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RICHEY AND RICHEY
ATTORNEYS AT LAW

OCT 30 2017
A PROFESSIONAL ASSOCIATION

S.C. SUPREME COURT

RODNEY W. RICHEY
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October 25, 2017

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

Re: William Andrew Lee vs. The State of South Carolina
Case No: 2014-CP-42-2508

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal and an affidavit of service for the same. Also, I have enclosed a copy of the Order from which the appeal is taken. Please file the copies and return them to me. I have enclosed a self-addressed stamped envelope.

Thank you for your help and if you should have any questions please feel free to call me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/tlg
enclosures
cc: Alicia Olive, Esquire

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

HONORABLE EDWARD W. MILLER

2014-CP-42-2508

WILLIAM ANDREW LEE, SCDC# 313779

APPELLANT,

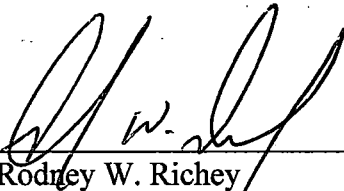
against

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

William Andrew Lee appeals from a Post- Conviction Relief. The Post- Conviction Relief Action was heard and granted by the Honorable Edward W. Miller, Circuit Judge on February 1, 2017 and Order issued on September 28, 2017 and filed on October 4, 2017. The Appellant was granted an appeal pursuant to State vs. Austin. The Appellant received notice of the judgment on October 8, 2017.



Rodney W. Richey
Attorney for the Appellant
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Other Counsel of Record:
Alicia Olive, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

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S.C. SUPREME COURT

WILLIAM ANDREW LEE, SCDC# 313779

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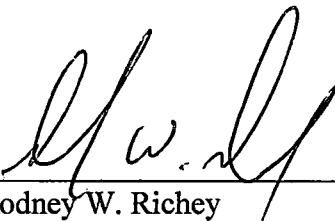
STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on October 25, 2017 addressed to their attorney of record, Alicia Olive, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Dated: October 25, 2017



Rodney W. Richey
Attorney for the Appellant
Post Office Box 10916
Greenville, South Carolina 29603
(864) 467-0503

Other Counsel of Record:
Alicia Olive, Esquire
Office of Attorney General State of SC
Post Office Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 William Andrew Lee, SCDC# 313779)
 Applicant,)
 vs.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2014-CP-42-2508

ORDER GRANTING PCR

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2017 OCT -4 PM 1:03
 M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on June 26, 2014. The Respondent made its Return on November 22, 2016. An evidentiary hearing into the matter was convened on February 1, 2017, at the Spartanburg County Courthouse. The Applicant was present and represented by Rodney Richey, Esquire. Alicia Olive, Esquire of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Kenneth P. Shabel, Esquire testified on Respondent's behalf. This Court also had before it a copy of the records of the Spartanburg Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, appellate records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted by the Spartanburg County Grand Jury at the May 2008 term for murder (08-GS-42-2433) and attempted armed robbery (08-GS-42-2432). Applicant was represented by S. Frank

2433) and attempted armed robbery (08-GS-42-2432). Applicant was represented by S. Frank Adams, Esquire. On February 3, 2009, the Applicant proceeded to trial, where he was convicted of the charges by a jury. Applicant was sentenced by the Honorable Thomas A. Russo to confinement for 35 years for murder and consecutive term of 10 years for attempted armed robbery.

A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Court of Appeals affirmed the conviction and sentence. State vs. Lee, Op. No. 2011-UP-369 (S.C. App. filed July 14, 2011). The Remittitur was returned on August 2, 2011.

2012-CP-42-0991

On February 27, 2012, Applicant filed his first application for post-conviction relief, alleging he was being held unlawfully for the follow reasons

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to provide adequate assistance,
 - b. Counsel failed to investigate,
 - c. Counsel failed to request a mental evaluation,
 - d. Counsel failed to properly attack indictments,
 - e. Counsel failed to petition the trial court for motion for reconsideration;
2. Ineffective assistance of appellate counsel in that;
 - a. Counsel failed to file a petition for rehearing

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SPARTANBURG COUNTY
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Respondent made its Return on February 26, 2013. An evidentiary hearing into the matter was convened on June 27, 2013, at the Spartanburg County Courthouse. Applicant was present and represented by Kenneth P. Shabel, Esquire. At the hearing, the Applicant testified on his behalf. S. Frank Adams, Esquire, also testified on Respondent's behalf. By the Order dated September 25, 2013, and filed October 2, 2013, the Honorable R. Lawson McIntosh denied and dismissed Applicant's PCR Application with prejudice. The Order also notified Applicant of his



appellate rights and procedures.

ALLEGATIONS

In his current applications and amendments, the Applicant alleged he was being held in custody unlawfully for the following reasons:

- 1. Denial of effective assistance of trial counsel,
 - a. Failure to provide adequate assistance.
- 2. Denial of effective assistance of appellate counsel
 - a. Failure to file petition for rehearing
- 3. Ineffective PCR Counsel
 - a. Failure to seek appellate review on first application/order of dismissal.

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FINDS OF FACT AND CONCLUSION OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and closely pass upon their credibility. This Court has weighted the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Section 17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he was denied the right of appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin vs. State, 305 S.C., 453, 409 S.E.2d 395 (1991), a post-conviction relief application may petition the South Carolina Supreme Court for discretionary review of the dismissal of his application.

Applicant testified he requested that his PCR counsel appeal the court ruling in his prior PCR case. He stated that he made this request after the PCR hearing.

Applicant's previous PCR attorney, testified that applicant requested that he appeal the

prior PCR case. He testified that the appeal was not perfected as the application requested.

Summary

This Court finds that PCR counsel failed to file and perfect the appeal in applicant prior PCR case. Accordingly, this court finds that the applicant is entitled to an appeal pursuant to Austin vs. State, 305 S.C., 453, 409 S.E.2d 395 (1991),

Moreover, all other issues that were pled in applicant's PCR application are hereby denied and applicant failed to meet his burden as to those allegations.

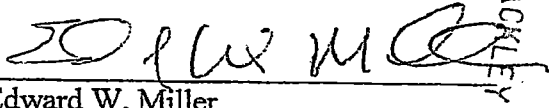
CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has met his burden and this court grants his application for relief. Therefore, the application for post-conviction relief is granted and the Applicant is entitled to an appeal pursuant to Austin vs. State, 305 S.C., 453, 409 S.E.2d 395 (1991),

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is hereby granted pursuant to Austin vs. State, 305 S.C., 453, 409 S.E.2d 395 (1991). The Applicant is entitled to a direct appeal from his previous PCR application.
2. All other issues in the Applicants PCR application are hereby denied.
3. The Applicant must be remanded to the custody of the Respondent.

AND IT SO ORDERED this 28 day of Sept., 2017


Edward W. Miller
Presiding Judge

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