

The Law Office of Tristan M. Shaffer

October 21, 2019

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

RECEIVED

OCT 23 2019

S.C. SUPREME COURT

Re: John Henry Bridges #345950 v. State 2014-CP-17-0171

Dear Mr. Shearouse,

Please find the enclosed Notice of Appeal, Certificate of Service, and Order Being Appealed in the above referenced case.

Although a belated appeal was granted, several allegations were denied as barred and/or successive by the trial court. Given the fact that a belated appeal was granted and this appeal is not subject to dismissal pursuant to Rule 243(c); I have not included a Rule 243(c) explanation. However, please advise me if I need to include a Rule 243(c) explanation for the allegations which the Court determined was time barred and/or successive.

Thank you for your assistance with this matter.

Sincerely,



Tristan M. Shaffer

CC: Dillon County Clerk of Court
Johnny James

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DILLON COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2014-CP-17-0171

John Henry Bridges #345950,

Petitioner,

v.

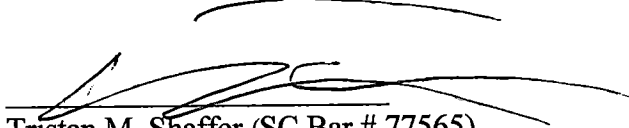
The State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the order granting him a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991) and dismissing his other post-conviction relief claims. This order was filed September 6, 2019 and received by Petitioner on September 19, 2019.

October 21, 2019



Tristan M. Shaffer (SC Bar # 77565)
P.O. Box 1027
Chapin, SC 29036
(803) 941-7514
Attorney for Petitioner

Other Counsel of Record:
Johnny E. James, Jr.
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

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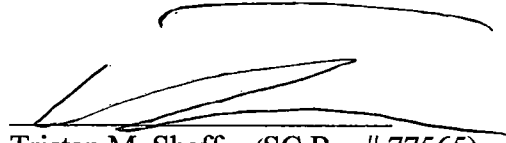
The State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I certify that on the date below I served the Notice of Appeal on The State of South Carolina by mailing a copy to the Respondent at the address below.

October 21, 2019



Tristan M. Shaffer (SC Bar # 77565)
P.O. Box 1027
Chapin, SC 29036
(803) 941-7514
Attorney for Petitioner

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Johnny E. James, Jr.
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Attorney for Respondent

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OCT 23 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DILLON)
)
 John H. Bridges,)
 S.C.D.C. No. 345950,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE FOURTH JUDICIAL CIRCUIT

2014-CP-17-0171

**CONSENT ORDER GRANTING
 AN APPEAL PURSUANT TO
AUSTIN V. STATE¹**

FILED
 GWENTHYATT
 2019 SEP -6 P 12:14
 CLERK OF COURT
 DILLON COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 30, 2014. Respondent made its Return on or about September 10, 2015, moving to dismiss all claims except the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. On August 21, 2019, Applicant amended his allegations. That same day, a hearing was conducted to review the claims from his amended application. Applicant is currently represented by Tristan M. Shaffer, Esquire. Respondent is represented by Jacob A. Isenberg of the South Carolina Office of the Attorney General.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. In May 2010, the Dillon County Grand Jury indicted Applicant for murder (2010-GS-17-473), possession of a weapon during the commission of a violent crime (2010-GS-17-474), burglary, first degree (2010-GS-17-476), kidnapping (2010-GS-17-477), armed robbery (2010-GS-17-478), larceny, value \$5000 or more

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

(2010-GS-17-479), and criminal conspiracy (2010-GS-17-481). J. Richard Jones, Esquire, represented Applicant. On November 4, 2010, Applicant pled guilty to the charges as indicted. The Honorable Thomas A. Russo sentenced applicant to consecutive terms of forty (40) years for murder and five (5) years for possession of a weapon during the commission of a violent crime. Judge Russo further sentenced Applicant to thirty (30) years for burglary, first degree, thirty (30) years for kidnapping, thirty (30) years for armed robbery, ten (10) years for larceny, value \$5000 or more, and five (5) years for criminal conspiracy, all of which are to be served concurrent to all other sentences. Applicant did not appeal his plea or sentence.

First PCR Application: 2012-CP-17-0252

Applicant filed an initial application for post-conviction relief on June 20, 2012, in which he raised the following grounds for relief:

1. "The State of South Carolina used false evidence in case"
2. "The solicitor took crooked witnesses for credibility"
3. "Upon multiple offense applicant is violated"
4. "No lie detect test conducted"
5. "involuntary guilty plea"
6. "The 16-23-490(a) statute is being read incorrectly"
7. "counsel committed cumulative [sic] errors"
8. "Trial counsel was ineffective when counsel failed to challenge Bill 3096 "Truth in Sentencing" 85% Law"
9. "Applicant was arrested to allege 16 years of age as a child, child means not a [sic] adult"

Heather M. Cannon, Esquire represented Applicant. Respondent filed a motion to dismiss the application as untimely. The Honorable Paul M. Burch issued a Conditional Order of Dismissal on September 4, 2012. Judge Burch issued a Final Order denying and dismissing the application on March 20, 2013. Applicant did not appeal Judge Burch's order.

