

# FALK LAW FIRM, LLC.

James K. Falk

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March 16, 2019

**RECEIVED**

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

MAR 20 2019

S.C. SUPREME COURT

Re: Marion Bonds 293431 v State of South Carolina, 2017-CP-07-2437


Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal and Grant of Appeal pursuant to Austin v State, in the above Beaufort County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,

James K Falk



Thank you for your assistance.

Cc: Benjamin Limbaugh, Esquire  
Marion Bonds 293431  
Beaufort County Clerk of Court

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAR 20 2019

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Honorable Perry M Buckner, III, Circuit Court Judge

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Case No.: 2017-CP-07-2437

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Marion Bonds 293431.....Petitioner

v.

State of South Carolina.....Respondent

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NOTICE OF APPEAL

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The Petitioner Marion Bonds appeals the Honorable Perry M Buckner's February 19, 2019 Order Granting an Appeal Pursuant to Austin v State. Undersigned counsel received notice of entry of the order on March 12, 2019. A copy of the order on appeal is attached to this notice.

Respectfully submitted



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James Falk  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402  
Attorney for Petitioner

March 25, 2016

*Other counsel of Record*  
Benjamin Limbaugh, Esq  
S.C. Attorney General's Office  
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAR 20 2019

APPEAL FROM BEAUFORT COUNTY

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Honorable Perry M Buckner, III, Circuit Judge

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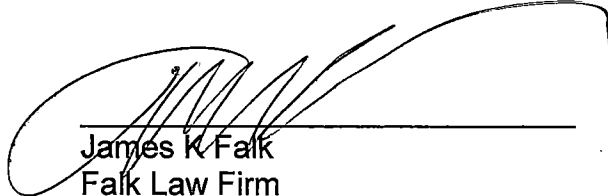
Marion Bonds #293431.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Benjamin Limbaugh Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Beaufort County Clerk of Court. I further certify that all parties required by Rule to be served have been served this March 17, 2019.



James K Falk  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

Marion Bonds, #293431,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

2017-CP-07-2437

**CONSENT ORDER  
GRANTING BELATED  
REVIEW PURSUANT TO  
AUSTIN V. STATE<sup>1</sup>**

2019 FEB 28 PM 12:15  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 16, 2017. Applicant is represented by James K. Falk, Esquire. Respondent is represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

**I. PROCEDURAL HISTORY**

#1  
PMS

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The March 2010 term of the Beaufort County Grand Jury indicted Applicant for assault and battery with intent to kill ("ABWIK") (2010-GS-07-0598), unlawful possession of a handgun (2010-GS-07-0599), trafficking in cocaine base, 28 grams or more but less than 100 grams ("cocaine trafficking") (2010-GS-07-0602), and possession with intent to distribute crack cocaine within a one-half mile radius of a school ("PWID crack cocaine within proximity") (2010-GS-07-0634). Ian Deysach, Esquire, represented Applicant at trial. Angie Tanner, Esquire, prosecuted the case. On December 16, 2010, Applicant proceeded to a trial before the Honorable Carmen T. Mullen and a jury. Applicant was found guilty of assault and battery of a high and aggravated nature

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

(ABHAN) as a lesser included offense, unlawful possession of a handgun, trafficking cocaine, and PWID crack cocaine within proximity. Judge Mullen sentenced the Applicant to confinement for ten years for ABHAN, five years for unlawful possession of a handgun, twenty years for trafficking cocaine, and fifteen years for PWID crack cocaine within proximity, all to be served concurrently.

Applicant filed a timely notice of appeal. Elizabeth Best, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion filed October 24, 2012. State v. Bonds, Op. No. 2012-UP-563 (Ct. App. 2012). Applicant then filed a petition for rehearing on November 8, 2012. By order dated December 18, 2012, the South Carolina Court of Appeals denied the petition. Applicant then filed a petition for writ of certiorari on March 21, 2013. The South Carolina Supreme Court denied the petition on April 3, 2014. The remittitur was issued on April 7, 2014.

#2  
PAB

**2014-CP-07-1950**

Applicant filed his first application for post-conviction relief on August 4, 2014, in which he alleged the following grounds for relief:

1. "Ineffective assistance of trial counselor"
  - a. "Failing to investigate and interview witness, and to sever witness at suppression hearing and trial"
2. "Violation of Applicant Due Process rights"
  - a. "Illegal arrest"
3. "Ineffective assistance of appellate counsel"
  - a. "Failure to articulate and argue the preserve meritorious issue of 'illegal arrest'"

Applicant later amended his application to include the following allegations:

1. Ineffective Assistance of Trial Counsel
  - a. Failure to adequately investigate and present information in support of his motion to suppress pursuant to a warrantless search.
  - b. Failure to argue the legality of Applicant's arrest and preserve the issue for appeal.

- c. Failure to challenge Applicant's multiple charges on crack cocaine on the basis of double jeopardy.
- d. Failure to move for a directed verdict on Applicant's multiple crack cocaine charges because they allege the same conduct.
- e. Failure to request lesser-included jury instruction to the charge of Trafficking in Crack Cocaine.

An evidentiary hearing into the matter was convened on May 18, 2017, at the Beaufort County Courthouse before the Honorable Brooks P. Goldsmith. Applicant was present at the hearing and represented by James A. Brown, Jr., Esquire. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Judge Goldsmith denied and dismissed Applicant's application with prejudice by an order of dismissal signed September 19, 2017, and filed September 26, 2017.

## II. ALLEGATIONS

In his second and current PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Counsel failed to file a requested 59(e) and appeal from the PCR final judgment. See Austin v. State, 409 S.E.2d 395, 305 S.C. 448 (1990)."

## III. 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 because his prior PCR counsel, James A. Brown, Jr., Esquire, never filed his notice of appeal. This allegation is corroborated by an affidavit from Mr. Brown attached to this order. Pursuant to Austin v. State, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

Respondent consents to allow Applicant a belated review of the denial of his PCR application (2014-CP-07-1950). In light of the information provided to this court and the attached affidavit, 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.

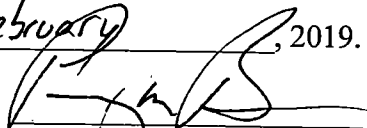
#### IV. CONCLUSION

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 2014-CP-07-1950 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 19<sup>th</sup> day of February, 2019.

  
PERRY M. BUCKNER, III  
Chief Administrative Judge  
Fourteenth Judicial Circuit

Walterboro, South Carolina

**FALK LAW FIRM**

PO Box 1058

Charleston, SC 29402

CHARLESTON SC 29402

18 MAR 2019 PM 1:18



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

29211-133030