

**Timothy L. Griffith Attorney at Law**  
360 West Wesmark Blvd, 2<sup>nd</sup> Floor, Sumter, SC 29150

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

October 19, 2016

Clerk of Court, South Carolina Supreme Court  
Case # 2016-CP-43-49

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,

A handwritten signature in black ink, appearing to read 'Timothy L. Griffith', with a large, sweeping flourish extending to the left.

Timothy L. Griffith, Esquire

**RECEIVED**

**OCT 20 2016**

**S.C. SUPREME COURT**

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

THE STATE OF SOUTH CAROLINA  
In Supreme Court of SC

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case # 2016-CP-43-49

**RECEIVED**

OCT 20 2016

S.C. SUPREME COURT

The State,

Respondent,

v.

Thomas Lee Geddie, #351166

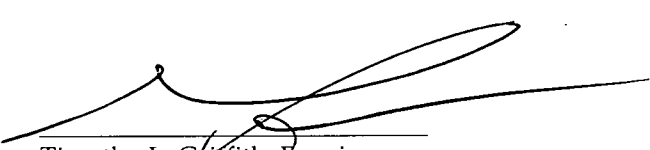
Appellant.

NOTICE OF APPEAL

Thomas Lee Geddie, #351166, appeals his denial of PCR request in this case. The PCR was denied. The Attorney General's office consented under *Austin v State* for Mr. Geddie to file out of time on July 25, 2016, and the order was recorded October 10, 2016 and received by his attorney on 10-17-2016 and the appeal is noticed herein a copy of which is also forwarded to the SCCID Appellate Division. The order of appeal is attached from that hearing.

Dated

10 - 19 - 16

  
Timothy L. Griffith, Esquire  
360 W. Wesmark Blvd,  
Sumter, South Carolina 29150  
Telephone: (803)607-9087  
Attorney for Appellant

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**

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

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case # 2016-CP-43-49

**RECEIVED**

**OCT 20 2016**

**S.C. SUPREME COURT**

The State,

Respondent,

v.

Thomas Lee Geddie, #351166

Appellant.

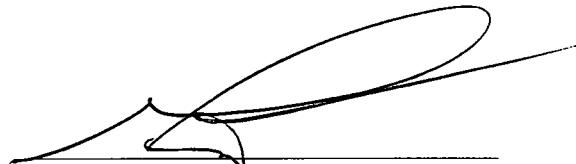
**PROOF OF SERVICE**

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 October 19, 2016

Date 10-19-2016

I received a copy of the Notice of Appeal  
on this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Office of the Attorney General  
PCR Division



\_\_\_\_\_  
Timothy L. Griffith  
2338 Mount Vernon Dr.  
Sumter, SC 29154  
Telephone: (803) 499-2012  
Attorney for Appellant

RCVD 10/17/16

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

Thomas Lee Geddie, #351166,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT  
2016 OCT 11 PM 3:57

2016-CP-43-49

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

CLERK OF COURT  
SUMTER COUNTY, S.C.

*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

**CONSENT ORDER GRANTING AN  
APPEAL PURSUANT TO  
AUSTIN V. STATE<sup>1</sup>**

This matter comes before the Court pursuant to an application for post-conviction relief filed January 11, 2016. Respondent files it Return and Motion to Dismiss All Claims Beyond Austin Review on April 11, 2016, 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. Timothy L. Griffith, Esquire, was appointed to represent Applicant by the Sumter County Clerk of Court. An evidentiary hearing was held on July 25, 2016, at the Sumter County Courthouse. Applicant was present and represented by counsel, Griffith. Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office represented Respondent.

**I. PROCEDURAL HISTORY**

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 July 2011 term of the Sumter County Grand Jury for murder (2011-GS-43-1155). Timothy Murphy, Esquire, represented Applicant. Applicant proceeded to a jury trial on June 4-7, 2012, before the Honorable W. Jeffrey Young. Applicant was subsequently found guilty as indicted. Judge Young sentenced Applicant to life in prison without the possibility of parole.

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

*[Signature]*

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. By unpublished opinion filed June 11, 2014, the South Carolina Court of Appeals dismissed the appeal. State v. Geddie, Un, Op. 2014-UP-219 (S.C. Ct. App. 2014). The Remittitur was issued on June 27, 2014.

Applicant subsequently filed for post-conviction relief on October 6, 2014 (2014-CP-43-2142). In his application, Applicant asserted claims of ineffective assistance of counsel. An evidentiary hearing was convened on April 14, 2015, at the Sumter County Courthouse before the Honorable George C. James, Jr. Applicant was present at the hearing and was represented by Fulton D. Casey Cornwell, Esquire. By written Order filed July 24, 2015, Judge James denied and dismissed Applicant's post-conviction relief action.

Thereafter, Applicant filed a *pro se* Notice of Appeal, which was dismissed by the South Carolina Supreme Court for failure to order the transcript. The Remittitur was issued on October 19, 2015. 2015-  
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Applicant subsequently filed a second application for post-conviction relief on January 11, 2016 (2016-CP-43-49). In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR Counsel.
  - a. PCR Counsel failed to properly file a notice of appeal.

At the outset of the evidentiary hearing, Respondent renewed its Motion to Dismiss All Claims Beyond Austin Review of the First PCR. This Court granted the motion and the hearing proceeded on the claim of Austin relief.



## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleged that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that it consented to an Austin review.

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

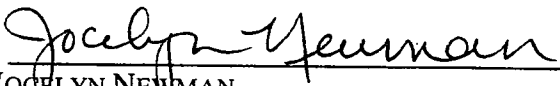
### IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2014-CP-43-2142 pursuant to Austin v. State; this second application for post-conviction relief is hereby denied and dismissed with prejudice;
2. 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



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

AND IT IS SO ORDERED this 29<sup>th</sup> day of September, 2016.

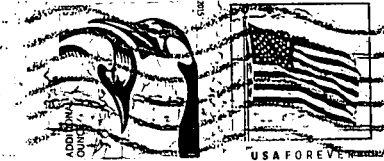
  
JOCELYN NEWMAN  
Presiding Judge  
Third Judicial Circuit

Columbia, South Carolina.

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

COLUMBIA SC 290

19 OCT 2015 PM 4 L



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

29211-133030

