

MCMAHAN & TAYLOR
ATTORNEYS^{LLC}

February 13, 2019

RECEIVED

FEB 14 2019

S.C. SUPREME COURT

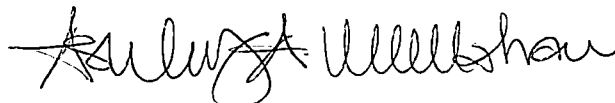
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Andre T. Richardson, #336692 v. State of South Carolina
2017-CP-15-00383

Dear Mr. Shearouse:

Please find enclosed a Notice of Appeal along with the accompanying Order for the above-referenced matter. Also enclosed is the letter to the court reporter requesting the transcript.

Best regards,



ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

cc: Andre T. Richardson
Benjamin H. Limbaugh, Asst. Attorney General
Colleton County Clerk of Court

RECEIVED

FEB 14 2019

STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Case No. 2017-CP-15-00383

Andre T. Richardson, #336692, Petitioner,

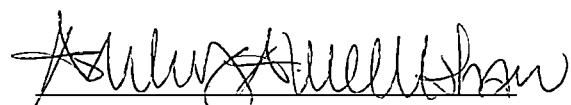
v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, Andre T. Richardson, appeals the order of the Honorable Jennifer B. McCoy, dated January 25, 2019, and filed February 8, 2019.

Feb. 13, 2019



ASHLEY A. McMAHAN, ESQUIRE

McMAHAN & TAYLOR, ATTORNEYS, LLC

PO Box 5501
West Columbia, SC 29171
803-219-1110
ashley@macvance.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

Opposing Counsel:
Benjamin H. Limbaugh, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
In The Supreme Court

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FEB 14 2019

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Jennifer B. McCoy, Circuit Court Judge

Case No. 2017-CP-15-00383

Andre T. Richardson, #336692, Petitioner,

v.

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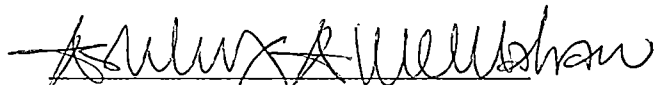
PROOF OF SERVICE

I, Ashley A. McMahan, certify that I have served the within Notice of Appeal on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Benjamin H. Limbaugh, Asst, Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

Feb 13, , 2019



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR, ATTORNEYS, LLC

PO Box 5501
West Columbia, SC 29171
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McMAHAN & TAYLOR
ATTORNEYS^{LLC}

February 13, 2019

Sallie Beth Todd
Court Reporter
PO Box 677
Conway, SC 29528

RE: Andre T. Richardson, #336692 v. State of South Carolina
2017-CP-15-00383


Dear Ms. Todd:

Please prepare a transcript of the PCR hearing of the above named matter taken on December 6, 2018, before the Honorable Jennifer McCoy, for the term in Beaufort County.

Kindly include a detailed index with the transcript. Please include all exhibits. If exhibits were not introduced, then please note that no exhibits were submitted at the hearing.

If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment.

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM

cc: Andre T. Richardson
Benjamin H. Limbaugh, Asst. Attorney General
Supreme Court of South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF COLLETON)
)
 Andre Taft Richardson, #336692,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

2017-CP-15-0383

**CONSENT ORDER
 GRANTING BELATED
 REVIEW PURSUANT TO
AUSTIN V. STATE¹**

2019 FEB - 8 AM 9:11
 JACILIA C. GRANT
 COLLETON COUNTY
 COMMON PLEAS

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 17, 2017. Applicant is represented by Ashley A. McMahan, Esquire. Respondent is represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. The June 2009 term of the Colleton County Grand Jury indicted Applicant for murder (2009-GS-15-0129) and financial identity fraud (2009-GS-15-0116). Harris S. Beach, Esquire, represented Applicant at trial. Deputy Solicitor Sean P. Thornton prosecuted the case. On September 1, 2009, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III. Applicant was found guilty as indicted of murder and financial identity fraud. On September 2, 2009, Judge Buckner sentenced Applicant to confinement for thirty-five years for murder and five years for financial identity fraud, to be served concurrently.

