

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

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Lee S. Alford, Chief Administrative Judge, Sixteenth Judicial Circuit

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Case Nos: 2011-CP-461154

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Alonzo Brinkley, II

v.

The State

Respondent,

Appellant,

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NOTICE OF APPEAL

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Alonzo Brinkley, II appeals his Order of Dismissal in this case. The dismissal was imposed by the Honorable Lee S. Alford , March 27, 2012. This appeal is taken from the denial and dismissal of Appellant's request for Post-Conviction Relief.

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SOUTH CAROLINA APPELLATE COURT RULE 243(C) EXPLANATION

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Odom v. State, 337 S.C. 256, 523 S.E. 2d 753 (S.C.1999) gives Petitioner the right to relief when due to ineffective assistance of counsel he has been denied access to the full appellate process. This court has allowed successive Post-Conviction Relief Applications where the applicant has been denied complete access to the appellate process, Austin v. State. 305 S.C. 453, 409 S.E. 2d 395 (1991) An Austin appeal is available to applicants who are prevented from seeking full appellate review of a denial of his post-conviction relief

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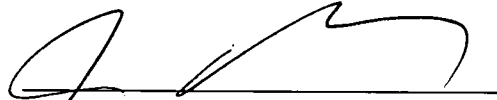
application, such as when an attorney fails to seek timely review. A post-conviction relief applicant is entitled to an Austin appeal if the Post-Conviction judge finds either: (1) the applicant requested and was denied an opportunity to seek appellate review: or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. If the PCR court finds an applicant was denied his right to appeal, the applicant can petition for certiorari and this Court will review whether the petitioner was prejudiced by the failure to obtain appellate review.

### **Extraordinary Circumstances**

In Artuz v. Bennett, 531 U.S. 4, 8, 11, the United States Supreme Court held while time limits on post-conviction petitions are conditions to filing, it reserved the question of whether the existence of certain exceptions to a timely filing requirement can prevent a late application from being properly filed. Because there are statutory exceptions to the time limit for filing, the time limit is not a “condition to filing” but a “condition to obtaining relief” as describe in Artuz.

In this case there exist extraordinary circumstances to justify equitable tolling for the filing and judicial review of Petitioner’s claim. The United States District Court specifically ruled that as a direct result of Petitioner’s trial counsel failure to meet the make a timely filing Petitioner’s 2254 application, Petitioner’s right to pursue remedies at the federal constitutional level has been extinguished. As such, the only remedy available to Petitioner is to allow him to re-start the post-conviction relief process de nova to allow him the opportunity to exhaust all right and remedies to which he is entitled pursuant to State and Federal review of his conviction.

April 25, 2012



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Attorney for Respondent

Other Counsel of Record:  
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South Carolina Attorney General's Office  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, S.C. 29201  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

RECEIVED  
APR 25 2012  
SC Court of Appeals

Lee S. Alford, Chief Administrative Judge, Sixteenth Judicial Circuit

Case Nos: 2011-CP-4601154

Alonzo Brinkley, II

Respondent

v.

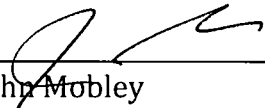
The State

Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal and Order of Dismissal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 24, 2012, addressed to David Hamilton, York County Clerk of Court Sixteenth Judicial Circuit, PO Box 649, York, SC 29745-0649.

April 25, 2012

  
\_\_\_\_\_  
John Mobley  
Bar No: 66470  
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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RECEIVED  
APR 25 2012  
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

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Lee S. Alford, Chief Administrative Judge, Sixteenth Judicial Circuit

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Case Nos: 2011-CP-4601154

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Alonzo Brinkley, II

Respondent,

v.

The State

Appellant

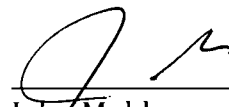
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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal and Order of Dismissal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 24, 2012, addressed to its attorney of record, Harrison D. Brant, Esquire, Assistant Attorney General, Post Office Box 11549, Columbia, SC 29211.

April 25, 2012



---

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Attorney for Respondent

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FAX: 803-931-3044  
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PERSONAL INJURY • CRIMINAL DEFENSE • WORKERS COMPENSATION • CIVIL LITIGATION

April 25, 2012

**VIA HAND DELIVERY**

South Carolina Court of Appeals  
Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211

Re: **Alonzo Brinkley, II**  
**Case Nos: 2011-CP-461154**  
**Notice of Appeal**

RECEIVED  
APR 25 2012  
SC Court of Appeals

Dear Sir or Madam:

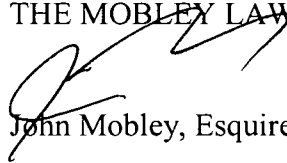
Enclosed along with this correspondence please find an original copy of Notice of Appeal along with two (2) copies and three (3) copies of the Order of Dismissal. I would appreciate it if you would file this document and return the two clocked copies to me in the self-addressed stamped envelope provided.

By copy of this correspondence I am serving Assistant Attorney General, Harrison D. Brant with a copy of this Appeal.

