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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

July 7, 2017

RECEIVED

JUL 07 2017

S.C. SUPREME COURT

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

Re: The State v. Dontavious Jackson

Dear Mr. Shearouse:

Enclosed is a copy of the Notice of Intent to Appeal in the above captioned case.

Please let me know if you have any questions.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/mpm

Enclosures

cc: Johnny E. James, Jr., Esquire
The Honorable Scott B. Suggs

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Darlington County
Roger E. Henderson, Circuit Court Judge

RECEIVED
JUL 07 2017
S.C. SUPREME COURT

DONTAVIOUS JACKSON,

PETITIONER,

V.


THE STATE,

PETITIONER.

NOTICE OF INTENT TO APPEAL

Dontavious Jackson, by and through counsel, hereby appeals the order of the Honorable Roger E. Henderson dated February 23rd, 2017. Petitioner received oral notice of this order on June 28, 2017 and physical notice on July 6, 2017, as evidenced by the attachments.

July 7, 2017



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Darlington County
Roger E. Henderson, Circuit Court Judge

DONTAVIOUS JACKSON,

PETITIONER,

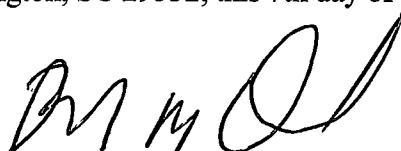
V.

THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

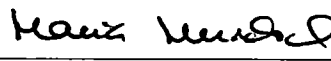
The undersigned attorney hereby certifies that a true copy of the Notice of Intent to Appeal in the above referenced case has been served upon Johnny R. James, Jr, Esquire, at the Attorney General Office, P. O. Box 11549, Columbia, SC 29211, and the Clerk of the Darlington County Court, at 1 Public Square, Room B4, Darlington, SC 29532, this 7th day of July, 2017.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2017.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023

STATE OF SOUTH CAROLINA)
 COUNTY OF DARLINGTON)
)
 Dontavious Jackson, #343868)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTH JUDICIAL CIRCUIT

2016-CP-16-0080

**ORDER GRANTING AN APPEAL
 PURSUANT TO AUSTIN V. STATE¹**

This matter comes before the Court by way of an application for post-conviction relief filed February 11, 2016. Respondent made its Return, consenting to a belated review of the denial of Applicant's prior PCR application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In November 2010, the Darlington County Grand Jury indicted Applicant for first-degree burglary (2010-GS-16-1975) and grand larceny (2010-GS-16-1974). Matthew S. Swilley, Esquire, and William E. Grove, Esquire, (collectively, "trial counsel") represented Applicant. On November 29, 2010, Applicant proceeded to trial before the Honorable J. Michael Baxley and a jury.² On December 1, 2010, the jury found Applicant guilty as indicted. Judge Baxley sentenced Applicant concurrent terms of twenty-five years for first-degree burglary and five years for grand larceny.

Applicant filed a timely notice of appeal. Tristan M. Shaffer, Esquire, and Susan B. Hackett, Esquire, of the Office of Appellate Defense, represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on August 1, 2012. State v.

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

² Trial counsel also represented Applicant at an earlier trial of these charges, which resulted in a mistrial.

TRUE CERTIFIED COPY,

CLERK OF COURT/RMC
 DARLINGTON COUNTY, SC

FILED
 2016 MAR 16 AM 9:32
 SC JUDGE
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

Handwritten initials

Jackson, Op. No. 2012-UP-476 (S.C. Ct. App. filed August 1, 2012). The Court of Appeals issued the remittitur on August 17, 2012.

First PCR Application: 2013-CP-16-177

Applicant filed his first PCR application on February 22, 2013, alleging the following grounds for relief:

1. Ineffective Assistance of Counsel.

In an attachment to his application, Applicant raised the following allegations of ineffective assistance of counsel:

1. Failure to move for a continuance to further prepare.
2. Failure to object to a photograph.
3. Failure to object to a cigarette butt.
4. Failure to impeach Dylan Smothers.
5. Failure to make a motion to dismiss.
6. Failure to object to a witness' handling of evidence at trial.
7. Failure to impeach Deputy Pierre.
8. Failure to suppress the cigarette butt.
9. Failure to object to statements at sentencing.
10. Failure to object to chain of custody.
11. Failure to object to Dylan Smothers' testimony.
12. Failure to move for a change of venue.
13. Failure to renew the motion for continuance.
14. Failure to object to Dylan Smothers' testimony.

On or about June 29, 2015, Applicant filed an amendment to his application, adding an allegation of ineffective assistance of counsel for failure to object to improper jury instructions.

Respondent filed its return on May 29, 2014. An evidentiary hearing was held on July 27, 2015, at the Darlington County Courthouse. Lance S. Boozer, Esquire, represented Applicant. At the evidentiary hearing, Applicant proceeded on only the following allegations of ineffective assistance of trial counsel:

1. Failure to object to a photograph of a fingerprint.
2. Failure to object to the introduction of a cigarette and related DNA.
3. Failure to impeach the victim with inconsistent statements.

