

RECEIVED

JAN 25 2017

BRCI MAILROOM

TJANELL PORTER # 240208  
BROAD RIVER COURT INST.  
MONTICELLO UNIT (124)  
4460 BROAD RIVER RD.  
COLUMBIA, S.C. 29210

JANUARY 25, 2017

THE HONORABLE DANIEL E. SHENROUSE  
CLERK OF COURT  
SOUTH CAROLINA SUPREME COURT  
P.O. BOX 11330  
COLUMBIA, S.C. 29211

RECEIVED

JAN 30 2017

S.C. SUPREME COURT

Re: TJANELL PORTER v. STATE  
AUSTIN v. STATE, PETITION  
LOWER COURT CASE NO. # 2015-CP-46-11816  
APPELLATE CASE NO. # 2016-002053

DEAR HONORABLE CLERK:

PLEASE SEND A COPY OF THE MOTION TO  
RELIEVE COUNSEL FILE IN THE YORK COUNTY COURT OF  
COMMON PLEAS !!! WITH CERTIFICATE OF SERVICE!

Sincerely  
Janel Porter

cc:

LEGAL MAIL

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

RECEIVED

JAN 30 2017

S.C. SUPREME COURT

JANUARY 25, 2017

The Honorable David Hamilton  
Clerk of Court  
P.O. Box 649  
York, S.C. 29745-0649

Re: Johnell Porter v. State  
Austen v. State Petition  
Lower Court Case No. # 2015-CP-46-1186  
Appellate Case No. # 2016-002053

Dear Clerk of Court:

Enclosed, please find a Motion to  
Relieve Counsel, please file and return a Clock-Stamp  
Copy to me!!!

cc:

Sincerely,  
Johnell Porter  
Johnell Porter # 240208

LEGAL MAIL

Johnell Porter # 240208  
Broad River Court Trust  
Monticello Unit (124)  
4460 Broad River Rd.  
Columbia, S.C. 29210

January 25, 2017

The Honorable Justin T. Hunter  
S.C. Assistant Attorney General  
South Carolina Attorney General's Office  
P.O. Box 11549  
Columbia, S.C. 29211

RECEIVED

JAN 30 2017

S.C. SUPREME COURT

Re: Johnell Porter v. State  
Justin v. State, Petition  
Lower Court Case No. # 2015-CP-46-1186  
Appellate Case No. # 2016-002053

Dear Honorable Sir:

Please find a copy of the Motion to  
Relieve Counsel filed in the York County Court of  
Common Pleas!!!

Sincerely,  
Johnell Porter

LEGAL MAIL

cc:

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

January 25, 2017

Mr. Nathan J. Sheldon, Esq.  
Attorney at Law  
331 E. MAIN St, Suite 200  
Rock Hill, S.C. 29730

RE: Johnell Porter v. State  
Austin v. State, Petition  
LOWER COURT CASE No. # 2015-CP-46-1186  
APPELLATE CASE No. # 2016-DD2053

Dear Mr. Sheldon:

Enclosed, is a copy of the Motion to  
Relieve Counsel Piled in the York County Court of  
Common Pleas !!!

Sincerely,  
Johnell Porter

cc

LEGAL MAIL

State of South Carolina  
County of York

In The Court of  
Common Pleas

Civil Action No. # 2015-CP-46-1186

Townell Porter #240208,  
Applicant,

MOTION TO RELIEVE  
COUNSEL

✓  
State of South Carolina  
Respondent.

Pursuant to Rule #11.1(d)  
S.C.R. Civ. P.  
Post-Conviction Relief Action

Now comes the Applicant, Townell Porter #240208, pro se, and respectfully moves this honorable Court via Motion to Relieve Counsel Pursuant to Rule #11.1(d) S.C.R. Civ. P., ..... to have Mr. Nathan F. Sheldon, Esq., relieved as Counsel in his State v. Austin ~~Petition~~ pending in the York County Court of Common Pleas, and shows unto the Court the following:

(1.) The Applicant vehemently states, that he has NEVER spoken to, met, or discuss

**LEGAL MAIL**

(2)

his case with Mr. Nathan F. Sheldon, Esq., prior to the Austin v. State, EVIDENTIARY HEARING held on August 1, 2016, at the Moss Justice Center, in York, S.C. !!!

(2) Although, Attorney Nathan F. Sheldon, was appointed to represent the Applicant IN regards to his Austin v. State, PETITION, the Applicant NEVER MET, SEEN, NOR DISCUSSED his case with Counsel. Nor did he give Counsel approval to consent or go forward with his case. The Clerk of Court's case files will show that an amended Post-Conviction Relief Motion, is pending along with a list of "12" witnesses has been subpoenaed to testify in regards to the newly discovered <sup>EVIDENCE</sup> crime.

