

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

*Also admitted in Florida

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November 17, 2017

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

The Honorable James C. Campbell
Clerk, Sumter County
215 N. Harvin Street
Sumter, SC 29150

RECEIVED

NOV 20 2017

S.C. SUPREME COURT

RE: William Welch, #208451, v. State of South Carolina
2017-CP-43-00877/2013-CP-43-1169

Dear Mr. Shearouse and Mr. Campbell:

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. Welch in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Welch in this appeal.

Yours very truly,



Lance S. Boozer

cc: Julie Coleman, AAG
Loriene French, OAD
William Welch, #208451

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

NOV 20 2017

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

S.C. SUPREME COURT

Case No. 17-CP-43-00877

William Welch, #208451.....Petitioner,

v.

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

NOTICE OF APPEAL

Now comes the Petitioner, by and through his undersigned and appointed Attorney, stating Petitioner's Notice of Appeal should be heard pursuant to the Consent Final Order of the Honorable R. Ferrell Cothran, Jr., which granted an *Austin* review of the Honorable George C. James, Jr.'s Final Order dated September 18, 2015, in Case No. 2013-CP-43-1169. The Petitioner received written notice of the Final Order granting an *Austin* review on November 14, 2017 . A copy of the Final Order is attached herewith.

Respectfully submitted,



Lance S. Boozer
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Tele: 803-608-5543

Columbia, South Carolina
November 17, 2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 17-CP-43-00877

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NOV 20 2017

S.C. SUPREME COURT


William Welch, #208451.....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 17th day of November, 2017.


Lance S. Boozer
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Tele: 803-608-5543

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER 2017 NOV -9 PM 2:45) THIRD JUDICIAL CIRCUIT

William Ricky Welch, #208451,) 2017-CP-43-00877
SUMTER CO.)

Applicant.)

v.)

State of South Carolina,)

Respondent.)

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

This matter comes before the Court pursuant to an application for post-conviction relief filed May 9, 2017. Respondent filed it Return and Motion to Dismiss All Allegations Beyond Austin Review on August 23, 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 S. Boozer, Esquire, was appointed to represent Applicant by the Sumter County Clerk of Court. Before this Court are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, direct appeal records, and the records from Applicant's prior post-conviction relief action and appeal.

I.

PROCEDURAL HISTORY

RJC

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted during the February 2008 term of the Sumter County Grand Jury for first degree criminal sexual conduct (CSC) with a minor, and committing or attempting a lewd act upon a minor (2008-

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


GS-43-0361)². Ernest Finney, III, Esquire, represented him. Applicant proceeded to a jury trial and was found guilty on June 4, 2008, of CSC with a Minor and Lewd Act Upon a Minor. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to twenty years' imprisonment for CSC with a minor and fifteen years' imprisonment for lewd act, to be served concurrently.

Applicant appealed to the South Carolina Court of Appeals. The Court of Appeals affirmed Applicant's conviction and sentence. State v. Welch, Op. No. 2011-UP-503 (Ct. App. filed November 10, 2011). Subsequently, Petitioner filed a petition for rehearing to the South Carolina Supreme Court. The South Carolina Supreme Court denied the petition on December 20, 2012. The Remittitur was issued on December 28, 2012.

Applicant subsequently filed an application for post-conviction relief (2013-CP-43-1169) on July 9, 2013, alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
 - a. "Failed to hire expert medical witness."
 - b. "Failed to object to vouching."

Respondent made its amended return on November 22, 2013. An evidentiary hearing in to the matter was convened on April 15, 2015, at the Sumter County Courthouse. 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. An Order of Dismissal was signed by the Honorable George C. James, Jr. on September 18, 2015, and filed on October 8, 2015.


² The cover page of the Transcript of Record dated June 2, 2008, and the Applicant's PCR Application list the indictment number as "2008-GS-43-3332." This is a scrivener's error.

On or around December 2, 2016, Applicant filed a *pro se* notice of appeal to the South Carolina Supreme Court. On March 28, 2017, Applicant filed a motion to allow the late filing of his notice of appeal. By Order dated April 5, 2017, the Supreme Court denied Applicant's appeal and dismissed it without prejudice to any rights to relief under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The Remittitur was sent April 21, 2017.

