

STATE OF SOUTH CAROLINA) THE SOUTH CAROLINA COURT OF APPEALS
COUNTY OF AIKEN) Case Nos. 2011-GS-02-636, 2011-GS-02-637,
) 2011-GS-02-638, 2011-GS-02-639.
Stephen Corley, # 347938)
Applicant,)
))
VS.) PETITION FOR BELATED APPEAL REVIEW
))
STATE OF SOUTH CAROLINA)
Respondent.)
_____)

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DEC 29 2020
SC Court of Appeals

Comes now the applicant, Stephen Corley, # 347938, who requests prusuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991). He respectfully request that this honorable court grant him the appropriate appellate review in this case.

The applicant is presently confined at the Broad River Correctional Institution, of the South Carolina Department of Corrections, pursuant to order of commitment from Aiken county clerk of court. The applicant was indicted at the May 23, 2011, term of the Aiken county grand jury for two counts of D.U.I. felony, and two counts of Reckless homicides case numbers (2011-GS-02-636), (2011-GS-02-637), (2011-GS-02-638), and (2011-GS-02-639). He was represented bt Fred Wallace Woods, Jr., Esq. on September 21, 2011, the applicant pleads guilty on the advice of counsel and was convicted as charged. He was sentenced by the Honorable William H. Seals, Jr., to confinement for period of 44 years 22 years on each charge.

The defendant was abandoned after his trial counsel did not filed the direct appeal from the conviction during a critical stage of his case. Counsel was ineffective in failing to file Notice of appeal, after the defendant advised counsel to appeal. The defendant is precluded from exhausting all available state remedies state remedies are not deemed exhausted until the applicant utilized all procedures available under state Law to raise his claim. See Id. § 2254 (c).

The applicant satisfies the exhaustion requirement by properly pursuing a claim throughout the entire appellate process of the state. See Justice of Boston Mun. Court v. Lydon, 466 U.S. 294, 302-03 (1984) (Exhaustion requirement satisfied by presentation of claim on appeal to state supreme court from denial of motion to dismiss, see e.g. McCandless v. Vaugh, 172 F. 3d 255, 260 (3d cir. 1999). (Exhausted remedies available in court of state). Rust v. Zent, 17 F. 155, 160 (6th cir. 1994) (Exhaustion requirement satisfied by filing required application in state appellate and supreme court. Wayne v. Missouri, Bd. of probation & parole, 83 F. 3d 994, 996 (8th cir (1996), (exhaustion requirement satisfied when applicant presented Federal claims in full round of litigation before state trial and appellate courts even though relitigation in state forum though another procedural device possible).

After counsel refused to perfect an appeal the applicant began the appeal process pro se with Notice of intent to appeal, and request for appellate defense assistance with Notice, note Rule 71.1 is based in part on former supreme court Rule 50(1)-(8) and has no counterpart in the Federal Rule 71.1 was added by order of the supreme court on April 17, 1990 and became effective September 1, 1990. South Carolina PCR case Law. Austin v. State, 305 S.C. 453, 409 S.E. 2d 345 (1991) state. "The right to seek appellate review of the denial of directed appeal is expressly authorized by state Law S.C. code ANN. § 17-27-100 (1995), supreme court Rule 50(g).

Whether such review is granted is discretionary with court. Knight v. State, 284 S.C. 138, 325 S.E. 2d 535 (1985).

State v. Truesdale, 278 S.C. 368 S.E. 2d 528 (1982).

The cardinal rule when evaluating the voluntariness of guilty pleas is to determine whether or not they were knowingly and intelligently entered. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). Defense counsel for a criminal defendant must advise his client of the right to appeal following a guilty plea only when there are exceptional circumstances present. Weathers v. State, 319 S.C. 59, 459 S.E. 2d 838 (1995).

