

Law Office of Leah B. Moody, LLC

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JUL 17 2017

S.C. SUPREME COURT

July 12, 2017

Mr. Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29221

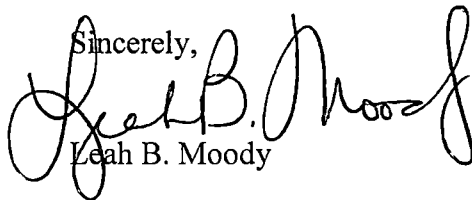
RE: James Dawkins, #345172, v. State of South Carolina
Case No.: 2016-CP-11-0308

Dear Mr. Shearouse:

The Spartanburg County Court of Common Pleas appointed my office to represent James Dawkins in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal, Proof of Service and one (1) copy of the **Consent Order Granting an Appeal Pursuant Austin v. State** in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance with this matter.

Sincerely,



Leah B. Moody

Enclosure

cc James Dawkins
Valerie G. Giovanoli, Esquire
Sharon Graham, SCCID
Brandy W. McBee Clerk of Court, Cherokee County

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

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JUL 17 2017

Roger Couch, Presiding in Spartanburg County

S.C. SUPREME COURT

Case No. 2016-CP-11-0308

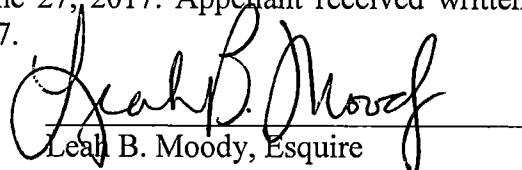
James Dawkins, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

James Dawkins appeals the case 2011-CP-11-0724 pursuant to Consent Order Granting an Appeal Pursuant to Austin v. State, as granted from the Honorable Roger Couch, dated on June 15, 2017 and mailed June 27, 2017. Appellant received written notice of entry of the final order on June 30, 2017.



Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
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Other Counsel of record:
Valerie G. Giovanoli, SC Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUL 17 2017

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Roger Couch, Presiding in Spartanburg County

Case No. 2016-CP-11-0308

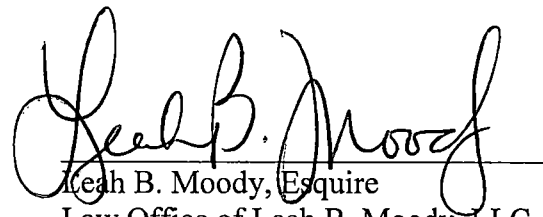
James Dawkins, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Valerie G. Giovanoli by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2017 addressed to its attorney of record, Valerie G. Giovanoli, Post Office Box 11549, Columbia, South Carolina, 29211-1549.



Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

July 12, 2017

cc James Dawkins
Valerie G. Giovanoli, Esq
Brandy McBee, Clerk of Court, Cherokee County
Sharon Graham, SCCID

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

James Dawkins, #345172,)
Applicant,)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-11-0308

CONSENT ORDER GRANTING
AN APPEAL PURSUANT
TO AUSTIN V. STATE¹

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 2, 2016.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the June 2010 term of the Cherokee County Grand Jury for assault and battery with intent to kill (2010-GS-11-0465). Sean Giovanetti, Esquire, represented him on the charges. On March 14, 2011, Applicant pleaded guilty as indicted. The Honorable J. Mark Hayes II sentenced Applicant to confinement for twenty years. Applicant did not appeal his guilty plea or sentence.

First PCR Application: 2011-CP-11-0724

Applicant subsequently filed an application for post-conviction relief (PCR) on October 27, 2011. The State filed its Return on July 17, 2012. An evidentiary hearing was convened on January 9, 2013, at the Spartanburg County Courthouse, at which the Applicant was present and represented by R. Patrick Martin, Esquire. Applicant raised the following issues in his first PCR:

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

APL
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1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to investigate, challenge arrest warrant, and "look at law as they apply to facts of the case;"
 - b. Arrest warrants in violation of Fourth Amendment.

The Honorable J. Derham Cole denied and dismissed Applicant's application by written Order filed April 8, 2013. Applicant did not appeal the denial of his PCR application.

Second PCR Application: 2013-CP-11-0547

Applicant filed a subsequent application for PCR on August 29, 2013, alleging the following:

1. Ineffective Assistance of PCR Counsel, in that;
 - a. Counsel failed to appeal the denial of Applicant's prior PCR application as instructed to by Applicant.

Respondent made its Return on March 18, 2014, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first PCR action pursuant to Austin. An evidentiary hearing on the matter was convened on March 26, 2015, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

Judge Roger L. Couch issued an Order Granting an Appeal Pursuant to Austin v. State filed April 23, 2015. Applicant did not file a Notice of Appeal.

Current PCR Application

Thereafter, Applicant filed his third and current application for PCR alleging *only* that his prior PCR counsel (in his second PCR action) failed to timely file a Notice of Appeal from the order granting Austin review (2013-CP-11-0547).

