



The Supreme Court of South Carolina

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June 28, 2018

Taylor Davis Gilliam, Esquire
P. O. Box 11589
Columbia SC 29201

Re: James Dawkins v. State
Appellate Case No. 2017-001534

Dear Mr. Gilliam:

The notice of appeal in this matter was filed from an order of the Honorable Roger L. Couch dated June 15, 2016, finding, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), petitioner did not voluntarily waive his right to appellate review of the order of the Honorable J. Derham Cole dated April 2, 2013, denying petitioner's first application for post-conviction relief (PCR). On August 11, 2017, your office ordered the transcript of the hearing before Judge Couch. Subsequently, you filed a petition for a writ of certiorari pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), raising only a question from petitioner's first PCR action. As set forth in *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992),

[w]hen the post-conviction relief judge has affirmatively found that the right to appellate review of a previous post-conviction relief order was not knowingly and intelligently waived, the petition shall raise this question along with all other questions petitioner seeks to have

reviewed from that order. At the same time this petition is served, petitioner shall serve and file an *Austin* petition addressing the questions from the previous post-conviction relief order. The *Austin* petition shall comply with the requirements of Rule 227(d). The Appendix shall contain the entire records from both post-conviction relief proceedings. Respondent's return to the petition shall address the questions from the latest post-conviction relief order, including whether the right to appellate review of the previous post-conviction relief order was knowingly and intelligently waived. At the same time this return is served, respondent shall serve and file an *Austin* return addressing the questions from the previous post-conviction relief order.

(Emphasis added). Because the petition and appendix you filed do not comply with this procedure, you are requested to file a new petition for a writ of certiorari addressing Judge Couch's finding that petitioner did not knowingly waive the right to appellate review of Judge Cole's order. This petition cannot be in the form of a *Johnson* petition, as the nature of the argument - that the PCR judge did not err in finding the applicant did not knowingly and voluntarily waive the right to appellate review of a prior PCR order - is not wholly frivolous. *See Johnson, supra* (citing *Anders v. California*, 386 U.S. 738 (1967)(allowing for the filing of an *Anders* brief where the appeal is "wholly frivolous")). You must also file a second petition for a writ of certiorari - an *Austin* petition - raising questions from Judge Cole's order. The *Austin* petition can be filed pursuant to *Johnson* if you deem the questions from that order wholly frivolous. Finally, you are requested to file an amended appendix that includes the transcript of the hearing before Judge Couch on petitioner's second PCR application. The new petitions and the supplemental appendix shall be served and filed within ten days of the date of this letter.

Very truly yours,



CLERK

cc:

Jordan Adraine Cox, Esquire

James Dawkins, 345172

Robert Dudek, Esquire