



 J. Michael Baxley
 Presiding Circuit Court Judge
 Sixteenth Judicial Circuit

March 21, 2014
 Hartsville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Johnell Porter, # 240208,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

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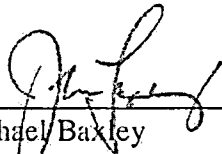
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IT IS THEREFORE ORDERED that Applicant's *pro se* Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCPP be DENIED and DISMISSED.

IT IS SO ORDERED.



J. Michael Baxley
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

March 21, 2014

Hartsville, South Carolina

STATE OF SOUTH CAROLINA

County of York

COURT OF COMMON PLEAS

Case # 2011 -CP- 46 - 2620

Johnell Porter

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

TEMPORARY ORDER

2014 JUN 22 PM 8:07
15
YORK COUNTY, SC

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

 1. The application for post-conviction relief is hereby: denied granted under advisement; a formal order will be filed (see below - No.6)

✓ 2. Motion(s) was/were heard in this case and the court orders:

✓ The motion to dismiss and/or for summary judgment is hereby ✓ granted denied under advisement based upon the statute of limitations and/or the successive nature of the application or other reason as follows:

Motion to relieve PCR counsel denied. After Applicant indicated he would not participate, Respondent moved to dismiss, under Rule 41(c) which was granted.

 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

 Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

 The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.

 5. Other:

✓ 6. The court further orders:

 The ✓ Attorney General Applicant's counsel is/are directed to submit to the court a proposed order and to serve the order on opposing counsel within 30 days. The court reserves the right to issue an order prior to the submission of any proposed orders.

 The court does not request proposed orders.

IT IS SO ORDERED.

Date: 1 / 21 / 14

J. Michael Baxley
J. Michael Baxley
Presiding Judge

Court Reporter Aileen Butler

Attorney for Applicant Leah B. Moody

Attorney for Respondent J. Rutledge Johnson