

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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APPEAL FROM SUMTER COUNTY

Court of Common Pleas

S.C. SUPREME COURT

Honorable R. Kirk Griffin, Circuit Court Judge

Case No.: 2019-CP-43-02127

Arthur Singleton 300109.....Petitioner

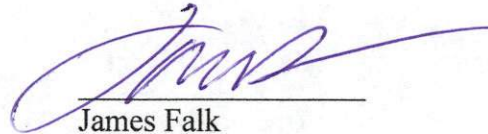
v.

State of South Carolina.....Respondent

NOTICE OF APPEAL

The Petitioner Arthur Singleton #300109 appeals the Honorable R. Kirk Griffin's May 26, 2020 Order Granting an Appeal Pursuant to Austin v State. Undersigned counsel received notice of entry of the order on June 2, 2020. A copy of the order on appeal is attached to this notice.

Respectfully submitted



James Falk
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Attorney for Petitioner

June 3, 2020

Other counsel of Record
Brianna Schill, Esq.
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Clerk of Court
Sumter Circuit Court
215 N Harvin
Sumter, SC 29150

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
)

RECORDED

2020 MAY 27 A 7:20

Arthur Singleton #300109,

Applicant,

v.

State of South Carolina,

Respondent.

)
) JAMES C. CAMPBELL
) CLERK OF COURT
) SUMTER COUNTY, S.C.
)

2019-CP-43-2127

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Stager
DEPUTY CLERK OF COURT

)
) **ORDER GRANTING BELATED**
) **PCR APPEAL PURSUANT TO**
) **AUSTIN V. STATE**
)

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 21, 2019.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for Armed Robbery, Conspiracy, and Possession of Crack Cocaine (2004-GS-43-0504). Melissa Biggers, Esquire, of the Sumter County Public Defender's Office ("Counsel") represented him at trial. On June 5, 2006 Applicant proceeded to a jury trial, on the armed robbery and conspiracy charges before the Honorable Howard P. King. Applicant was found guilty on both counts. On the armed robbery charge he was sentenced to life without parole pursuant to S.C. Code Ann. § 17-25-45. On the conspiracy charge he was sentenced to a concurrent five (5) year term.

A notice of appeal was filed and an appeal perfected. Applicant's conviction and sentence were affirmed. State v. Singleton, 2008-UP-650 (S.C. Ct. App. filed December 1, 2008). The Remittitur was sent on December 17, 2008.

The Applicant filed an application for post-conviction relief (PCR) on October 12, 2009 (2009-CP-43-2392). The Respondent made its Return on January 19, 2010. An evidentiary hearing into the matter was convened on September 10, 2014, at the Sumter County Courthouse, before the Honorable Clifton Newman. Applicant was present at the hearing and represented by Kenneth Young, Esquire. The Applicant raised the following issues in his first PCR:

Ineffective assistance of counsel.

- a. "...failing to have competency evaluation done."
- b. "...failing to give Defendant his Rule 5 in a timely manner."
- c. "...failed to obtain a continuance."
- d. "...failed to conduct a reasonable pre-trial investigation."
- e. "...failed to object to Judge's outbursts. Counsel failed to object to witnesses contradicting testimony."
- f. "...failed to inform defendant of any possible defenses."
- g. "...failed to interview potential witnesses."
- h. "...showed no interest in case nor in filing all issues on appeal."
- i. "Counsel promised that if Defendant would just trust her judgment she would win trial."
- j. "Defendant was prejudiced in handcuffs and shackles."

At the evidentiary hearing, Applicant proceeded on all allegations except for claims e, h, i, and j. By order dated November 30, 2017 and filed December 8, 2017, Judge Newman denied and dismissed Applicant's PCR application with prejudice.

Applicant filed a second PCR application October 21, 2019 and alleged the following grounds for relief:

(1) Ineffective Assistance of Trial Counsel

- a. Counsel failed to have competency evaluation done.