Applicant subsequently filed a second application for post-conviction relief on May 9, 2017, alleging the following allegations:

1. Ineffective assistance of counsel
 - a. Counsel failed to Hire Expert Medical Witness to Rebut State's Experts.
 - b. Counsel failed to object to State's Expert in Forensic Interviewing Vouching for Victim's Credibility.
 - c. Counsel failed to object to Expert in Forensic Interviewing giving improper Medical Opinion Testimony.
 - d. Counsel failed to contemporaneously object to the reliability of forensic interviewer improperly sworn in as expert in forensic interviewing who then went on to bolster victim's testimony.
2. Former PCR Counsel failed to ascertain meritorious issues
3. Belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

In its Return, Respondent moved to dismiss all claims beyond Austin review as untimely filed and successive. After reviewing the facts and circumstances surrounding the case, Respondent indicates to this Court that the State is willing to consent to the grant of a belated appeal of the denial of Applicant's first PCR application pursuant to Austin and Applicant and Applicant's counsel agree as evidenced by their signatures below.

Agcl

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Respondent's Motion to Dismiss all allegations beyond Austin review should be granted, as any allegations beyond that scope are untimely filed and successive to Applicant's first application for post-conviction relief. Therefore, the motion is granted and Applicant can proceed only on the grounds of Austin relief.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, and based on Respondent's consent, this Court finds 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.

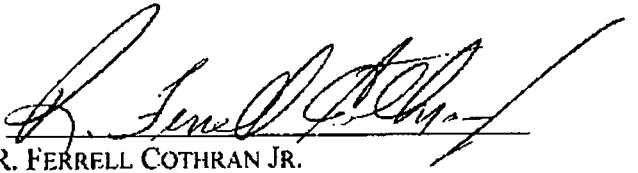
IT IS THEREFORE ORDERED:

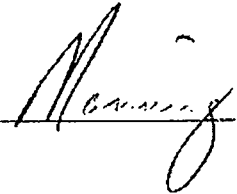
1. That Respondent's Motion To Dismiss All Allegations Beyond Austin Review is granted, and those claims are dismissed with prejudice;
2. That Applicant be granted an appeal of case 2013-CP-43-1169 pursuant to Austin v. State;

QSC


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

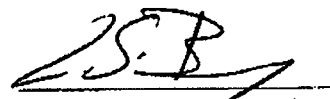
AND IT IS SO ORDERED this 30 day of Oct., 2017.

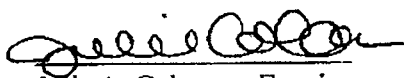

R. FERRELL COTHRAN JR.
Chief Administrative Judge
Third Judicial Circuit


_____, South Carolina.

WE CONSENT:


William Ricky Welch
Applicant


Lance S. Boozer, Esquire
Attorney for Applicant


Julie A. Coleman, Esquire
Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF

William Welch

Plaintiff(s),
-vs-

State of S.C.
Defendant(s).

) IN THE COURT OF (Select one.)
) COMMON PLEAS FAMILY COURT
) JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-43-00877
) APPOINTMENT OF COUNSEL OR GAL
) (Select one.)
) ORDER
) AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> SVP case | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change | <input type="checkbox"/> Other: | |

RECORDED
2017 JUN 20 PM 1:23
JANE C. CAMPBELL
CLERK OF COURT
SUMNER COUNTY, S.C.

It appears that ^{William} ~~Welch~~ who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

Other:

Lana Boger
1400 Laurel St.
Suite 414
Coker, SC 29201

counsel lead counsel (if capital PCR case) guardian ad litem

Therefore, it is ordered that ~~Boger~~ Boger, hereby is appointed as (Select one.)
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

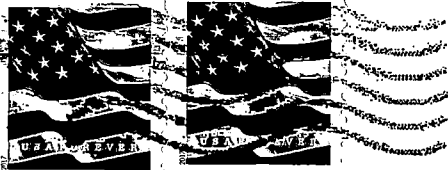
IT IS SO ORDERED THIS 20 DAY OF June 20 17 .

TOOZER LAW FIRM, LLC

Laurel Street, Suite 4A
Columbia, SC 29201

COLUMBIA SC 29201

17 NOV 2017 PM 2



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

29211-133030

