

ELIZABETH FRANKLIN-*Best*

APPELLATE AND FEDERAL CRIMINAL LAW

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JAN 27 2020

S.C. SUPREME COURT

January 23, 2020

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

To Whom It May Concern,

Please find enclosed the motion to allow appeal of denial of post-conviction order of dismissal regarding State of South Carolina vs. Michael James Young Jr. Also enclosed is his affidavit of indigency and application for counsel.

Please let us know if you have any questions or need more information from us.

Sincerely,

LaDonna Beeker

LaDonna Beeker
Paralegal
Elizabeth Franklin-Best, P.C.
803-445-1333

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JAN 27 2020

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Walter J. McLeod, IV, Circuit Court Judge

Case No. 2012-CP-32-04648

STATE OF SOUTH CAROLINA,.....Respondent,

vs.

MICHAEL JAMES YOUNG, JR. (#345614).....Petitioner.

**MOTION TO ALLOW APPEAL OF DENIAL OF POST-CONVICTION
ORDER OF DISMISSAL PURSUANT TO *AUSTIN V. STATE*, 305 S.C. 453, 409
S.E.2d 395 (1991).**

Respectfully, Petitioner asks this Court to allow him to pursue an appeal of the denial of his post-conviction relief proceeding. During the pendency of this proceeding, Petitioner's attorney passed away, and Petitioner was not made aware of the denial of his 59(e) motion. He did not voluntarily, knowingly, or intelligently waive his right to appeal and respectfully asks this Court to grant him an appeal at this point.

Petitioner was indicted by the Lexington County grand jury during its October 2007 term for murder (2007-GS-32-2948), assault and battery with intent to kill (2007-GS-32-2949) and possession of a firearm during the commission of a violent crime (2007)GS-32-2950). He was represented by John Delgado. On April 11, 2011, he pleaded guilty before the Honorable Thomas R. Russo to murder and ABWIK. He received a term of imprisonment of fifty (50) years for murder and twenty (20) years for ABWIK. Petitioner then sought an appeal, but by order dated February 10, 2012, the Court of Appeals dismissed the appeal for failing to show how any issue was preserved for appellate review as required by Rule 203(d)(1)(B)(iv), SCACR. The *remittitur* was issued on March 7, 2012.

Petitioner then filed an application for post-conviction relief on November 21, 2012. An evidentiary hearing was held on November 9, 2018 before the Honorable Walton J. McLeod, IV. Petitioner was represented by Robert Mills. An order of dismissal was filed on December 5, 2018. Counsel filed a motion to alter judgment on December 20, 2018, which was denied on January 29, 2019.¹

By order dated February 27, 2019, this Court entered an order appointing Peyre Lumpkin as receiver of Petitioner's lawyer's files and noted that Mr. Mills passed away on February 16, 2019. *In the Matter of Robert W. Mills, deceased. Appellate Case No. 2019-000291.* According to communications with Taylor Smith, assistant Attorney General, their office sent Mr. Lumpkin a copy of the order of dismissal and the order denying the motion to alter the judgment in June, 2019.

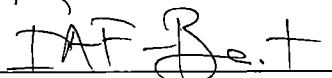
¹ Petitioner was also convicted in federal court for conspiracy to purchase a mail bomb and was sentenced to 43 years in prison. *United States v. Michael Young, Jr.*, Case No. 3:17-cr-00575-001.

Petitioner informs counsel that he was unaware that his case became final because he did not receive any communications from Mr. Mills informing him of that fact. Undersigned counsel confirmed with Ms. Patty Lundy with the receivers office that they did not send a letter to Petitioner informing him of the death of Mr. Mills and that he needed to seek new counsel. It appears that the receiver's office believed, based on the condition of the file, that it was a closed matter.

The right to seek appellate review of the denial of PCR is expressly authorized by state law. *S.C. Code Ann.* §17-27-100 (1985); Supreme Court Rule 50(9). Whether such review is granted is discretionary with the Court. *Knight v. State*, 284 S.C. 138, 325 S.E.2d 535 (1985). Petitioner respectfully asks this Court to grant him the right to appeal the denial of his PCR belatedly because he did not knowingly, intelligently or voluntarily waive his right. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner also respectfully requests that this Court appoint the South Carolina Office of Indigent Defense, Appellate Division to represent him. Attached to this motion is a copy of an affidavit of indigency. Counsel has the original in her possession.

Respectfully submitted,



Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
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Columbia, South Carolina 29205
(803) 331-3421
elizabeth@franklinbestlaw.com

January 23, 2020

Cc: Robert M. Dudek
Michael Young, Jr.

