

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Sumter County

Honorable R. Knox McMahon, Circuit Court Judge

\_\_\_\_\_  
WAYNE D. COOPER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001507

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

TAYLOR D GILLIAM  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JANELL GREGORY  
Assistant Attorney General  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED  
JUL 22 2019  
S.C. SUPREME COURT

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**2012-CP-43-1286**

On June 25, 2013, Applicant filed his first application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

Respondent made its Return on January 24, 2013. An evidentiary hearing into the matter was convened on October 1, 2013, at the Sumter County Courthouse before the Honorable R. Knox McMahon. Applicant was present at the hearing and represented by David Holler, Esquire. Applicant's trial counsel testified. By Order filed December 9, 2013, Applicant's PCR application was denied and dismissed with prejudice. Applicant did not appeal the denial of his application.

**2014-CP-43-2626**

Applicant filed his second application for post-conviction relief on December 8, 2014, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel

- a. PCR Counsel failed to file an appeal or 59(e)
- b. Austin Appeal – Austin v. State, 409 S.E.2d 395

Respondent made its return and motion to dismiss all claims except failure to file an appeal from the denial of his first PCR action on March 27, 2015. An evidentiary hearing was convened on July 15, 2015 at the Sumter County Courthouse before the Honorable Steven H. John. Applicant was present and represented by Casey Cornwell, Esquire. Daniel Gourley, Esquire, of the South Carolina Office of the Attorney General, represented Respondent.

At the evidentiary hearing, Respondent consented to the granting of an appeal pursuant to Austin v. State of the first post-conviction relief application (2012-CP-43-1286). Judge John issued an Order granting Austin relief, signed on July 27, 2015, and filed September 17, 2015. Applicant did not file an appeal pursuant to the order to obtain the relief that was granted.

## II.

In his third and current application for post-conviction relief, Applicant claims he is being held unlawfully based on the following allegations:

1. Violation of due process and procedural irregularities when PCR counsel failed to file an appeal of his first and second PCR applications.

For the purposes of this Return, Respondent incorporates the Sumter County Clerk of Court records, Applicant's direct appeal records, Applicant's prior PCR records, the South Carolina Department of Corrections' records, and the application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

## III.

Respondent interprets Applicant's allegations as claims that the Applicant seeks a belated appeal of the denial of his prior PCR application. Respondent submits that this is a successive application. Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

However, Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Because an evidentiary hearing on this issue was previously held in Applicant's second post-conviction relief action, and because Respondent consented to the granting of Austin relief in his second post-conviction relief action and the notice of appeal to obtain this relief was never filed, Respondent again

consents to the granting of Austin relief for the belated appellate review of the denial of Applicant's first PCR action (2012-CP-43-1286).

IV.

The State therefore consents solely to the granting of a belated appeal from his previous PCR action (2012-CP-43-1286). Respondent denies and moves to dismiss any other allegations in the current application as untimely and successive. Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the State requests that Austin relief be granted and counsel be appointed to represent Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN  
Assistant Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for the Respondent

Columbia, South Carolina

*June 22*, 2018

RECORDED

STATE OF SOUTH CAROLINA )  
2018 JUN 25 PM 4:17 ) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER )  
JAMES D. CAMPBELL )  
CLERK OF COURT )  
SUMTER COUNTY, S.C ) 2018-CP-43-0114

WAYNE D. COOPER, #331763 )

Applicant, )

vs )

STATE OF SOUTH CAROLINA, )

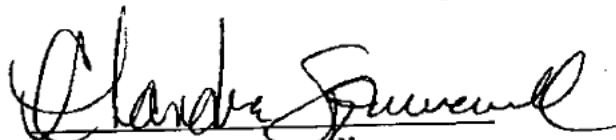
Respondent. )

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Timothy L. Griffith, Esquire  
360 West Wesmark Blvd., 2nd Floor  
Sumter, SC 29150

DATED this 22<sup>ND</sup> day of June, 2018.

