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APR 27 2020

S.C. SUPREME COURT

Mr. Daniel E. Sherrouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: 2012-CP-32-04648
2020-000115
2019-000791

Mr. Clerk:

My name is Michael Young and I wanted to write AS to the status of my belated appeal because to be honest I'm very confused.

I had a post-conviction Relief hearings on Nov 9, 2018 and an order of dismissal was filed on Dec 5, 2018. My Attorney, ^{Robert} ~~Robert~~ Mills, filed a rule 59(c) ~~Re~~ Motion to Alter Judgement on December 20th, 2018 which was denied on January 29th 2019.

I've only recently found out that Mr. Mills passed away and that my PCR was dismissed and that he filed a ~~the~~ motion to Alter Judgement, which means ~~that~~ he didn't appeal the dismissal. He passed away Feb 16 2019.

I would've wanted to appeal the dismissal, not to mention

Challenge Mr. Hill's Competency during
the hearing after ~~knowing~~ recently
learning that he was critically ill
at the time.

Still, I heard that I would ~~the~~
need the transcript of the P.C.R.
hearings to Appeal... I don't even
know how to get that and I cannot
afford to pay for one if it costs.

My family had a lawyer file
a Motion asking the Supreme Court
to allow an appeal due to these
circumstances and the response was
for me to do a P.C.R. and it
was courtesy copied to the Division of
Appellate Defense, so am I waiting on
them. I wrote them in Feb (2020) and
have yet to hear a response. I also
wrote Lexington County Court House on
Feb 17, 2020 and advised them that
I wasn't able to appeal because of
Mr. Hill's Death. and after sending them
two more letters, I just received
a response from them post-marked
Apr 16 2020 and the only items

enclosed were any indictments. Not even a letter from the Clerk.

I know your office probably can't give legal advice, but can someone point me in the right direction?

I currently have no attorney. I cannot afford an attorney, still I feel I have a right to my appeal ~~at~~ at least. Please see the enclosed motion that Attorney Best filed. Even the Attorney ^{is office} who took over Mr. Mills' cases state that they didn't contact me. Were they supposed to appeal for me?

Any assistance that your office could give me would be greatly appreciated.

Best Regards;



Michael S. Young Jr #345614

Lee Correctional Inst;

990 Wisacky Hwy

Bishopville, SC 29010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

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 *remititur* 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.
2725 Devine Street
Columbia, South Carolina 29205
(803) 331-3421
elizabeth@franklinbestlaw.com

January 23, 2020

Cc: Robert M. Dudek
Michael Young, Jr.

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

Michael J. Young, Jr. #543614
990 Wisacky Hwy
Bishopville, SC 29010

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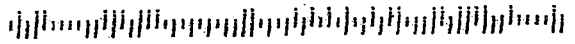
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S.C. SUPREME COURT

29211-133030



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