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September 23, 2015

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

RECEIVED

SEP 25 2015

Re: Stacardo Grissett vs. State of South Carolina
C/A No: 2011-CP-40-4443

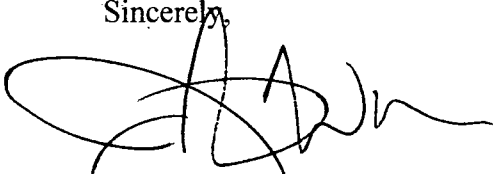
S.C. SUPREME COURT

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Mr. Grissett in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: J. Clayton Mitchell, South Carolina Office of Attorney General

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

2011-CP-40-4443

Stacardo Grissett, #342817,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.


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SEP 25 2015

S.C. SUPREME COURT

NOTICE OF APPEAL

Stacardo Grissett, #342817, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed February 6, 2013. Mr. Grissett, subsequently filed a second Application for Post-Conviction Relief (2014-CP-40-6168) and by Order filed August 28, 2015, Judge Tanya A. Gee ordered that Mr. Grissett be granted an appeal of his initial Post Conviction Relief Application pursuant to Austin v. State.



Jonathan D. Waller

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jwaller@thegieselawfirm.com
ATTORNEY FOR PETITIONER

This 23 day of September, 2015.

Other Counsel of Record:
J. Clayton Mitchell, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

2011-CP-40-4443

RECEIVED

SEP 25 2015

Stacardo Grissett, #342817,

Appellant,

v.

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Clayton Mitchell, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 23 day of September 2015.


Charlotte Giese

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4006168

Stacardo #342817 Grissett

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 31 August 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Stacardo #342817 Grissett

Jonathan D Waller

Megan Harrigan Jameson

James Clayton Mitchell III

Stacardo #342817 Grissett

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

FILED
2015 AUG 31 PM 3:28
RICHLAND COUNTY
JEANETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Stacardo Grissett, #342817,)
)
 Applicant,)
 vs.)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

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

Case No. 2014-CP-4061

2015 AUG 28 PM 3:16
 RICHLAND COUNTY
 FILED
 JENNIFER W. MCBRIDE
 C.C.P. & G.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 7, 2014. Respondent made its Return and Motion to Dismiss All Claims Beyond Austin Review of First PCR on June 3, 2015, 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. Jonathan D. Waller, Esquire was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on August 25, 2015, at the Richland County Courthouse. Applicant was present and represented by counsel, Waller. J. Clayton Mitchell, Esquire, 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 orders of commitment of the Richland County Clerk of Court. Applicant was indicted for Strong Arm Robbery (2009-GS-40-1493), Kidnapping (2009-GS-40-1494), and Lynching Second Degree (2009-GS-40-1495). Applicant was represented by Tynika Claxton, Esquire, and pled guilty on September 16, 2010, before the Honorable L. Casey Manning, to Strong Arm Robbery and

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

1 SCANNED

Lynching Second Degree and pled pursuant to North Carolina vs. Alford² to Kidnapping. Judge Manning sentenced Applicant to ten (10) years' confinement on the Strong Arm Robbery and Lynching Second Degree charges and eight (8) years' on the Kidnapping charge, with the sentences to be served concurrently. Applicant did not appeal his conviction or sentence.

Applicant subsequently filed an application for post-conviction relief on July 8, 2011. (2011-CP-40-4443). In his first application, Applicant asserted a claim of ineffective assistance of counsel. An evidentiary hearing was convened on September 10, 2012, at the Richland County Courthouse before the Honorable J. Ernest Kinard, Jr. Applicant was present at the hearing and was represented by David E. Belding, Esquire. By written Order filed February 6, 2013, Judge Kinard denied and dismissed Applicant's post-conviction relief action.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel, in that;
 - a. Counsel "failed to file an appeal,"
2. "My time is not right," in that;
 - a. "My jail time is not on my sentence"
 - b. My max is over my 10%"

At the outset of the evidentiary hearing, Respondent renewed its Motion to Dismiss All Claims Beyond Austin Review of First PCR. Applicant's counsel candidly informed the court that Applicant had no grounds to oppose the Respondent's motion and would be proceeding only on Applicant's claim that he was denied the right to appeal the dismissal of his previous post-conviction relief application.

² North Carolina vs. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

II. 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, 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 the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the Applicant is entitled to appeal the denial of his post-conviction relief application (2010-CP-38-1758). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), post-conviction relief applicants 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.

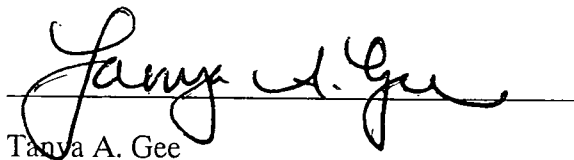
Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2010-CP-38-1758) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2011-CP-40-4443 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 the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant's first post-conviction relief action. Counsel and the 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 the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 28th day of August, 2015



Tanya A. Gee

Presiding Judge

Columbia, South Carolina

SCANNED

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COLUMBIA, SC 29201

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