

A. J. Z. Law Firm, LLC

Mailing Address
P.O. Box 11961
Columbia, SC 29211

Phone: (803) 400-1918
Toll Free: (844)-501-1661
Fax: (803) 403-8005

Physical Address
2003 Lincoln Street
Columbia, South Carolina 29201

Aimee J. Zmroczek, Attorney
aimee@ajzlawfirm.com

Christina Metze, paralegal
christina@ajzlawfirm.com

December 1, 2016

RECEIVED

DEC -2 2016

S.C. SUPREME COURT

The Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
PO Box 11330
Columbia, SC 29211

RE : Randall Sightler v. State of SC
2014CP3203766

Dear Mr. Shearouse:

Enclosed please find a Notice of Appeal along with a Certificate of Service and a copy of the Order being appealed. Also enclosed is a copy which I request you stamp as "filed" and return to me in the enclosed stamped envelope.

Thank you for your assistance in this matter.

Yours very truly,



Christina Metze
Paralegal

cc: Johanna Valenzuela, Esq.
Beth Carrigg, Lexington County Clerk of Court
Randall Sightler

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.: 2014-CP-32-03766

Randall Earl Sightler,

Appellant,

v.

State of South Carolina,


Respondent.

RECEIVED
DEC -2 2016
S.C. SUPREME COURT

NOTICE OF APPEAL

Randall Earl Sightler, #311918 files this appeal pursuant to the Order dated October 12, 2016, filed October 18, 2016 and received by his counsel on November 5, 2016, which grants a belated PCR appeal.

December 1, 2016


Aimee J. Zmroczek, Esq.
P.O. Box 11961
Columbia, South Carolina 29211
Telephone: 803-400-1918
Fax: 803-403-8005
ajzlawfirm@gmail.com
Attorney for Appellant

Other Counsel of Record:
Johanna Valenzuela, Esq.
PO Box 11549
Columbia, SC 29211
Counsel for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.: 2014-CP-32-03766

Randall Earl Sightler,

Appellant,

v.

State of South Carolina,

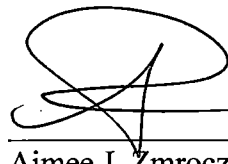
Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Johanna Valenzuela by depositing a copy of it in the United States Mail, postage prepaid, on December 1, 2016, addressed to her office at:

PO Box 11549
Columbia, SC 29211

December 1, 2016



Aimee J. Zmroczek, Esq.
P.O. Box 11961
Columbia, South Carolina 29211
Telephone: 803-400-1918
Fax: 803-403-8005
ajzlawfirm@gmail.com
Attorney for Appellant

RECEIVED
DEC -2 2016
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA) IN THE SECOND JUDICIAL CIRCUIT
COUNTY OF LEXINGTON) THE COURT OF COMMON PLEAS

FILED

Randall Earl Sightler #311918 2016 OCT 18 A 10:54 Docket No.: 2014-CP-32-03766

Petitioner,) BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

v.

AMENDED ORDER GRANTING PCR

State of South Carolina)

Respondent.)

Note: This Amended Order merely corrects Rule and Case citations referenced in the last 2 paragraphs with the remainder of the previous Order unchanged.

This matter comes before the Court by way of an Application for Post-Conviction Relief timely filed October 15, 2014. Respondent made a Return on September 22, 2015. The Court convened an evidentiary hearing held on April 18, 2016, addressing the merits of Mr. Sightler's application for post-conviction relief. The State was represented by Johanna Valenzuela, Esq., Assistant Attorney General. Mr. Sightler was represented by Aimee J. Zmroczek Esq. After hearing testimony and arguments of both counsels, the Court grants post-conviction relief and orders.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. On June 7, 2011, Applicant waived presentment of the indictments for trafficking methamphetamine 10-28 grams – second offense (2011-GS-32-6009), manufacturing methamphetamine – second offense (2011-GS-32-6010), and violation of his conditions of probation (2010-GS-32-1202). Sarah Hahn, Esq. represented Applicant. Judge Edward B. Cottingham revoked applicant's probation in full and

ORIGINAL

1 PHz

sentenced applicant to a term of fifteen (15) years for trafficking methamphetamine; and to a term of fifteen (15) years for manufacturing methamphetamine. These were to be served concurrently.

Applicant filed his first application for post-conviction relief (2011-CP-32-3685) on September 23, 2011, in which he raised the following grounds:

1. Ineffective assistance of counsel
 - a. "failure to investigate a suppression defense"
 - b. "failure to timely investigate a witness statement"
 - c. "failure to withdraw the plea at the hearing"
 - d. "failure to substitute counsel based on an alleged conflict of interest"

Andrew Farley, Esq. represented Applicant. Respondent made its return on April 5, 2012. An evidentiary hearing into the matter convened at the Lexington County Courthouse on November 13, 2013. The Honorable Lawton R. McIntosh issued an order of dismissal on October 2, 2014. Applicant's current application stemmed from that dismissal.

I.

At the present PCR hearing, Applicant proceeded on the following allegations of ineffective assistance of counsel:

1. Ineffective assistance of PCR counsel for failing to appeal the PCR.

SUMMARY OF TESTIMONY

Applicant testified at the PCR hearing that he did not knowingly and voluntarily waive his right to appellate review of his prior PCR hearing. Applicant testified that he was not aware what was going on with his hearing appeal but remembers asking as he was being led out of the PCR hearing. Applicant testified that he was told that his attorney was going to file the appeal and assumed that he did.

Counsel testified to his course of conduct during the representation. The attorney stated it is generally his practice to automatically file an appeal. The attorney testified that he did not recall why he did not file one in this case, as he could not find his file.

APPLICABLE LAW

“The right to seek appellate review of the denial of a PCR is expressly authorized by state law.” *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. § 17-27-100). “A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively 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.” *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citations omitted).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

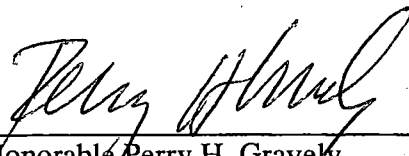
This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant’s previous application for post-conviction relief, the order from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-100 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented. The order in the underlying PCR states that the Applicant must file an Appeal within thirty (30) days. In his Application, he states that “never received an order from the Court.” Therefore, I have no basis for finding that the Applicant “knowingly and intelligently waived” his right to appellate review as required by *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999).

Accordingly, this Court grants Applicant a belated PCR appeal pursuant to Austin v. State, in which he may raise on appeal any issues that were raised and ruled upon in his prior application. In order to secure this review, however, the Applicant must appeal from this Order.

CONCLUSION

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.

AND IT IS SO ORDERED



Honorable Perry H. Gravelly
Presiding Judge

Oct 12, 2016.
Pickens, South Carolina

ORIGINAL

FILED
2016 OCT 18 A 10:50
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3203766

Randall Sightler #311918

State of South Carolina

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.
- 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: _____

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.**

11/2/2016

Circuit Court Judge

Judge Code

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 or 2nd of November 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Jendrzejewski Zmroczek
A.J.Z. Law Firm, LLC PO Box 11961 Columbia, SC 29211

Johanna Catalina Valenzuela
PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Beth A. Carrigg - 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.
