

The Supreme Court of South Carolina

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CLERK OF COURT

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July 31, 2018

David Alexander, Esquire
Comm. On Indigent Def. Appellate Div.
PO Box 11589
Columbia SC 29211

Re: Randall E. Sightler v. State
Appellate Case No. 2016-002415

Dear Mr. Alexander:

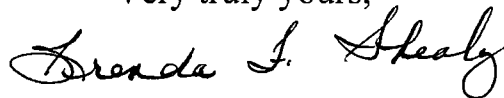
The notice of appeal in this matter was filed from an order of the Honorable Perry H. Gravely dated October 12, 2016, finding, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), petitioner did not voluntarily waive his right to appellate review of the order of the Honorable R. Lawton McIntosh dated October 2, 2014, denying petitioner's first application for post-conviction relief (PCR). You have 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).

Because the petitions you filed do not comply with this procedure, you are requested to file a new petition for a writ of certiorari addressing Judge Gravely's finding that petitioner did not knowingly waive the right to appellate review of Judge McIntosh'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 McIntosh's order. The *Austin* petition can be filed pursuant to *Johnson* if you deem the questions from that order wholly frivolous. The new petitions shall be served and filed within ten days of the date of this letter.

Very truly yours,

A handwritten signature in cursive script that reads "Brenda J. Stealy".

CHIEF DEPUTY CLERK