  
Chandra E. Squirewell  
Legal Assistant For Respondent

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER  
IN THE COURT OF COMMON PLEAS

RECORDED

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2018CP4300114

Wayne D Cooper

2018 JUL 19 PM 3:15

South Carolina State of

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

JAMES S. CAMPBELL  
CLERK OF COURT  
SUMTER

*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

_____	2144	7/19/2018
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only



This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Wayne D Cooper  
Timothy Lee Griffith 360 W Wesmark Blvd Second Floor  
Sumter, SC 29150

Alan McCrory Wilson S.C. Attorney General's Office PO  
Box 11549 Columbia, SC 29211-1549

---

ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

*James C. Campbell*

---

Court Reporter

---

James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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RECORDED

2018 JUL 19 PM 1:43

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.ALAN WILSON  
ATTORNEY GENERAL

July 17, 2018

The Honorable James C. Campbell  
Clerk of Court, Sumter County  
215 North Harvin Street  
Sumter, South Carolina 29150

**Re: Wayne D. Cooper, #331763 v. State of South Carolina**  
**2018-CP-43-114**

Dear Ms. Lancaster:

Enclosed please find the original **Order Granting an Appeal Pursuant to Austin v. State**, signed by the Honorable R. Ferrell Cothran, in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our files.

Sincerely,

Julie A. Coleman  
Assistant Attorney GeneralJAC/ks  
Enclosure(s)

STATE OF SOUTH CAROLINA )  
 COUNTY OF SUMTER )

Wayne D. Cooper, #331763,

Applicant,

vs.

State of South Carolina,

Respondent.

RECORDED

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

2018 JUL 10

JAMES C. CAMPBELL 2018-CP-43-114  
 CLERK OF COURT  
 SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY  
 OF ORIGINAL FILED

*James C. Campbell*  
 DEPUTY CLERK OF COURT  
 SUMTER COUNTY  
 SOUTH CAROLINA

**ORDER GRANTING AN APPEAL  
 PURSUANT TO AUSTIN V. STATE**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 29, 2018. The Respondent made its return and motion to dismiss all claims except for failure to file an appeal from the denial of his PCR action. The Court has before it the Sumter County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the application, Respondent's return, and the prior PCR records.

**PROCEDURAL HISTORY**

The records before the Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the April 2007 term of the Sumter County Grand Jury for murder (2007-GS-43-277). Arthur Wilder, Esquire, represented him. On November 10-13, 2008, Applicant proceeded to a jury trial before the Honorable Howard P. King. On November 13, 2008, Applicant was found guilty as indicted. Judge King sentenced Applicant to forty years imprisonment.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Wayne Darnell Cooper, No. 2011-UP-544 (Ct. App. filed December 6, 2011). The Remittitur was sent on December 22, 2011.

**2012-CP-43-1286**

On June 25, 2013, Applicant filed his first application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

Respondent made its Return on January 24, 2013. An evidentiary hearing into the matter was convened on October 1, 2013, at the Sumter County Courthouse before the Honorable R. Knox McMahon. Applicant was present at the hearing and represented by David Holler, Esquire. Applicant's trial counsel testified. By Order filed December 9, 2013, Applicant's PCR application was denied and dismissed with prejudice. Applicant did not appeal the denial of his application.

**2014-CP-43-2626**

Applicant filed his second application for post-conviction relief on December 8, 2014, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel

- a. PCR Counsel failed to file an appeal or 59(e)
- b. Austin Appeal – Austin v. State, 409 S.E.2d 395

Respondent made its return and motion to dismiss all claims except failure to file an appeal from the denial of his first PCR action on March 27, 2015. An evidentiary hearing was convened on July 15, 2015 at the Sumter County Courthouse before the Honorable Steven H. John. Applicant was present and represented by Casey Cornwell, Esquire. Daniel Gourley, Esquire, of the South Carolina Office of the Attorney General, represented Respondent.

At the evidentiary hearing, Respondent consented to the granting of an appeal pursuant to Austin v. State of the first post-conviction relief application (2012-CP-43-1286). Judge John issued an Order granting Austin relief, signed on July 27, 2015, and filed September 17, 2015. Applicant did not file an appeal pursuant to the order to obtain the relief that was granted.

### **ALLEGATIONS**

In his third and current application for post-conviction relief, Applicant claims he is being held unlawfully based on the following allegations:

1. Violation of due process and procedural irregularities when PCR counsel failed to file an appeal of his first and second PCR applications.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

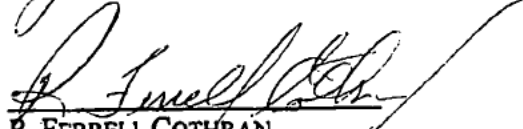
After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties have consented to the granting of an appeal pursuant to Austin v. State of Applicant's first post-conviction relief application (2012-CP-43-1286). The parties agree that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of Applicant's application for post-conviction relief. Prior PCR Counsel, David Holler, previously indicated Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a timely Notice of Appeal of the application.