COUNTY OF Lexington

JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA

**AFFIDAVIT OF INDIGENCY
AND
APPLICATION FOR COUNSEL**
(Defense of Indigency Act, Form No.2)

vs.

Michael James Young Jr

CRIMINAL CHARGING DOCUMENT NO. 2012-CP-32-04648

| | |
|------------------------|--|
| NAME OF APPLICANT | <u>Michael James Young Jr</u> |
| ADDRESS | <u>990 Wisacky Hwy Bishopville, SC 29010</u> |
| TELEPHONE NUMBER(S) | |
| DATE OF BIRTH | |
| SOCIAL SECURITY NO. | |
| NAMES OF CO-DEFENDANTS | <u>Brian Leagues</u> |

1. Are you presently employed? Yes No

a. If "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

| SALARY OR WAGES PER MONTH | NAME AND ADDRESS OF EMPLOYER |
|---------------------------|------------------------------|
| | |
| | |

If "no", state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month.

| SALARY OR WAGES PER MONTH | NAME AND ADDRESS OF EMPLOYER | TERMINATION DATE |
|---------------------------|------------------------------|------------------|
| | | |

2. Include employment information for the spouse, if applicable.

| SALARY OR WAGES PER MONTH | NAME AND ADDRESS OF EMPLOYER |
|---------------------------|------------------------------|
| | |
| | |

If the spouse is not currently employed, state the name and address of last employment, date of termination of employment, and amount of salary or wages per month.

| SALARY OR WAGES PER MONTH | NAME AND ADDRESS OF EMPLOYER | TERMINATION DATE |
|---------------------------|------------------------------|------------------|
| | | |

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| NAME | AGE | RELATIONSHIP | AMOUNT OF SUPPORT |
|------------|------------|--------------|-------------------|
| <i>N/A</i> | <i>N/A</i> | | |
| | | | |
| | | | |
| | | | |

4. Have you received within the past twelve months any money from any of the following sources?

- a. Business, profession or form of self-employment? Yes No
- b. Rent payments, interest or dividends? Yes No
- c. Pensions, annuities or life insurance payments? Yes No
- d. Gifts or inheritances? Yes No
- e. Any other sources? Yes No

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

| SOURCE OF MONEY | AMOUNT |
|---------------------|---------------------|
| <i>Family Gifts</i> | <i>Approx \$200</i> |
| | |
| | |
| | |

5. Do you own cash, or do you have any money in a checking or savings account?

Yes No

If the answer is "yes", state the total amount of the cash owned. _____

6. Do you own any real estate, stocks, bonds, notes, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes No

If the answer is "yes", describe the property and state the appropriate value of the items owned.

7. What kind of motor vehicle do you own? *N/A*

Is it paid for? Yes No

If not, what are the payments? _____

8. How much do you owe (on liens, mortgages, other encumbrances or debts)? *Approx*

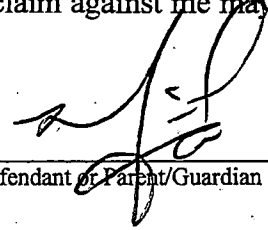
\$3,000

... I understand the appointment of counsel creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the cost of representation less the amount paid to appointed counsel, the public defender office and/or the Commission on Indigent Defense. I understand that such claim shall be filed in the office of the Clerk of Court in the county where I, my child, or ward are assigned counsel, but that the filing of a claim shall not constitute a lien against my real or personal property unless, in the discretion of the court, part of all of such claim is reduced to judgment by appropriate order of the court after serving me with at least thirty (30) days notice that judgment will be entered.

I understand that, pursuant to §17-3-30(b), I am required to pay a non-refundable \$40.00 application fee to the Clerk of Court for public defender services or other appointed counsel.

I am financially unable to employ counsel and request that counsel be assigned to represent me. I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This 16 day of January, 2020



Defendant or Parent/Guardian if applicable

Subscribed and sworn to before me this
16th day of Jan., 2020
James McJee (L.S.)
Notary Public for South Carolina
My Commission Expires: 09/04/2029

The applicant's request for court-appointed counsel is hereby granted / denied.

Dated: _____

Judge/Clerk or Deputy Clerk

_____, South Carolina

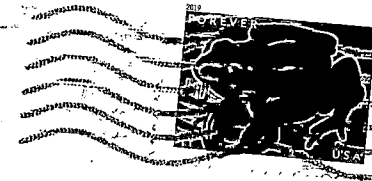
ELIZABETH FRANKLIN *Best*

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2725 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205

COLUMBIA SC 29205

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Supreme Court of South Carolina
Clerk of Court
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