(3) HOWEVER, ONCE Counsel took it upon himself to proceed with the Austin v. State, PETITION, HEARING without notifying the Applicant or seeking his approval! Counsel's actions willfully violated the Due Process and Equal Protection Clauses of the Fifth (5th) and Fourteenth (14th) Amendments of the United States Constitution and

**LEGAL MAIL**

(3.)

Similar rights under the South Carolina Constitution.

(4.) The August 1, 2016 hearing, in regards to the Austen v. State, petition, was a critical stage of a criminal proceeding that required the Applicant's presence in order for him to put the newly discovered evidence claim on the record. Therefore Counsel's actions clearly violated Applicant's Sixth (6<sup>th</sup>) amended rights to the effective assistance of Counsel !!! See MISSOURI v. Frye, 132 S.Ct. 1399 (2012)

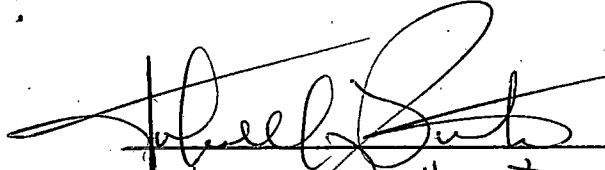
(5.) Applicant asserts that Counsel actions violated the Rules of Professional Conduct found in South Carolina Appellate Court Rule # 407 ... Rule # 1.1, 1.2, 1.3, and 1.4 (A) See e.g. State v. Sanders, 237 S.E. 2d 53 (1977); and Postier v. State, 379 S.E. 2d 907 (1989).

Wherefore, Applicant request an hearing in regards to his motion to relieve Counsel and in regards to MARTINEZ v. Ryan 132 S.Ct. 1309. The Applicant most humbly request, that PCR Counsel Mr. Nathan T. Sheldon, Esq., be relieved as Counsel

LEGAL MAIL

(4.)

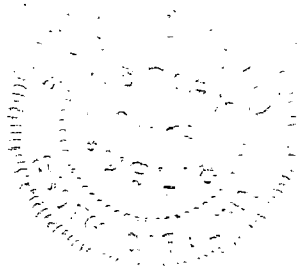
Immediately and another attorney be  
appointed to represent him IN THE AUSTIN  
State, PETITION !!!

  
Tommie Porter # 240208  
Broad River Corr. Inst.  
4460 Broad River Road  
Columbia, S.C. 29210

Appointed to and subscribed before me  
this 25 day of January 2017.

Notary Public:

My Commission Expires  
9/16/2022



LEGAL MAIL

State of South Carolina  
County of York

In the Court of  
Common Pleas

CIVIL ACTION No. # 2015-CP-46-1186

Johnell Porter # 240208,  
Applicant,

State of South Carolina,  
Respondent.

CERTIFICATE  
of  
SERVICE

I, Johnell Porter # 240208, certify that I  
have served a copy of the Motion to Relieve  
Counsel on Justin T. Hunter, Assistant Attorney  
General, by depositing it in the United States  
Mail, postage prepaid to Post Office Box 11549,  
Columbia, S.C. 29211-1549, to the Honorable  
DANIEL E. SHEAROUSE, Clerk of Court, South  
Carolina Supreme Court, Post Office Box 11330  
Columbia, S.C. 29211. Mr. Nathan T. Sheldon, Esq.  
331 E. MAIN St., Suite 200, Rock Hill, S.C. 29730.

This 25<sup>th</sup> day of January 2017

Johnell Porter  
Johnell Porter # 240208  
LEGAL MAIL

(2.)

Appointed to and Subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2017

Notary Public:

My Commission Expires

CC: The Honorable Justin T. Hunter  
Ass. Attorney General  
The Honorable DANIEL E. SHEAROUSE  
Clerk of Court  
South Carolina Supreme Court  
Mr. Nathan T. Sheldon, Esq.

LEGAL MAIL

# The Supreme Court of South Carolina

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Johnell Porter, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-002053

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## ORDER

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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.



FOR THE COURT

C.J.