Should you need any additional information or have any questions, please do not hesitate to contact my assistant, Kim Robins.

Sincerely,

THE MOBLEY LAW FIRM, P.A.

  
John Mobley, Esquire

JM/kr  
Enclosures

Cc: Harrison D. Brant

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP460154

RECEIVED  
APR 25 2012  
SC Court of Appeals

Alonzo Brinkley II 271143	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.
- ACTION DISMISSED (CHECK REASON):
  - Rule 43(k), SCRPC (Settled);
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Other: Final Order of Dismissal
- ACTION STRICKEN (CHECK REASON):
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - 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.

FINAL ORDER OF DISMISSAL

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC 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)
N/A	N/A	N/A

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.

8/ Joe B. Alford  
Circuit Court Judge

2113  
Judge Code

3/27/2012-3/24/12  
Date

Office Outlook Web Access    Type here to search    This Folder    Address Book    Options    Log Off

<ul style="list-style-type: none"> <li>Mail</li> <li>Calendar</li> <li>Contacts</li> <li>Deleted Items (18)</li> <li>Drafts (17)</li> <li>Inbox (6)</li> <li>Junk E-Mail</li> <li>Sent Items</li> </ul> <p>Click to view all folders</p> <ul style="list-style-type: none"> <li>CGI/Balboa</li> <li>Commissions</li> <li>Contacts</li> <li>FOREMOST/Farmers</li> <li>Misc Documents</li> <li>Safco</li> <li>Training</li> <li>Xactimate</li> <li>good/laig</li> <li>xactanalysis</li> </ul> <p>Manage Folders...</p>	<p style="text-align: right;">Reply    Reply to All    Forward    Move    Delete    Close</p> <p><b>Re: Email address</b>  Ophelia Rattary [f121981@gmail.com]</p> <p>Sent: Friday, December 10, 2010 9:17 AM  To: MacGregor, David</p> <p>Got it. Info being forwarded now.</p> <p>On Dec 9, 2010 10:25 PM, "MacGregor, David" &lt;dmacgregor@eagleadjusting.com&gt; wrote:</p> <p>Ophelia,</p> <p>Please send me all the documentation that you have on your Rental Property.</p> <p>Thank you,</p> <p>David M. MacGregor  Contract Adjuster  Eagle Adjusting Services, LLC  Phone (843)766-6604  Cell (248)318-6905  Email: dmacgregor@eagleadjusting.com</p>
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<https://webmail.eagleadjusting.com/owa/?ae=Item&t=IPM.Note&id=RgAAAABmh2fRjf...> 12/17/2010

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DEC 17 2010

For Clerk of Court Office Use Only

This judgment was entered on March 27, 2012, and a copy mailed first class or placed in the appropriate attorney's box on March 27, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

John Terrence Mobley Attorney at Law 925 Calhoun Street Columbia, SC  
29201

---

ATTORNEY(S) FOR THE PLAINTIFF(S)

Harrison D Brant Office Of Attorney General P. O. Box 11549 Columbia,  
SC 292111549

---

ATTORNEY(S) FOR THE DEFENDANT(S)

*David Hamilton*

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Alonzo Brinkley, II, #271143, )  
Applicant, )

2011-CP-46-1154

v. )

State of South Carolina, )  
Respondent. )

FINAL ORDER OF DISMISSAL

FILED-RECEIVED  
2012 MAR 27 PM 2:32  
DAVID HAMILTON  
C.C.P. & S.S.  
YORK COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 25, 2011. The Respondent (the State) made its Return and Motion to Dismiss on November 17, 2011, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated November 23, 2011, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final.

In a document titled "Applicant's Response to Conditional Order of Dismissal" dated December 19, 2011, the Applicant, through counsel, contends he was denied effective assistance of counsel when his PCR/appellate counsel failed to timely file a Petition for Federal Habeas Corpus. The Applicant also contends he should be entitled to an appeal pursuant to Austin v. State.<sup>1</sup> This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why

<sup>1</sup> 305 S.C. 453, 409 S.E.2d 395 (1991).

the Conditional Order of Dismissal should not become final.

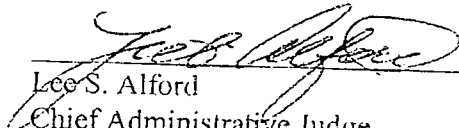
The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin. Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. The Applicant contends he is entitled to a belated PCR appeal pursuant to Austin. This Court has examined the Applicant's procedural history and concludes the Applicant has already had a PCR Appeal. *See* Case No. 2002-CP-46-2457. Therefore, the Applicant is not entitled to another Austin review.

Furthermore, the Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). "Consequently, a petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings." *Id.* at 752, 111 S. Ct. at 2566. It also follows there is no constitutional claim for ineffective assistance of PCR counsel in the context of a Petition for Federal Habeas Corpus. Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under '17-27-90.'" Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991). Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 16<sup>th</sup> day of March, 2012.

  
Lee S. Alford  
Chief Administrative Judge  
Sixteenth Judicial Circuit

York, South Carolina.

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2012