

# The Supreme Court of South Carolina

Johnell Porter, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-002053

---

## ORDER

---

Petitioner filed an application for post-conviction relief (PCR) seeking a belated review, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), of the denial of his first PCR application and alleging newly discovered evidence. The circuit court issued an order that finds petitioner is entitled to an Austin review, but does not address the claim of newly discovered evidence. Petitioner filed a notice of appeal from the order. In response to an inquiry from the Clerk of this Court as to whether the claim of newly discovered evidence is still pending, counsel for petitioner confirmed the claim of newly discovered evidence was held in abeyance and remains pending in the circuit court. As such, the order on appeal is not a final order in this PCR matter. See S.C. Code Ann. § 17-27-80 (2014) ("The court shall make specific findings of fact, and state expressly its conclusions of law, relating to *each issue presented*. This order is a final judgment.) (Emphasis added); S.C. Code Ann. § 17-27-100 (2014) ("A final judgment entered under this chapter may be reviewed by writ of certiorari as provided by the South Carolina Appellate Court Rules."); Rule 243(a), SCACR; Rule 71.1(g), SCRCP; Lewis v. State, 368 S.C. 630, 630 S.E.2d 464 (2006). We therefore dismiss the notice of appeal without prejudice to petitioner's right to file a notice of appeal upon the issuance of a final judgment in this matter.



C.J.

FOR THE COURT

Columbia, South Carolina

November 28, 2016

cc:

Nathan James Sheldon, Esquire

Justin James Hunter, Esquire

Johnell Porter, #240208