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S.C. SUPREME COURT

February 27, 2020

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

Re: Shakeia Butler vs. State of South Carolina
C/A No: 2017-CP-38-00670

Dear Mr. Shearouse:

Please find enclosed one (1) original and one (1) copy each of Applicant's Notice of Appeal and Certificate of Service in the above referenced case. I would appreciate you filing the original and returning the clocked copies in the enclosed envelope.

I was appointed to represent Ms. Butler in this matter and am also enclosing a copy of the Order of Dismissal. If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

Cc: , South Carolina Office of Attorney General

Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
George M. McFaddin, Jr., Circuit Court Judge

2017-CP-38-00670

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S.C. SUPREME COURT

Shakeia Butler, # 339254,

Appellant,


v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Shakeia Butler, # 339254, appeals the Order of Dismissal denying her Application for Post-Conviction Relief filed February 24, 2020, issued by the Honorable George M. McFaddin, Jr., Presiding Judge, First Judicial Circuit.



Jonathan D. Waller

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ATTORNEY FOR PETITIONER

February 27, 2020

Other Counsel of Record:
Sara E. Gunton, Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
George M. McFaddin, Jr., Circuit Court Judge

2017-CP-38-00670

Shakeia Butler, # 339254,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

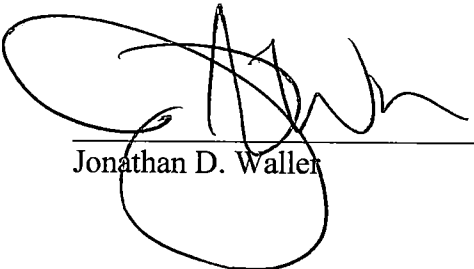
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S.C. SUPREME COURT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Sara E. Gunton, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.


Jonathan D. Waller

February 27, 2020

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
George M. McFaddin, Jr., Circuit Court Judge

2017-CP-38-00670

Shakeia Butler, # 339254,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Sara E. Gunton, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this day, to her office located at P.O. Box 11549, Columbia, SC 29211.


Jonathan D. Waller

February 27, 2020

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Shakeia Butler, #339254,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

C.A. No. 2017-CP-38-0670

**CONSENT ORDER GRANTING RIGHT
 TO SEEK BELATED APPELLATE REVIEW
 PURSUANT TO AUSTIN V. STATE**

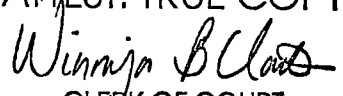
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 CLERK OF COURT
 ORANGEBURG COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 19, 2017. Respondent made its Return on April 10, 2018. An evidentiary hearing on the matter was convened on February 4, 2020, at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Sara Gunton, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

The Court had before it the Orangeburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, Applicant's current application, Respondent's return, and the records from Applicant's previous PCR action.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Orangeburg County Clerk of Court. Applicant was indicted at the April 2008 term of the Orangeburg County Grand Jury for Murder (2008-GS-38-0648). He was represented by Jillian D. Ullman, Esquire. Assistant Solicitor Don Sorenson, Esquire prosecuted the case. On January 28, 2010, Applicant pleaded to the lesser included offense of

ATTEST: TRUE COPY

 CLERK OF COURT
 ORANGEBURG COUNTY, SC

voluntary manslaughter before the Honorable Edgar W. Dickson. Pursuant to a negotiated sentence range, Judge Dickson sentenced Applicant to imprisonment for twenty-six years for voluntary manslaughter. The court reconvened for a hearing to determine whether Applicant was entitled to early parole eligibility on February 8, 2010. Judge Dickson found Applicant did not present credible evidence to support a finding under S.C. Code §16-25-20 that there was a history of criminal domestic violence.

Applicant appealed from the denial of her motion for early parole eligibility. An appeal was perfected on Applicant's behalf by Appellate Defender LaNelle Cantey DuRant, Esquire. The South Carolina Court of Appeals affirmed in an unpublished opinion filed April 25, 2012. State v. Butler, Op. No. 2012-UP-252 (Ct. App. 2012). The remittitur was issued on May 15, 2012.

First PCR Application: 2012-CP-38-0033 and 2012-CP-38-0844

Applicant filed her first application for post-conviction relief on January 12, 2012 (2012-CP-38-0033). Respondent moved to dismissed for failure to state a cognizable claim under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). A conditional order of dismissal was signed on June 27, 2012 and filed July 17, 2012. Applicant filed a second application on June 15, 2012, alleging more grounds, specifically that counsel was ineffective regarding a parole eligibility hearing held pursuant to S.C. Code § 116-25-90 (2012-CP-38-0844). The two applications were merged by order filed July 16, 2012. Pursuant to the order, the first application (2012-CP-38-0033) is the surviving case, and the second application is considered an amendment. Respondent then moved to vacate the conditional order of dismissal on August 27, 2012, and requested the matter be set for an evidentiary hearing. A hearing was convened on May 29, 2014, where Applicant's PCR Counsel, Joshua Koger, Jr., Esquire, moved

for funding to retain a battered spouse syndrome expert. Applicant as well as Plea counsel testified at this hearing. The motion for funding was denied on September 14, 2014. An evidentiary hearing into Applicant's allegations was convened on October 27, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and testified on her own behalf. On November 3, 2014, the Honorable Kristi Lea Harrington denied Applicant's application.

ALLEGATIONS

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

1. Applicant now seeks a belated PCR appeal pursuant to Austin v. State
 - a. "PCR attorney failed to perfect an appeal from order denying previous PCR application, docketed at 2012-CP-38-00844."
 - b. "2012-CP-38-00844 was not appealed. Through a clerical error, PCR Counsel failed to file a notice of appeal from that decision. Applicant now seeks a belated PCR appeal through guidelines and procedures set forth in Austin v. State."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges she was denied the right to seek an appeal following the dismissal of her previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his or her PCR application.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of allegations in Applicant's post-conviction relief application, the parties below have consented to the granting of an appeal of Applicant's first post-conviction relief application (2012-CP-38-0033) pursuant to Austin v. State. The parties agree Applicant did not voluntarily waive her right to seek an appeal of the post-conviction relief court's denial and



dismissal of Applicant's first application for post-conviction relief. Based on the documents submitted from the previous PCR file, it appears to the parties and this Court Applicant did not freely and voluntarily waive the right to appeal her first application for post-conviction relief, and PCR counsel failed to file a timely Notice of Appeal of the application.

Based upon the foregoing, this Court finds granting Applicant's request to seek belated appellate review of her previous PCR (2012-CP-38-0033) pursuant to Austin v. State is warranted. Counsel for the State and Applicant's current PCR counsel consented to the granting of leave to pursue a PCR appeal in this matter. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appellate review of case 2012-CP-38-0033 pursuant to Austin v. State.

AND IT IS SO ORDERED this 14th day of February, 2020.



GEORGE M. MCFADDIN, JR.
Presiding Judge
First Judicial Circuit

Sumter, South Carolina.



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Clerk of Court
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