4. Failure to challenge the search warrant that led to the discovery of the stolen items.
5. Failure to impeach the investigating officer with a video of the crime scene.
6. Failure to object to law enforcement statements at sentencing.
7. Failure to object to the jury instructions on reasonable doubt and the role of jurors.

The Honorable Thomas A. Russo denied and dismissed the application with prejudice on October 7, 2015.

Applicant filed his *second* and current PCR application on February 11, 2016, alleging the following grounds for relief:

1. "PCR counsel failed to timely file an appeal of the denial of Applicant's prior PCR case."
 - i. "Prior PCR counsel admits he inadvertently and incorrectly calendared Applicant's appeal date.
"Counsel attempted to file the claim out of time with the Attorney General's consent, however, the request was denied. Applicant's appeal was dismissed without prejudice."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Applicant's PCR Counsel inadvertently missed the deadline to file and serve a notice of appeal of Applicant's PCR application.

After review of the pleadings 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 (2011-CP-17-0153) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to

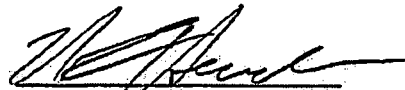
appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of Applicant's post-conviction relief action (2011-CP-17-0153) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2011-CP-17-0153 pursuant to Austin v. State; and
2. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 23rd day of February, 2017.



ROGER E. HENDERSON
Chief Administrative Judge
Fourth Judicial Circuit

Chesterfield, South Carolina.

I consent.



Valerie Garcia Giovanoli
Assistant Attorney General
Attorney for Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

Dontavious Jackson, #343868)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

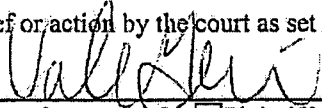

IN THE COURT OF COMMON PLEAS

CASE NO.

2016-CP-26-6625

16

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Dontavious Jackson, #343868, Bar No. Address: Broad River CI 4460 Broad River Rd Columbia, SC 29210 phone: fax: e-mail: other:	Defendant's Attorney: Valerie Garcia Giovanoli, Bar No. 102524 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	February 17, 2017 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____	Date Filed: _____ TRUE CERTIFIED COPY.  CLERK OF COURT/RMC DARLINGTON COUNTY, SC

FILED
 2017 MAR 16 AM 9:32
 SCOTT B. SUSS
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, SC



ALAN WILSON
ATTORNEY GENERAL

July 6, 2017

Barton J. Vincent, General Counsel
Attn: Jonathan Eckstrom
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221-1787

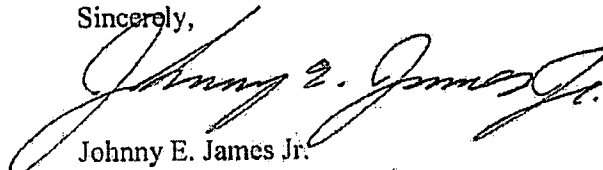
Re: Dontavious Jackson, #343868 v. State of South Carolina
2016-CP-16-0080

Dear Mr. Eckstrom:

Enclosed please find the **Order Granting an Appeal Pursuant to Austin v. State** in the above-captioned inmate's post-conviction relief action. Please serve the inmate, **Dontavious Jackson, #343868**, with the order and provide me with an affidavit of service (enclosed).

If you have any questions, please feel free to call me at (803) 734-3737.

Sincerely,



Johnny E. James Jr.
Assistant Attorney General

JEJ/mm
Enclosures

cc: Robert M. Dudek, Esquire



ALAN WILSON
ATTORNEY GENERAL

July 6, 2017

Robert M. Dudek, Esquire
SC Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

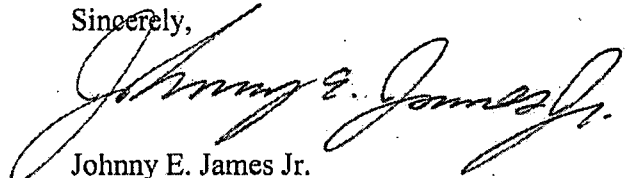
Re: Dontavious Jackson, #343868 v. State of South Carolina
2016-CP-16-0080

Dear Mr. Dudek:

This letter is sent in reference to our phone conversation on June 28, 2017, regarding the above named applicant, who is at the moment pro se. Rather than appoint separate counsel for the sole purpose of filing a Notice of Appeal, I would respectfully request that you assist Mr. Jackson as necessary to ensure he does not inadvertently abandon the relief that has been granted to him.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Johnny E. James Jr.
Assistant Attorney General

JEJ/mm

RECEIVED

JUL 06 2017

APPELLATE DEFENSE