

The Supreme Court of South Carolina

Marcus Daniel Allison, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-000332

Lower Court Case No. 2015CP3700316

ORDER

The order on appeal in this matter is dated October 3, 2019, and was filed with the clerk of the circuit court on October 9, 2019. The *pro se* notice of appeal was not served until February 20, 2020. While petitioner's counsel has been asked to provide the date on which he received written notice of entry of the order under appeal,¹ counsel has not responded.

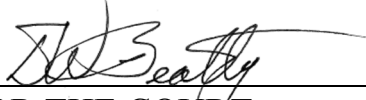
Accordingly, the notice of appeal is dismissed based on petitioner's failure to establish that the notice of appeal has been timely served under Rules 243(b) and 203(b)(1) of the South Carolina Appellate Court Rules (SCACR). The remittitur will be sent as provided by Rule 221(b), SCACR.

In light of this dismissal, the *pro se* motion to appoint substitute counsel in this appellate case is denied as moot.

Finally, with the notice of appeal, petitioner filed a *pro se* document entitled "motion for leave to reinstate appeal." In essence, this motion seeks a belated

¹ *Cf.* Rule 203(e)(1)(C), SCACR (requiring statement of when written notice of entry was received if necessary to determine timeliness of the appeal); Rule 71.1(g) of the South Carolina Rules of Civil Procedure ("If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR, and shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR.").

review under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Since relief under *Austin* is sought by filing an application for post-conviction relief in the circuit court,² this motion is denied without prejudice to whatever right petitioner may have to seek relief under *Austin* by filing an application for post-conviction relief in the circuit court.



FOR THE COURT C.J.

Columbia, South Carolina
June 9, 2020

cc: Lindsey Ann McCallister, Esquire
William G. Yarborough, III, Esquire
Mr. Marcus Daniel Allison, 350669

² *Cf. King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (setting forth the appellate procedures to be followed depending on the findings made by the PCR judge regarding the *Austin* claim).