Columbia, South Carolina

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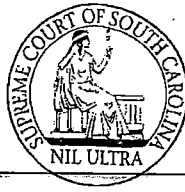
November 28, 2016

cc:

Nathan James Sheldon, Esquire

Justin James Hunter, Esquire

Johnell Porter, #240208



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA  
29211  
1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499  
[www.sccourts.org](http://www.sccourts.org)

December 14, 2016

The Honorable David Hamilton  
PO Box 649  
York SC 29745-0649

## REMITTITUR

Re: Johnell Porter v. State  
Lower Court Case No. 2015CP4601186  
Appellate Case No. 2016-002053

Dear Clerk of Court:

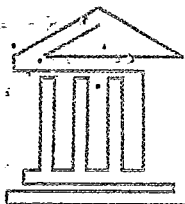
The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc:

Nathan James Sheldon, Esquire  
Justin James Hunter, Esquire  
Johnell Porter, #240208



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

October 18, 2016

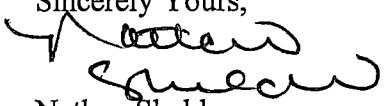
Daniel E. Shearouse, Clerk  
The Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re.: Porter v. State  
2016-002053

Dear Clerk:

This letter is in response to the letter that was mailed on October 13, 2016 regarding the issue of an interlocutory appeal. It is true that the Order granting *Austin* review did have an outstanding after discovered evidence claim remaining in the lower Court. Petitioner asked for a belated appeal in his PCR application with the after discovered evidence claim. The AG and I agreed to consent to that relief at the last hearing. Petitioner could not (or was not) transported to the hearing. The *Austin* relief was granted and the issue of after discovered evidence was held in abeyance. It was my understanding that because the *Austin* review was based off of a 2011 case number and a 2014 Order that this was a separate and distinct issue than the after discovered evidence claim. Essentially, there was a 2014 Order that was generated and never appealed, but that Order was a stand-alone final order and that it was ripe for appellate review. The AG and I agreed that these were two separate issues that could be resolved at two separate times. The after discovered evidence claim was raised after the 2014 Order was issued. To do otherwise would have left the Court ruling on two separate appeals, with two separate orders (2014 PCR and 2016 after discovered evidence) as part of the same appeal. Procedurally, this did not make sense to me. I did put on the record that the after discovered evidence claim would be addressed at a subsequent hearing and that the issues were essentially being bifurcated. This was specifically done to protect the petitioner's right to a hearing on the merits regarding the after discovered evidence motion while allowing the original order to be appealed pursuant to petitioner's request for that specific relief. I do believe that the Order that is subject to *Austin* review is a final order that is dispositive of petitioner's PCR claims for ineffective assistance and that the after discovered evidence motion will create a separate and distinct order that is appealable on its own. However, if this is incorrect, then we will vacate the previous Order, set the case to be heard on the merits of the after discovered evidence motion and generate an Order that rules on that issue and grants the *Austin* relief as well. I apologize for the confusion and will wait further instruction from the Court. Thank you.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Nathan Sheldon".

Nathan Sheldon  
The Law Office of Nathan J. Sheldon

cc.: Justin J. Hunter, Esq  
Johnell Porter #240208



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](http://www.nathansheldonlaw.com)

(803)909-9343

October 17, 2016

Johnell Porter #240208  
Broad River Correctional Institution  
4460 Broad River Rd.  
Columbia, SC 29210

Re.: PCR Case

Dear Mr. Porter:

I am writing to clear up some of the confusion surrounding the order issued granting the A review. First, please see the letter I mailed to the Supreme Court enclosed. Second, please that the order has been amended to reflect that you were not present, but that I entered into agreement for Austin review on your behalf. I did this because your application specifically requested this relief. However, at the hearing we specifically put on the record that your cl a full hearing on the after discovered evidence claim would be affected by the Austin petiti being granted. I received your letter stating that all of your constitutional rights had been violated. I am not sure why you feel that way. You requested to separate and distinct grou for review in your application. One, the after discovered evidence claim, is still pending b the lower Court. Two, the Austin review of the first PCR Order, was granted. I'm not sure this leaves you in anything but a better position than you were in before. I have not heard from the Supreme Court concerning the issue of interlocutory appeal. However, if the app deemed to be interlocutory, then we will vacate the previous order and have the Austin issu heard at the same time as the after discovered evidence motion. Your presence was not necessary to consent to the Austin review since the AG was not contesting that issue. Your presence obviously will be required at the after discovered evidence hearing. Thank you and please write me with any additional questions or concerns. Either way, your right to the after discovered evidence is preserved. The Austin relief basically just implies that the previous was not appealed, it should have been appealed, and it is now going to be appealed.

Sincerely Yours,

Nathan Sheldon

The Law Office of Nathan J. Sheldon

