

The Supreme Court of South Carolina

William D. Swaney, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-000359

Lower Court Case No. 2011CP3800052

ORDER

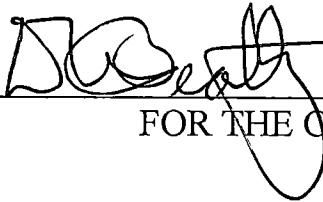
The final order in this post-conviction relief (PCR) case is dated December 3, 2004. After a notice of appeal was served and filed from this order, the appellate case was dismissed based on petitioner's failure to timely serve and file the petition for writ of certiorari and appendix. The remittitur was sent on November 17, 2005.

Petitioner has now filed a notice of appeal from the order dated December 3, 2004. Further, he seeks to have counsel appointed to represent him.

Since nothing in the South Carolina Appellate Court Rules allows for the filing of a successive notice of appeal from a single order, the notice of appeal is dismissed. This dismissal is without prejudice to whatever right petitioner may have to seek relief under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), by filing an application for post-conviction relief in the circuit court.¹ The motion to appoint

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

counsel is denied as moot.



FOR THE COURT C.J.

Columbia, South Carolina

March 04, 2020

cc: Mr. William D. Swaney, 249421
Office of the Attorney General
Division of Appellate Defense

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).")