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May 31, 2017

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

RECEIVED
JUN 01 2017
S.C. SUPREME COURT

The Honorable Sharon W. Staggers
Clerk of Court
125 W Main St.
Kingstree, SC 29556

RE: Dennis Wright, #343201, v. State of South Carolina
2016-CP-45-292

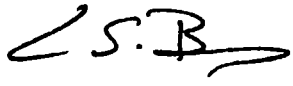
Dear Mr. Shearouse and Ms. Staggers:

Enclosed for filing is a Notice of Appeal pursuant to *Austin v. State* in the above-referenced case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal;
(2) A copy of the Order which is to be challenged on appeal; and
(3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Wright in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Wright in this appeal.

Yours very truly,



Lance S. Boozer

cc: Julie Coleman, AAG
Loriene French, OAD
Dennis Wright, #343201

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
JUN 01 2017
S.C. SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

Case No. 16-CP-45-292

Dennis Wright, #343201.....Petitioner,

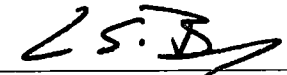
v.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Now comes the Petitioner, by and though his undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Final Order of the Honorable D. Craig Brown which granted an *Austin* review of the Honorable George C. James' Final Order dated June 26, 2015, in Case No. 2012-CP-45-403. The Petitioner received written notice of the Final Order granting an *Austin* review on May 31, 2017. A copy of the Final Order is attached herewith.

Respectfully submitted,



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Columbia, South Carolina
May 31, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Court Judge

Case No. 16-CP-45-292

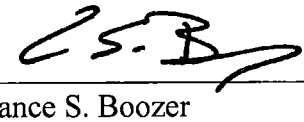
Dennis Wright, #343201.....Petitioner,

v.

State of South Carolina,.....Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Julie Coleman, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 31st day of May, 2017.



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STATE OF SOUTH CAROLINA COUNTY OF WILLIAMSBURG	)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
Dennis Wright, #343201, Applicant, v. State of South Carolina, Respondent.	)	2016-CP-45-00292 **CONSENT ORDER GRANTING AN APPEAL PURSUANT TO AUSTIN V. STATE**[1]

This matter comes before the Court pursuant to an application for post-conviction relief filed July 1, 2016. Respondent filed it Return and Partial Motion to Dismiss on March 3, 2017, requesting an evidentiary hearing be convened solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. Lance Boozer, Esquire, was appointed to represent Applicant by the Williamsburg County Clerk of Court. An evidentiary hearing was held on March 27, 2017, at the Sumter County Courthouse. Applicant was present and represented by counsel, Boozer. Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office represented Respondent.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the Williamsburg County Clerk of Court's orders of commitment. The Williamsburg County Grand Jury indicted Applicant at the July 2009 term for criminal sexual conduct, first degree and abuse of a vulnerable adult (2009-GS-45-199). Charles David Barr, Esquire, represented Applicant. On October 14, 2010, Applicant appeared before The Honorable Clifton Newman. Applicant pled guilty to both charges as indicted. Judge Newman sentenced Applicant twenty

[1] Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

DCP p. 10/14

years' imprisonment for criminal sexual conduct and five years for abuse of a vulnerable adult. The sentences are set to run concurrently.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Wright, Op. No. 2012-UP-408 (S.C. Ct. App. filed July 11, 2012). The Remittitur was sent on July 27, 2012.

2012-CP-45-0403

Applicant filed an application for post-conviction relief (PCR) on July 21, 2012, *alleging* ineffective assistance of counsel and prosecutorial misconduct. An evidentiary hearing on the matter was convened on April 13, 2015, at the Sumter County Courthouse before the Honorable George C. James, Jr. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's office. Judge James denied Applicant's application for post-conviction relief on June 26, 2015.

On November 23, 2015, Applicant filed a pro se notice of intent to appeal Judge James's Order of Dismissal. After Applicant's attorney failed to provide proof that the notice of appeal was timely served, the Supreme Court of South Carolina dismissed Applicant's appeal on March 1, 2016. Applicant filed a motion for reconsideration and a motion to appoint new counsel. Both motions were denied on June 15, 2016. The Remittitur was issued on June 15, 2016.

Applicant subsequently filed this second application for post-conviction relief on July 1, 2016 (2016-CP-45-00292). In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel
    a. "PCR counsel failed to file the 59(e), upon the judge's Order of Dismissal. Applicant expressed to his PCR counsel thru letters dated May 26, 2015 that he wanted PCR counsel to file the Rule 59(e)

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(Exhibit 1) against the Order of Dismissal, so all of Applicant's issues would be preserved. Applicant also sent several letters to PCR Counsel to Amend his PCR application, which PCR Counsel never amended Applicant application. See Exhibits (Exhibit 2 & 3). This is in violation of his rights to due process of law and effective assistance of Counsel. See Austin v. State, 305 S.C. 453; 409 S.E.2d 395 (1991)."

At the outset of the evidentiary hearing, Respondent renewed its Motion to Dismiss All Claims Beyond Austin Review of the First PCR. This Court granted the motion and the hearing proceeded on the claim of Austin relief.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleged that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that it consented to an Austin review.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant is entitled to appeal the denial of his post-conviction relief application (2014-CP-43-2142). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), post-conviction relief applications may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based on the foregoing, this Court finds that the granting of an appeal of Applicant's first post-conviction relief action (2014-CP-43-2142) pursuant to Austin v. State is warranted.

PCB p 307 4

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2012-CP-45-0403 pursuant to Austin v. State; this second application for post-conviction relief is hereby denied and dismissed with prejudice;

2. Within thirty (30) days of the service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate appellate review of Applicant's first post-conviction relief action. Counsel and Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR, for the appropriate procedure for a belated appeal; and

3. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 7 day of April, 2017.

D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florence, South Carolina.

DCB
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
County of Williamsburg	)	Third Judicial Circuit
Dennis Wright Petitioner	)	
	)	NOTICE OF APPOINTMENT FOR LEGAL COUNSEL
vs.	)	
	)	Case Number 2016-CP-45- 292
STATE OF SOUTH CAROLINA Defendant	)	

To: Boozer ,Attorney at Law

By order of the Chief Administrative Judge and pursuant to Rule 608, SCACR, you are hereby appointed to act as attorney for Dennis Wright , the Petitioner, in this action.

This 28th day of September , 2016.

Sharon W. Staggers
Judge/Clerk of Court

SCCA 265 (2/04)

THE BOOZER LAW FIRM, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201

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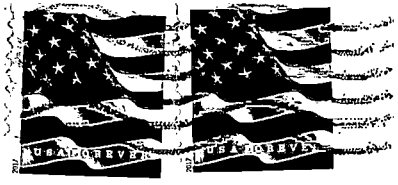

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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