The state charged the petitioner "with the identical felony D.U.I. two counts "while counsel ill-advised petitioner to agree to plead guilty and received "two consecutive 22 years sentence for each offense a total of 44 years, on account of a single incident. Plea counsel was ineffective for failing to negotiate a plea favorable to the defendant. See: Bell v. State, Supra. Thus, counsel was ineffective for failing to appeal the sentence, and defendant did not wave his right to appeal.

See: Transcript pages 7, lines 1-4. THE COURT: The judge stated furthermore, if you have a jury trial or if you're not happy with something that happened at that trial or this plea, you can appeal it but you got to do so within 10 days. Do you understand that? Defendant: stated yes sir. The applicant contends due to his illiteracy to the Law he was entitled to rely upon his counsel to make reasonable decision. Pursuant to U.S. v. Dewalt, 92 F. 30 1209 without some authoritative guidance the defendant did not understand the appeal process, from the guilty plea. Counsel failure to advised the applicant of his appeal. The counsel must ensure that a criminal defendant is made fully aware of his appeal right White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1994). A gross miscarriage of Justice. See Butler v. State, 297 S.E. 2d 87 (S.C. 1990) in the applicant case the applicant has not had under judicial circumstances, a full fair bite at the apple.

See Aice v. State, 409 S.C. 2-395 (S.C. 1991). Anders requires appellate counsel to brief arguable issues despite counsel's belief the appeal is frivolous, as a safeguard of the rights to appeal.

Applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence. "Rule 71.1 (e), SCRPC. normally, if trial counsel fails to file a Notice of appeal, error is proven, and a belated appeal is granted. In re Anonymous member of the bar, 303 S.C. 306, 400 S.E. 2d 483 (1991). However, in this case the facts support a clear conclusion of error on the part of trial counsel. In determining whether an attorney should consult with the criminal defendant concerning an appeal the totality of the circumstances must be considered Id. In examining the totality of the circumstances courts should consider; (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonable demonstrated to counsel that he was interested in appealing. Id. where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights the applicant may petition the South Carolina supreme court for review.

The defendant is precluded from exhausting all available state remedies, state remedies are not deemed exhausted until the applicant utilized all procedures available under state law to raise his claim. See Id. § 2254(c). The applicant satisfies the exhaustion requirement by properly pursuing a claim throughout the entire appellate process of the state. See Justice of Boston Munn Court v. Lydon, 466 U.S. 294, 302-03 (1984) (exhaustion requirement satisfied by presentation of claim on appeal to state supreme court from denial of motion to dismiss) see e.g. McCandless v. Vaughn, 172 F. 3d 255, 260 (3d cir. 1999), (exhaustion requirement satisfied only when applicant has exhausted remedies available in court of state).

Rust v. Zent, 17 F. 155, 160 (6th cir. (1994) (exhaustion requirement satisfied by filing required application in state, appellate and supreme court. Wayne v. Missouri, Bd. of probation & parole, 83 F. 3d 994, 996 (8th cir. 1996) (exhaustion requirement satisfied when petitioner presented Federal claims in full round of litigation before state trial and appellate courts even though relitigation in state forum though another procedural device possible).

The direct appeal issues pursuant to White v. State; see rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E. 2d 60 (1986).

The defendant have been informed by the clerk of the supreme court the Honorable Daniel E. Shearous, since relief under Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), is sought by filing an application for post-conviction relief in the circuit court. C F 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). The 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, 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).

After trial counsel refused to perfect an appeal the applicant began the appeal process pro-se with Notice of intent to appeal, and request for appellate defense assistance with Notice, note Rule 71.1 is based in part on former supreme court Rule 50(1)-(8) and has no counterpart in the federal Rule 71.1 was added by order of the supreme court on April 17, 1990, and became effective: September 1, 1990.

South Carolina PCR case Law. Austin v. State, 305 S.C. 453, 409 S.E. 2d 345 (1991) state. "The right to seek appellate review of the denial of (PCR) is expressly authorized by state Law S.C. code ANN. § 17-27-100 (1995), supreme court Rule 50(g).