- b. Counsel failed to provide Brady material
- c. Failure to conduct a reasonable pre-trial investigation
- d. Failed to object to witness contradicting testimony.
- e. Counsel failed to interview potential witnesses
- f. Counsel failed to file all issues on appeal
- g. Counsel allowed to Applicant to be prejudiced by Jury

(2) Applicant is entitled to a belated PCR appeal pursuant to Austin v. State (305 S.C. 453, 409 S.E.2d 395 (1991)).

An evidentiary hearing on Applicant's second PCR application was held February 25, 2020 in the Sumter County Courthouse. Brianna Schill, Esquire of the South Carolina Attorney General's Office appeared on behalf of the Respondent, and James Falk, Esquire was appointed to represent Applicant. Testifying at the hearing were both Applicant and Kenneth R Young, Esquire, who represented Applicant at his first PCR hearing in 2014. At the commencement of the hearing, Respondent's counsel argued that all of Applicant's claims, other than the claim for Austin relief, were barred by the statute of limitations. Applicant's counsel acceded to the State's argument and only went forward on the Applicant's Austin claim.

At the hearing, the following testimony was offered: By letter dated December 7, 2017 Kenneth Young notified Applicant of Judge Newman's November 30, 2017 order. In this letter, Mr Young advised that Applicant had thirty days in which to appeal Judge Newman's order. Further Mr Young advised applicant that: 1) he did not believe Applicant had an issue to raise on appeal; 2) because health issues he longer handled these types of cases: and, 3) Applicant would have to retain counsel to represent him on the appeal.

On August 17, 2018, Applicant filed a *pro se* Notice of Appeal. Thereafter on August 17, 2018 the South Carolina Supreme Court sent Mr Young a letter notifying him of Applicant's *pro se* filing and reminding Mr Young that pursuant to Rule 71.1(g) SCRCR and Rule 264 SCACR he remained as Applicant counsel or record. The letter advised Mr Young that he had ten days to provide proof of service upon respondent's counsel along with a written statement as to the date on which he received a copy of the order on appeal. On September 5, 2018 the South Carolina Supreme Court dismissed the Applicant's appeal citing the following procedural defaults: Petitioner failed to provide the Court with proof of service as required by Rules 243(b) and 203(d)(1)(B)(i) SCACR; and, Counsel for petitioner failed to provide the information requested in the Court's August 17, 2018 letter. All parties agree the Applicant is entitled to an appeal from the denial of his PCR application (2010-CP-02-1873).

By email dated April 21, 2020 the State advised the PCR court that it would not oppose Applicant's Austin claim. Therefore it appearing that counsel for both parties consent to the denial of all claims in his Application for Post-Conviction Relief with the only exception being the granting of a belated PCR appeal pursuant to Austin v. State¹, this Application for post-conviction Relief is granted only as to Applicant's right to seek a belated appeal of his previous Application for Post-Conviction Relief and is denied and dismissed as to all other claims for relief.

IT IS THEREFORE ORDERED:

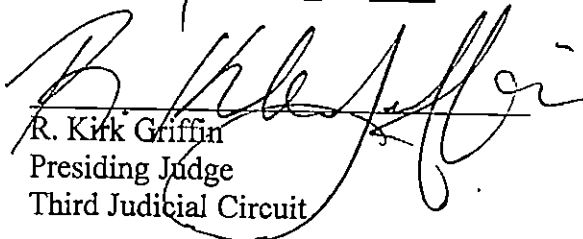
1. This Application for Post-Conviction Relief is **DENIED WITH THE EXCEPTION OF GRANTING A BELATED AUSTIN APPEAL**. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of

¹ 305 S.C. 453, 409 S.E.2d 395 (1991)

the Applicant's first post-conviction relief action, captioned 2010-CP-02-1873. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR, for the appropriate procedure for a belated appeal; and

2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 26th day of May, 2020.


R. Kirk Griffin
Presiding Judge
Third Judicial Circuit

Spartanburg, South Carolina.