JD
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In lieu of filing a responsive pleading in the current action, Counsel for Respondent, indicating by consent below, agrees that Applicant did not knowingly and intelligently waive his right to the relief granted in the April 23, 2015, Order Granting an Appeal Pursuant to Austin v. State. Accordingly, Respondent consents that Applicant should be permitted Austin review of his original PCR (2011-CP-11-0724) as provided in the order granting review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 application.

This Court has reviewed and incorporates the previous Order granting Austin review. Counsels for Respondent and Applicant represent to this Court that they agree that Applicant did not voluntarily waive his right to appeal the denial of his first application for PCR. Accordingly, this Court finds Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his first PCR action. Therefore, this Court finds Applicant is entitled to appeal the denial of his first post-conviction relief application (2011-CP-11-0724).

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2011-CP-11-0724) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:


1. That Applicant be granted an appeal of case 2011-CP-11-0724 pursuant to Austin v. State; this this third 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

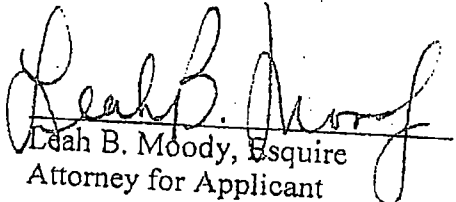
3. That Applicant remain in the custody of the South Carolina Department of Corrections.

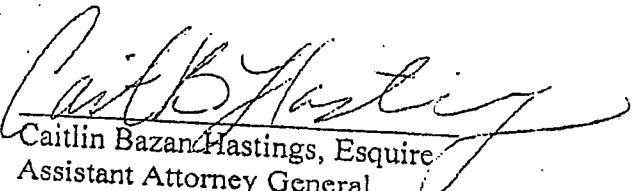
AND IT IS SO ORDERED this 15th day of June, 2016.


ROGER L. COUCH
Circuit Court Judge
Seventh Judicial Circuit

Charleston, South Carolina.

WE CONSENT:


Leah B. Moody, Esquire
Attorney for Applicant

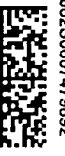

Caitlin Bazan Hastings, Esquire
Assistant Attorney General
Attorney for Respondent

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July 12, 2017

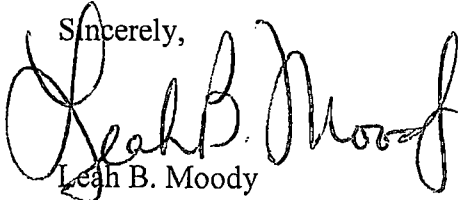
The Honorable Brandy W. McBee
Cherokee County Clerk of Court
Post Office 2289
125 E. Floyd Baker Blvd.
Gaffney, SC 29342

RE: James Dawkins, #345172, v. State of South Carolina
Case No.: 2016-CP-11-0308

Dear Ms. McBee:

Please find enclosed the Notice of Appeal and the Proof of Service in the above-referenced matter.

Sincerely,



Leah B. Moody

Enclosures

cc James Dawkins
Valerie G. Giovanoli, Assistant Attorney General
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

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July 12, 2017

Valerie G. Giovanoli, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

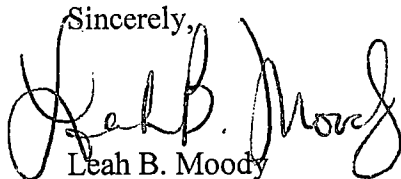
RE: James Dawkins, #345172, v. State of South Carolina
C.A. No.: 2016-CP-11-0308

Dear Ms. Giovanoli:

The Cherokee County Court of Common Pleas appointed my office to represent James Dawkins in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please feel free to contact my office. Thank you.

Sincerely,



Leah B. Moody

Enclosures

cc James Dawkins
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Brandy McBee, Clerk of Court, Cherokee County
Sharon Graham, SCCID

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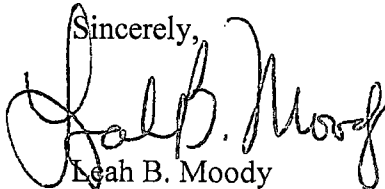
Ms. Sharon A. Graham
SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11433
Columbia, South Carolina 29211-1433

RE: James Dawkins v. State of South Carolina
Case No.: 2016-CP-11-0308

Dear Ms. Graham:

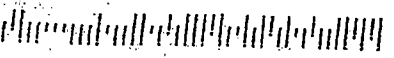
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Thank you for your attention in this matter.

Sincerely,

Leah B. Moody

Enclosures

cc James Dawkins
Valerie G. Giovanoli, Esquire
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Brandy W. McBee, Clerk of Court, Cherokee County



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TO:

Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
PO Box 11330
Columbia SC 29211-1330