

Timothy L. Griffith Attorney at Law
360 West Wesmark Blvd, 2nd Floor, Sumter, SC 29150

Phone: (803) 607-9087 Fax: (803) 728-3375

Clerk of Court, South Carolina Supreme Court
Case # 2018CP4300114

Wayne D. Cooper v State of South Carolina

August 15, 2018
RECEIVED

AUG 17 2018

S.C. SUPREME COURT

Please see the included Notice of Appeal. I have also forwarded by separate mail copies to:

The Sumter County Clerk of Court
The Office of the Attorney General of South Carolina
SC Office of Indigent Defense / Commission of Indigent Defense

Please file the included NOTICE OF APPEAL for the case captioned.

Attorney Timothy L. Griffith was appointed as PCR Council and not retained and will not be handling the Appeal.

Thank You,



Timothy L. Griffith, Esquire

NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF
COMMON PLEAS

RECEIVED

AUG 17 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran , Circuit Court Judge

Case # 2018CP4300114

Said Case granting Appeal of case# 2012-CP-43-1286 under Austin v State

The State,

Respondent,

v.

Wayne D. Cooper

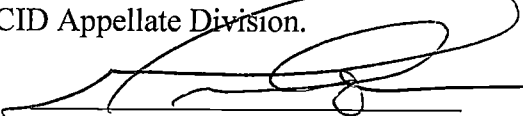
Appellant.

NOTICE OF APPEAL

Wayne D. Cooper, appeals the decision of the Court, on October 1, 2013, where Mr. Wayne D. Cooper was denied his request for Post Conviction Relief. Subsequently Wayne D. Cooper fined a second and third PCR and is granted appeal of the first PCR under Austin v State by consent order. Mr. Wayne D. Cooper was represented at his third PCR by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated

8/15/18


Timothy L. Griffith, Esquire
360 W. Wesmark Blvd,
Sumter, South Carolina 29150
Telephone: (803)607-9087
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Julie A. Coleman, Esquire
Assistant Attorney General
South Carolina Attorney General's Office P.O. Box 11549
Columbia, S.C. 29211

PROOF OF SERVICE OF A NOTICE OF APPEAL

RECEIVED

AUG 17 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Circuit Court Judge

Case # 2018CP4300114

The State,

Respondent,

v.

Wayne D. Cooper

Appellant.

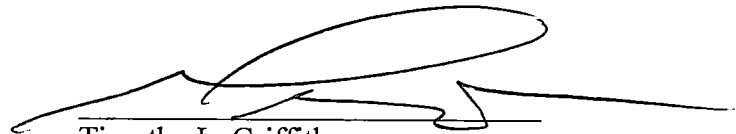
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Office of the Attorney General of South Carolina, PCR Division, by U.S. Postal Service, postage prepaid, to P.O. Box 11549, Columbia, S.C. 29211, on November 21, 2016

Date 8/15/18

I received a copy of the Notice of Appeal on this ___ day of _____, 2017

Office of the Attorney General
PCR Division



Timothy L. Griffith
360 West Wesmark Blvd
Sumter, SC 29150
Telephone: (803) 607-9087
Attorney for Appellant

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SUMTER
 IN THE COURT OF COMMON PLEAS

RECORDED

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2018CP4300114

Wayne D Cooper

2018 JUL 19 PM 3:15

South Carolina State of

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2144

Judge Code

7/19/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Wayne D Cooper
Timothy Lee Griffith 360 W Wesmark Blvd Second Floor
Sumter, SC 29150

Alan McCrory Wilson S.C. Attorney General's Office PO
Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



RECORDED
2018 JUL 19 PM 1:43
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

July 17, 2018

The Honorable James C. Campbell
Clerk of Court, Sumter County
215 North Harvin Street
Sumter, South Carolina 29150

Re: Wayne D. Cooper, #331763 v. State of South Carolina
2018-CP-43-114

Dear Ms. Lancaster:

Enclosed please find the original **Order Granting an Appeal Pursuant to Austin v. State**, signed by the Honorable R. Ferrell Cothran, in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our files.

