

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Roger L. Couch, Circuit Court Judge

RECEIVED

JUL 17 2018

S.C. SUPREME COURT

JAMES DAWKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001534

SUPPLEMENTAL APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
(803) 734-1330

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Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

COURT OF COMMON PLEAS NONJURY

JAMES DAWKINS,)
APPLICANT,)
vs.)
THE STATE OF SOUTH CAROLINA,)
DEFENDANT.)

TRANSCRIPT
OF
RECORD
2013-CP-11-0547

March 26th, 2015
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

A P P E A R A N C E S:

LEAH MOODY
ESQ.
Attorney for the Applicant

SUZANNE WHITE
ASSISTANT ATTORNEY GENERAL
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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I N D E X O F W I T N E S S E S

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

1 PROCEEDINGS

2

3 MS. WHITE: James Dawkins, Your Honor.

4 THE COURT: Okay.

5 MS. WHITE: Thank you, Your Honor.

6 THE COURT: All right. Yes, ma'am.

7 MS. WHITE: Case Number 2013-CP-11-0547. Mr. Dawkins
8 is represented today by Ms. Leah Moody.

9 Mr. Dawkins was originally indicted for assault and
10 battery with intent to kill in Cherokee County. He pled
11 guilty and was represented by Sean Giovannetti. He was
12 sentenced to a sentence of 20 years. He did have a PCR in
13 October, 2011. A hearing was held. An Application was
14 denied. However, there was no appeal of the PCR. So -- and
15 he has filed a second Application alleging that PCR counsel
16 failed to appeal the denial of that Application.

17 The State has spoken with his PCR counsel who was with
18 a firm in Spartanburg, and, subsequent to the hearing, but
19 prior to the final Order being issued, he had left and gone
20 to another firm. And so, from my communication with him, as
21 well as the firm, it does not appear that an appeal was
22 filed or that those rights were discussed --

23 THE COURT: Okay.

24 MS. WHITE: -- with Mr. Dawkins. So, the State
25 consents to a belated PCR appeal for him.

1 THE COURT: All right. Is that correct, Ms. Moody?

2 MS. MOODY: Yes, sir, Your Honor.

3 THE COURT: All right. Are you gonna prepare an Order
4 to that effect?

5 MS. WHITE: Yes, Your Honor. We can.

6 THE COURT: All right. I'll ask you to do so. I'll
7 sign the Order granting the belated appeal.

8 Thank you very much.

9 MS. WHITE: Thank you, Your Honor.

10

11

12 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Cherokee County, South Carolina, on the 26th day of March, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 2nd, 2018

Pamela E. Green

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
)
 County of CHEROKEE)
)
JAMES DAWKINS, #345172)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

016CP-110308

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

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 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2016 MAR 27
 11:51 AM
 BRADY
 COBBE

1. Place of detention McCormick Corr. Inst. 386 Redemption Way, McCormick SC 29899

2. Name and location of Court which imposed sentence Cherokee County General Sessions

3. Name(s) of co-defendant(s) (if any) Gary Dawkins

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 10-GS-11-0465 Assault & Battery with Intent to Kill
 - (b) _____

(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) 03/14/2011- 20 years

(b) _____
(c) _____

6. Check whether a finding of guilty was made:
(a) after a plea of guilty X
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
N/A

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:
i. NO
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:
i. N/A
ii. _____
iii. _____

(c) the date of each such result:
i. N/A
ii. _____
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. N/A
ii. _____
iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Counsel failed to file for hearing to preserve claims
(b) _____

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of PCR Counsel
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) counsel missed the filing deadline for a Notice of Appeal - PCR
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. PCR 2011-CP-11-0724; PCR 2013-CP-11-0547
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Common Pleas Cherokee Co.
 - ii. _____
 - iii. _____
 - iv. _____

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 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 016 MAY -2 A 11:57
 BRANDY W. MCBEE

(c) the disposition thereof:

- i. denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. April 2, 2013
- ii. April 23, 2015- Consent Order for Austin Appeal
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. See attached
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) See 10 (a)- Consent Order for Appeal Pursuant to Austin v. State
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? n/a
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Sean Giovanetti
 - R. Patrick Martin
 - ii. Leah B. Moody (PCR Counsel obtain the consent order)
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea & Sentencing
 - PCR
 - ii. PCR
 - iii. _____

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19. State clearly the relief you seek in filing this application:

Belated Appeal per Austin and any other relief that is entitled to Mr. Dawkins.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
County of McCormick)

VERIFICATION

I, James Dawkins, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Dawkins
James Dawkins

SWORN to and subscribed before me this 20
day of April, 2016

J. C. Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, James Dawkins, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

James Dawkins
Applicant

SWORN or affirmed to and subscribed before me this

20 day of April, 2016.

J. Frankler
Notary Public

My Commission Expires: 12-16-2019

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