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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

March 28, 2017

RECEIVED

MAR 28 2017

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

Re: William Ricky Welch v. The State  
Appellate Case No. 2016-002428

Dear Mr. Shearouse:

Enclosed please find an original and six copies of the motion to allow the late filing of the notice of appeal or Austin v. State appeal.

Thank you for your assistance in this matter.

Sincerely,

Robert M. Dudek  
Chief Appellate Defender

RMD/rd  
Enclosures

cc: Julie A. Coleman, Esquire  
William Richy Welch, #208451

THE STATE OF SOUTH CAROLINA

ORIGINAL

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Sumter County

George C. James, Jr., Circuit Court Judge

**RECEIVED**

MAR 28 2017

WILLIAM RICKY WELCH,

S.C. SUPREME COURT

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002428

\_\_\_\_\_  
MOTION TO ALLOW THE LATE FILING OF  
THE NOTICE OF APPEAL OR AN AUSTIN v. STATE APPEAL  
\_\_\_\_\_

William Ricky Welch requests this Court to accept the filing of the notice of intent to appeal out-of-time or allow an Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) appeal. Assistant Attorney General Julie Coleman has confirmed that the respondent was never served with a notice of intent to appeal in this case.

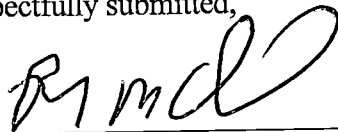
It appears that while the notice of intent to appeal may have been filed timely with the Sumter County Court of Common Pleas, it was never timely filed with this Court, and never properly served upon the respondent. Undersigned counsel spoke with Assistant Attorney General Julie A. Coleman about this matter -- and they agree that because the notice of appeal was not ever

served -- that the proper remedy is for Petitioner Welch to file a Post-Conviction Relief Application (PCR) requesting a belated PCR appeal pursuant to Austin v. State. 305 S.C. 453, 409 S.E.2d 395 (1991). See attached email memorializing the agreement of counsel. Exhibit A.

Undersigned counsel for Mr. Welch hereby moves the Court to either allow the late filing of the notice of intent to appeal or, since Julie A. Coleman, Assistant Attorney General, does not oppose the motion, allow Mr. Welch to file a new Post-Conviction Relief application requesting a belated appeal pursuant to Austin v. State.

WHEREFORE, Petitioner respectfully requests that this Court issue an order allowing him a reasonable time period to file an application for post-conviction relief with the Sumter County Court of Common Pleas requesting a belated PCR appeal pursuant to Austin v. State. 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,



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Robert M. Dudek  
Chief Appellate Defender

March 28, 2017

# EXHIBIT

# A

## Dudek, Robert

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**From:** Julie Coleman <JColeman@scag.gov>  
**Sent:** Thursday, March 09, 2017 2:26 PM  
**To:** Dudek, Robert  
**Subject:** William Welch PCR Appeal

Mr. Dudek,

Thank you for calling today about the PCR appeal of William Welch.

I've checked our file on the matter and can confirm that our office never received the notice of intent to appeal the order of dismissal in this case.

The only documents we have in the file are letters from the Supreme Court dating back from December 7, 2016.

Because the notice of appeal was not timely filed or properly served, it seems the appropriate thing for Mr. Welch to do in this situation is to file a new PCR application requesting a belated appeal pursuant to Austin v. State. If, after the application is filed, it appears that Mr. Cornwell did fail to file the appeal, then we can resolve the issue and have the court grant a belated appeal.

I will reach out to Mr. Cornwell after the application is filed and, if possible, get an affidavit of his testimony on the issue. If I can do that, we might be able to resolve the matter with a form consent order without a court appearance and proceed with the appeal.

Please let me know if there is anything else I can do to assist with this case.

Thank you!



**Julie A. Coleman**  
Assistant Attorney General

S.C. Attorney General's Office  
Rembert C. Dennis Building  
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Columbia, South Carolina 29211

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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Sumter County

George C. James, Jr., Circuit Court Judge

\_\_\_\_\_

WILLIAM RICKY WELCH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_

CERTIFICATE OF SERVICE

\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Motion to Allow the Late Filing of the Notice of Appeal or an Austin v. State Appeal in the above-referenced case has been served upon opposing counsel Julie A. Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and William Ricky Welch, #208451, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 28th day of March, 2017.



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Robert M. Dudek  
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me  
this 28th day of March, 2017.

Rhonda Demese Zappavorth (L.S.)  
Notary Public for South Carolina  
My Commission Expires: November 17, 2021