

RECEIVED

FEB 15 2017

Johnell Porter # 240208  
Broad River Court, ~~ISC~~ SUPREME COURT  
Monticello Unit - (124)  
4460 Broad River Rd.  
Columbia, S.C. 29210

February 10, 2017

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

Re: Johnell Porter v. State  
Austin v. State, Petition  
Lower Court Case No. # 2015-CP-46-1186  
Appellate Case No. # 2016-00-002053

Dear Honorable Clerk:

Enclosed, please find a letter from  
the York County Clerk of Court's Office, refusing  
to file my Motion to Revoke Counsel. However,  
it is the very same Motion that was mailed  
to you, the Honorable Justin T. Hunter, Assistant

LEGAL MAIL

(2)

Attorney General for South Carolina. Also, a copy was mailed to Mr. Nathan F. Sheldon, Esq., which was mailed, on January 25, 2017!!!

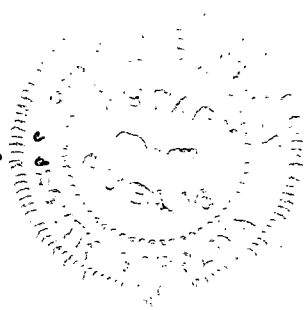
Mr. Sheardouse, by law and in REFERENCE to Houston v. Lack, 487 U.S. 266, the MOTION TO RELIEVE COUNSEL, IS CONSIDERED FILED. I HAVE EVERY RIGHT TO RELIEVE COUNSEL, and do NOT have to go through the COUNSEL who I am asking to be RELIEVED. I am most humbly asking that you will correct this matter. I am sending you the MOTION TO RELIEVE COUNSEL the Clerk of Court's Office RETURNED to me. Will you forward it to the York County Clerk of Court's Office and advise them to file and return a (clock-stamp) copy to me?!!!

Sincerely,  
Johnell Porter #240208

Sworn to and subscribed before me  
this 10 day of FEBRUARY 2017.

Notary Public:

My Commission Expires  
9/16/2024





**CLERK OF COURT'S OFFICE**

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

February 2, 2017

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

Dear Mr. Porter:

The Clerk of Courts office is in receipt of your mail. According to our records you have been appointed an attorney. All correspondence that you may have should go directly to your attorney. If you have something that you want to file, that should be communicated to your attorney. I have provided your appointed attorney's information for your convenience.

Nathan Sheldon  
PO Box 36682  
Rock Hill, SC 29732

Sincerely,

Clerk of Court  
Common Pleas Division

RECEIVED

FEB 15 2017

S.C. SUPREME COURT

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

RECEIVED

JAN 25 2017

BRCI  
MAILROOM

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 !!!

Sincerely,  


Johnell Porter # 240208

LEGAL MAIL

cc:

RECEIVED

FEB 15 2017

S.C. SUPREME COURT

JOHNELL PORTER # 240208  
BROAD RIVER CIRCUIT 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

Re: JOHNELL PORTER v. STATE  
AUSTIN v. STATE, PETITION  
LOWER COURT CASE No. # 2015-CP-46-1186  
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  
Johnell Porter

cc:

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

Re: Johnell Porter v. State  
Austin 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 Court 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

RECEIVED

FEB 15 2017

STATE OF South CAROLINA  
County of YORK

In The S.C. SUPREME COURT

COMMON PLEAS

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

TOMMIE PORTER # 240208,  
Applicant,

MOTION TO RELIEVE  
COUNSEL

v.

STATE OF South CAROLINA  
Respondent.

Pursuant to Rule # 11.1(d)  
S.C.R. CIV. P.  
POST CONVICTION RELIEF ACTION

Now comes the Applicant, TOMMIE 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 discussed

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  
SUBPONEED TO TESTIFY IN regards to the Newly  
Discovered ~~Evidence~~ <sup>Evidence</sup> Claim.

(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 (5<sup>th</sup>) AND FOURTEENTH (14<sup>th</sup>) 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 Austin 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. 1309 (2012)

(5.) Applicant asserts that Counsel's 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.)

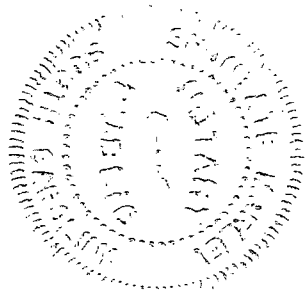
Immediately and another attorney be  
appointed to represent him IN THE AUSTIN  
v. STATE, PETITION !!!

T. J. Porter  
T. J. 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.

T. J. Porter  
Notary Public:

My Commission Expires  
9/16/2020



**LEGAL MAIL**

RECEIVED

FEB 15 2017

State of South Carolina  
County of York

In the <sup>S.C. SUPREME COURT</sup> 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 Revoke  
Council 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.)

APPROVED TO AND SUBSCRIBED BEFORE ME  
~~THIS 25 DAY OF JANUARY~~ 2017

Notary Public:

MY COMMISSION EXPIRES  
9/16/2020:



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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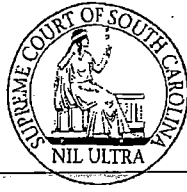
November 28, 2016

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

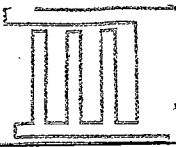
Dear Clerk of Court:

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

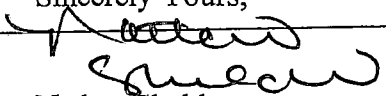
Daniel E. Shearouse, Clerk  
The Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re.: Porter v. State  
2016-002053

Dear Clerk:

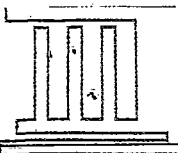
This letter is in response to the letter that was mailed on October 13, 2016 regarding the is: an interlocutory appeal. It is true that the Order granting *Austin* review did have an outstar after discovered evidence claim remaining in the lower Court. Petitioner asked for a belate appeal in his PCR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

Sincerely Yours,



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

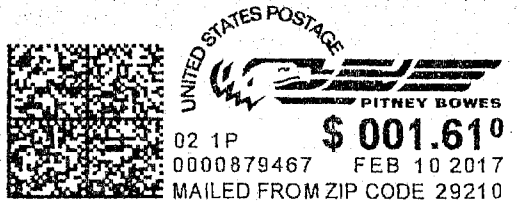
Dear Mr. Porter:

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 be 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 l from the Supreme Court concerning the issue of interlocutory appeal. However, if the appo 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 a please write me with any additional questions or concerns. Either way, your right to the aft 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

Porter # 240208  
River Court Inst.  
Cell Unit - 124  
Broad River Rd.  
Columbia, S.C. 29210



Attn: The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
P.O. Box 11330  
Columbia, S.C.

MAILROOM  
BRCI

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