Applicant filed a timely notice of appeal. Appellate Defender Robert M. Dudek perfected

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

the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals denied the petition to be relieved as counsel and directed the parties to brief the following issue:

Did the circuit court err in denying Richardson's motion for a directed verdict on his murder charge in light of State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Odems, Op. No. 27084 (S.C. Sup. Ct. filed Dec. 28, 2011) (Shearouse Adv. Sh. No. 46 at 87)?

Briefs were subsequently filed pursuant to the order. The South Carolina Court of Appeals affirmed Applicant's convictions on May 22, 2013. State v. Richardson, Op. No. 2013-UP-223 (Ct. App. 2013). The remittitur was issued on June 14, 2013.

2013-CP-15-0442

Applicant filed his first application for post-conviction relief on June 6, 2013, and later amended his application to include the following allegations:

1. Ineffective Assistance of Trial Counsel
 - a. "Failing to move to suppress Applicant's refusal to consent to search his car. This resulted in a violation of Applicant's Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights."
 - b. Failing to move to suppress Applicant's refusal to consent to a GSR test. This resulted in a violation of Applicant's Fourth Amendment, Sixth Amendment, and Fourteenth Amendment rights."

An evidentiary hearing into the matter was convened on October 18, 2016, at the Beaufort County Courthouse before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Assistant Attorney General Ruston W. Neely represented Respondent. Judge Nettles denied and dismissed Applicant's application with prejudice by an order of dismissal signed December 20, 2016, and filed December 30, 2016.

II. ALLEGATIONS

In his second and current PCR application, Applicant alleges he is being held in custody

unlawfully for the following reasons:

1. "My attorney failed to timely appeal the order of dismissal from my PCR hearing dated October 26, 2017."

On November 27, 2018, Applicant amended his application through Counsel to allege the following additional ground for relief:

1. Ineffective Assistance of PCR Counsel – Counsel failed to raise in the first PCR ineffective assistance of appellate counsel in that the malice instructions allowing for inference of malice by the use of a deadly weapon (ROA p. 428, lines 8-14) given by the Court were no longer good law in South Carolina as of October 12, 2009, approximately one month after the Applicant's trial, when the opinion of State v. Belcher, 385 S.C. 597 (2009), was released.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Belated Review Pursuant to Austin

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application because his prior PCR counsel, Tristan M. Shaffer, Esquire, did not timely file his appeal. This allegation is corroborated by representations from Mr. Shaffer. 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.

Respondent informed this Court of their consent to allow Applicant a belated review of the denial of his PCR application (2013-CP-15-0442). In light of the information provided to this court, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal his first PCR application. Accordingly, this Court grants Applicant a belated review of the denial of post-conviction relief pursuant to Austin v. State, in which he may raise on appeal any issues that were raised and ruled upon in his prior application. In order to secure this review, however, Applicant must appeal from this Order.

Ineffective Assistance of PCR Counsel

Applicant's contention that he received ineffective assistance of counsel on his prior post-

conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, “the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90.” Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin, which recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Austin “is limited to its particular factual situation” Aice, 305 S.C. at 452, 409 S.E.2d at 394. For these reasons, this Court finds that while Applicant is entitled to belated review of his previous PCR dismissal pursuant to Austin, the allegation of ineffective assistance of PCR Counsel is dismissed.

[Conclusion and signature on following page]


IV. CONCLUSION

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2013-CP-15-0442 pursuant to Austin v. State;
2. That all other PCR allegations are waived and dismissed with prejudice;
3. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25th day of JANUARY, 2019.



JENNIFER B. McCOY
Presiding Judge
Fourteenth Judicial Circuit

Charleston, South Carolina

McMAHAN & TAYLOR
ATTORNEYS^{PC}

PO Box 5501
West Columbia, SC
29171

COLUMBIA SC 290

13 FEB 2019 PM 2 L



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

29211-133030