Based upon the foregoing, this Court finds that the granting of an appeal of Applicant's first PCR (2012-CP-43-1286) pursuant to Austin v. State is warranted.

**IT IS THEREFORE ORDERED:**

1. That Applicant remain in the custody of the South Carolina Department of Corrections; and
2. That Applicant be granted an appeal of case 2012-CP-43-1286 pursuant to Austin v. State.

AND IT IS SO ORDERED this 24 day of June, 2018.

  
R. FERRELL COTHRAN  
Chief Administrative Judge  
Third Judicial Circuit

, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER )

INDICTMENT FOR  
 MURDER

At a Court of General Sessions, convened on April 5, 2007, the Grand Jurors of SUMTER County present upon their oath:

That DERICK LEON COOPER AND WAYNE DARNELL COOPER did in Sumter County on or about September 2, 2006, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Brandon Green by means of shooting him, and that the said Brandon Green did die as a proximate result thereof.

CERTIFIED TRUE COPY  
 OF ORIGINAL FILE  
*Barbara Harper*  
 DEPUTY CLERK OF COURT  
 SUMTER COUNTY  
 SOUTH CAROLINA

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*C. Kelly Jackson*  
 \_\_\_\_\_  
 SOLICITOR

DOCKET NO. 2007-GS-43- 277

The State of South Carolina

County of SUMTER

WITNESSES

SHERIFF'S OFFICE

Turner

COURT OF GENERAL SESSIONS

APRIL TERM 2007

THE STATE

vs.

DERICK LEON COOPER

WAYNE DARNELL COOPER

ARREST WARRANT NUMBER

J286901, J286902

D/A: 9/6/06

ACTION OF GRAND JURY

*True Bill*

*T Chandler Streett*

Foreperson of Grand Jury

Date: *4/5/07*

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

MURDER

C. KELLY JACKSON, SOLICITOR

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR MURDER WITH THE AFORESAID NAME OF DERICK LEON COOPER and WAYNE DARNELL COOPER SHOWN THEREON:

COUNT TWO – ACCESSORY AFTER THE FACT OF A FELONY

That DERICK L. COOPER did in Sumter County on or about September 2, 2006, render assistance to a felon, namely, Wayne Cooper who, on or about September 2, 2006, committed the crime of murder.

CERTIFIED TRUE COPY  
OF ORIGINAL FILE

*Barbara Hays*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

*P. Kelly Jackson*  
SOLICITOR

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER )

INDICTMENT FOR  
 MURDER

At a Court of General Sessions, convened on December 31, 2008, the Grand Jurors of SUMTER County present upon their oath:

That DERICK LEON COOPER AND WAYNE DARNELL COOPER did in Sumter County on or about September 2, 2006, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Brandon Green by means of shooting him, and that the said Brandon Green did die as a proximate result thereof.

CERTIFIED TRUE COPY  
 OF ORIGINAL FILE  
*Barbara Shagan*  
 DEPUTY CLERK OF COURT  
 SUMTER COUNTY  
 SOUTH CAROLINA

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*P. Kelly Jackson*  
 SOLICITOR

AMENDED

DOCKET NO. 2007-GS-43-277

11/13/08

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY TERM 2009

THE STATE  
vs.

DERICK LEON COOPER

WAYNE DARNELL COOPER

WITNESSES

SHERIFF'S OFFICE

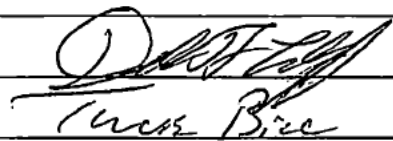
Turner

ARREST WARRANT NUMBER

J286901, J286902

D/A: 9/6/06

ACTION OF GRAND JURY

  
Lucas Bice

Foreperson of Grand Jury

Date: 31 DECEMBER 2008

VERDICT

Indictment for

MURDER

Foreperson of Petit Jury

Date:

C. KELLY JACKSON, SOLICITOR

1017