

The Supreme Court of South Carolina

Michael James Young, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-000115

Lower Court Case No. 2012CP3204648

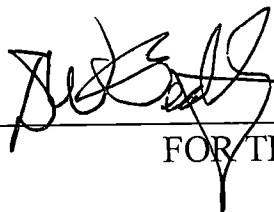
ORDER

Petitioner asks this Court to grant him a belated appeal in the above post-conviction relief (PCR) case pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). He also seeks to have the Division of Appellate Defense appointed to represent him in this appellate case.

Since relief under *Austin* must be sought by filing an application for post-conviction relief in the circuit court,¹ this matter is dismissed without prejudice to whatever right petitioner may have to seek relief under *Austin* by filing

¹ See *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753, 755-756 (1999) ("This Court has allowed successive PCR applications where the applicant has been denied complete access to the appellate process. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). . . . A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. See *King [v. State]*, 308 S.C. at 348, 417 S.E.2d at 868. If the PCR court finds an applicant was denied his right to appeal, the applicant can petition for certiorari and this Court will review whether the petitioner was prejudiced by the failure to obtain appellate review. *Id.*; see *King*, 308 S.C. at 349, 417 S.E.2d at 868 (outlining the procedure used to seek review pursuant to *Austin v. State*; *Wicker v. State*, 310 S.C. 8, 425 S.E.2d 25 (1992).")

an application for post-conviction relief in the circuit court. The motion to appoint the Division of Appellate Defense is denied as moot.



FOR THE COURT C.J.

Columbia, South Carolina
January 29, 2020

cc: Elizabeth Anne Franklin-Best, Esquire
Lillian Loch Meadows, Esquire
Division of Appellate Defense