Whether such review is granted is discretionary with court. Knight v. State, 284 S.C. 138, 325 S.E. 2d 535 (1985).

Although the South Carolina supreme court recently held in Austin v. state, OP. No. 23256 (filed 8/27/90), that post-conviction relief counsel may be found to be ineffective that decision only addresses post-conviction relief counsel's failure to file a Notice of appeal from the denial of an application for post-conviction relief. The court finds that Austin does not extend to general effectiveness of counsel during the course of the post-conviction relief proceeding or appeal there from but rather is limited to counsel's failure to file an appeal from the denial of the application for post-conviction relief. See Aice v. State, S.Ct. OP. No. 23476 (filed September 9, 1991).

The applicant contends due to his illiteracy to the Law he was entitled to rely upon his counsel to make reasonable decision. Pursuant to U.S. v. Dewalt, 92 F. 30 1209 without some authoritative guidance the defendant did not understand the appeal process, from the post-conviction relief hearing. Counsel failure to advised the applicant of his appeal rights. The counsel must ensure that a criminal defendant is made fully aware of his appeal rights White v. State, 263 S.C. 110, 208 S.E. 26, 35 (1974). A gross miscarriage of justice. See Butler v. State, 297 S.E. 2d 87 (S.C. 1990) in the applicant's case the applicant has not had under judicial circumstances, a full fair bite at the apple.

Suggests that Corley did not voluntarily waive his direct appeal. This court has ruled, in Odom v. State, 337 S.C. 256, 523 S.E. 2d 753 (1999), that the one year statute of limitations required by S.C. code ANN. § 17-27-45(A), does not apply to Austin appeals. Austin appeals do not have to be filed within the one year statute of limitations because they are belated appeals intended to correct unjust procedural defects. A petitioner is entitled to an Austin appeal if PCR judge affirmatively finds either that (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. Odom, 337 S.C. at 262, 523 S.E. 2d at 756.

We extend our reasoning in Odom and Austin to the instant situation. A defendant has the procedural right to one fair bite at the apple. That is every defendant has a right to file a direct appeal and one PCR application. In this case, Corley has not had "one bite at the apple" since he did not receive a direct appeal from his conviction.

See Poston v. State, 339 S.C. 37, 528 S.E. 2d 422 (2000); Odom. Just as it was in Odom, Austin's policy would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied appeal due to ineffective assistance of trial counsel, and then was denied his right to a PCR application because of the one year statute of limitations.

conclusion

Wherefore, Defendant prays, This Honorable court will allow him to have his fair bite at the apple to this belated appeal review that being file with the Aiken county clerk of court.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
THE SECOND JUDICIAL CIRCUIT

Stephen Corley, # 347938)
Applicant,)

CASE NOS. 2011-GS-02-636
2011-GS-02-637
2011-GS-02-638
2011-GS-02-639

VS.)

STATE OF SOUTH CAROLINA)
Respondent.)

CERTIFICATE OF SERVICE

I, Stephen Corley, # 347938, being duty sworn upon my oath, depose and say I have subscribed to the foregoing petition for Belated Appeal Review, that I know the contents thereof, that it includes every grounds known to me for vacating, setting aside or correcting the conviction and sentence in the above petition attacked in this request and that the matter and allegations therein set forth are true. I do hereby under oath and penalty of perjury certify that I have served copies of the documents upon the below party upon this exact date.

The Honorable Robert J. Harte
Clerk of court, Aiken county
Post Office Box 583
Aiken, South Carolina 29802

s/ Stephen Corley
Stephen Corley, # 347938

Sworn to and subscribed before me
This 24 day of November 2020

[Signature]
Notary Public For South Carolina
My Commission Expires: 7-27-2024

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Mr. Stephen Corley, # 347938
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South Carolina Court Of Appeals
Jenny Abbott Kitchings, Clerk
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