Sincerely,

Julie A. Coleman
Assistant Attorney General

JAC/ks
Enclosure(s)

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Wayne D. Cooper, #331763,

Applicant,

vs.

State of South Carolina,

Respondent.

RECORDED

2018 JUL 18 10 41 AM
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

WESLEY CAMPBELL 2018-CP-43-114
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

**ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 29, 2018. The Respondent made its return and motion to dismiss all claims except for failure to file an appeal from the denial of his PCR action. The Court has before it the Sumter County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the application, Respondent's return, and the prior PCR records.

PROCEDURAL HISTORY

The records before the Court indicate 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 at the April 2007 term of the Sumter County Grand Jury for murder (2007-GS-43-277). Arthur Wilder, Esquire, represented him. On November 10-13, 2008, Applicant proceeded to a jury trial before the Honorable Howard P. King. On November 13, 2008, Applicant was found guilty as indicted. Judge King sentenced Applicant to forty years imprisonment.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Wayne Darnell Cooper, No. 2011-UP-544 (Ct. App. filed December 6, 2011). The Remittitur was sent on December 22, 2011.

2012-CP-43-1286

On June 25, 2013, Applicant filed his first application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

Respondent made its Return on January 24, 2013. An evidentiary hearing into the matter was convened on October 1, 2013, at the Sumter County Courthouse before the Honorable R. Knox McMahon. Applicant was present at the hearing and represented by David Holler, Esquire. Applicant's trial counsel testified. By Order filed December 9, 2013, Applicant's PCR application was denied and dismissed with prejudice. Applicant did not appeal the denial of his application.

2014-CP-43-2626

Applicant filed his second application for post-conviction relief on December 8, 2014, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel

- a. PCR Counsel failed to file an appeal or 59(e)
- b. Austin Appeal – Austin v. State, 409 S.E.2d 395

Respondent made its return and motion to dismiss all claims except failure to file an appeal from the denial of his first PCR action on March 27, 2015. An evidentiary hearing was convened on July 15, 2015 at the Sumter County Courthouse before the Honorable Steven H. John. Applicant was present and represented by Casey Cornwell, Esquire. Daniel Gourley, Esquire, of the South Carolina Office of the Attorney General, represented Respondent.

At the evidentiary hearing, Respondent consented to the granting of an appeal pursuant to Austin v. State of the first post-conviction relief application (2012-CP-43-1286). Judge John issued an Order granting Austin relief, signed on July 27, 2015, and filed September 17, 2015. Applicant did not file an appeal pursuant to the order to obtain the relief that was granted.

ALLEGATIONS

In his third and current application for post-conviction relief, Applicant claims he is being held unlawfully based on the following allegations:

1. Violation of due process and procedural irregularities when PCR counsel failed to file an appeal of his first and second PCR applications.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

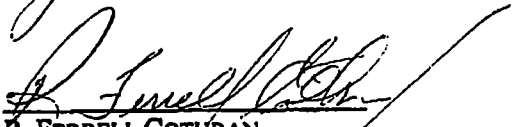
After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties have consented to the granting of an appeal pursuant to Austin v. State of Applicant's first post-conviction relief application (2012-CP-43-1286). The parties agree that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of Applicant's application for post-conviction relief. Prior PCR Counsel, David Holler, previously indicated Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the application.

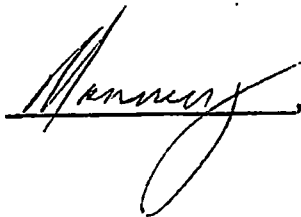
Based upon the foregoing, this Court finds that the granting of an appeal of Applicant's first PCR (2012-CP-43-1286) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That Applicant remain in the custody of the South Carolina Department of Corrections; and
2. That Applicant be granted an appeal of case 2012-CP-43-1286 pursuant to Austin v. State.

AND IT IS SO ORDERED this 26 day of June, 2018.


R. FERRELL COTHRAN
Chief Administrative Judge
Third Judicial Circuit

 South Carolina.

Timothy L. Griffith, Attorney at Law
360 West Wesmark Blvd, 2nd Floor
Sumter, SC 29150

RECEIVED

AUG 17 2018

S.C. SUPREME COURT

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