II. CURRENT ALLEGATIONS

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

1. Eighth Amendment Violation
 - a. Cruel and Unusual Punishment based upon receiving a *de facto* life sentence without conducting an individualized hearing to consider hallmarks of youth, pursuant to Miller v. Alabama.
2. South Carolina State Constitution Violation
 - a. Violation of Article I, Section 15, based upon the failure to provide an individualized hearing to consider hallmarks of youth before determining the sentence
3. Ineffective Assistance of PCR Counsel
 - a. Counsel failed to argue the statute of limitations should have been equitably tolled based upon his minor status at the time of sentencing
 - b. Counsel failed to file a notice of appeal

Before this Court are the records of the Dillon County Clerk of Court regarding Applicant's convictions, the records from the South Carolina Department of Corrections, Applicant's prior PCR application and the corresponding Order of Dismissal, Applicant's current PCR application, Respondent's Return thereto, and a sworn affidavit from Applicant's prior PCR counsel.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

i. Failure to File Notice of Appeal

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. 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. Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991).

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds Applicant did not knowingly and voluntarily waive his right to appeal his first PCR application. Accordingly,

this Court grants Applicant a belated PCR appeal 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, the Applicant must appeal from this Order.

ii. Eighth Amendment Violation

Applicant contends his *de facto* life sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment based upon his minor status at the time. The United States Supreme Court held the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders. Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 2457-58, 183 L. Ed. 2d 407 (2012). However, the Eighth Amendment does not prohibit a juvenile offender from being sentenced on aggregate to an amount of years that creates a *de facto* life sentence. State v. Slocumb, 426 S.C. 297, 306, 827 S.E.2d 148, 152 (2019) (holding there was no eighth amendment violation where a minor had been sentenced to a term of one hundred and thirty years on aggregate).

Here, the precedent Applicant relies upon mandates minors cannot be sentenced to life without parole. Applicant received consecutive terms totaling at forty five years. He began this sentence at the age of sixteen. Therefore, Applicant will be released at the age of sixty one. The sentence was an aggregate of forty years for murder and five years for possession of a weapon during a violent crime. The sentence is facially numerical. These circumstances are not the same as life without parole. Accordingly, this Court finds there is no genuine question of material fact regarding terms of his sentence. Therefore, this Court finds Respondent is entitled to judgment on this issue as a matter of law.

iii. State Constitution Violation

Applicant contends his sentencing hearing violated Article I, Section fifteen of the South Carolina Constitution. Specifically, Applicant contends he should have been afforded an individual sentencing hearing to consider the hall marks of his youth. The section reads as follows:

All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

S.C. Const. art. I, § 15. The South Carolina Supreme Court retroactively held a judicial offender must receive an individualized sentencing hearing, to explore hallmark features of youth, before the imposition of life without parole. Aiken v. Byars, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014). However, it imposed a deadline for all individuals affected by that decision to file a motion for resentencing within one year of November 12, 2014. Id.

Here, Applicant did not receive a life without parole sentence. Instead, he received a term of year sentence totaling at forty-five. Moreover, Applicant was sentenced before the above-mentioned ruling came out. Therefore, the appropriate relief on this matter was to file a motion for resentencing. There is nothing in the record to suggest Applicant attempted to timely file this motion. Accordingly, there is no genuine issue of material fact Applicant did not receive the appropriate sentence to qualify for a hearing to consider his youth. Moreover, there is no genuine issue of material fact Applicant failed to file a motion for resentencing in a timely manner. Accordingly, this Court finds he does not qualify for the hearing at issue based upon

either ground set forth above. Therefore, Respondent is entitled to judgment as a matter of law on this issue.

iv. Failure to prepare an adequate argument

Applicant contends the original post-conviction relief counsel should have made an argument to equitably toll his original application based upon age. Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial. Martinez v. Ryan, 566 U.S. 1, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012). However, the South Carolina Supreme Court, in Kelly v. State, has specifically held the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions. 404 S.C. 365, 745 S.E.2d 377 (2013).

Here, Applicant is alleging ineffective assistance of PCR counsel. Accordingly, this Court finds there is no genuine issue of material fact Applicant is making allegations against his lawyer from a collateral proceeding. As a matter of law, Applicant is not entitled to bring this allegation until federal habeas corpus review. Therefore, Respondent is entitled to judgment on this claim as a matter of law.

IV. CONCLUSION

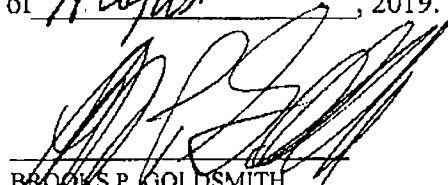
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the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

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2012-CP-17-0252 pursuant to Austin v. State;

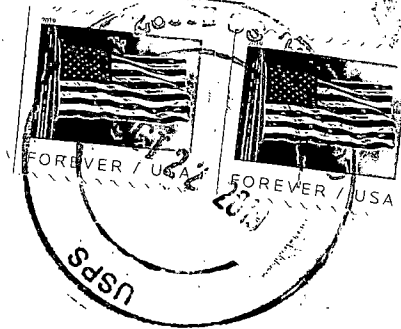
2. That all other PCR allegations are dismissed with prejudice;
3. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of August, 2019.


BROOKS P. GOLDSMITH
Chief Administrative Judge
Fourth Judicial Circuit


_____, South Carolina.

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Chapin, SC 29036



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