

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY  
Diane S. Goodstein, Circuit Court Judge

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2014-CP-38-0682

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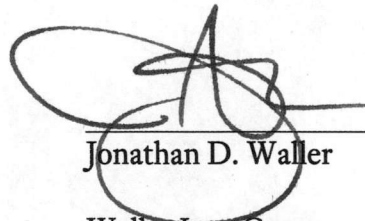
Lindy Lamont Jones, # 335250,  
Appellant,  
v.  
STATE OF SOUTH CAROLINA,  
Respondent.

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NOTICE OF APPEAL

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Lindy Lamont Jones, # 335250, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed December 6, 2012, issued by the Honorable Carmen T. Mullen, Presiding Judge, First Judicial Circuit as allowed by Amended Consent Order Granting Right to Seek Belated Appellate Review Pursuant to Austin v. State filed August 23, 2021, issued by the Honorable Diane S. Goodstein, Resident Judge, First Judicial Circuit.



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Jonathan D. Waller

Waller Law Group  
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**RECEIVED**

SEP 08 2021

S.C. SUPREME COURT

Columbia, SC 29201  
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ATTORNEY FOR PETITIONER

September 2, 2021

**Other Counsel of Record:**

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FILED FOR RECORD  
WINNIFA B. CLARK

ATTEST: TRUE COPY

*Winnifa B. Clark*

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS OF COURT  
COUNTY OF ORANGEBURG ) PH 12 FOR THE FIRST JUDICIAL CIRCUIT ORANGEBURG COUNTY, SC

Lindy Lamont Jones, #335250 ) GA. No. 2014-CP-38-0682  
Applicant )

CLERK OF COURT  
ORANGEBURG, SC

vs. )

AMENDED<sup>1</sup> CONSENT ORDER GRANTING  
RIGHT TO SEEK BELATED APPELLATE  
REVIEW PURSUANT TO AUSTIN V. STATE<sup>2</sup>

State of South Carolina, )  
Respondent. )  
\_\_\_\_\_ )

This matter comes before the Court by way of an application for post-conviction relief filed on May 14, 2014, by Applicant Lindy Lamont Jones, seeking belated appellate review of the denial of his initial post-conviction relief action. In response, Respondent made its Return on August 14, 2017. An evidentiary hearing on the matter was convened on December 14, 2017, before the Honorable Kristi L. Harrington, then-circuit court judge. The sole issue before the Court was whether Applicant was entitled to seek belated appellate review of the denial of his first post-conviction relief action pursuant to Austin and the State consented to their limited relief. At the conclusion of the hearing, Judge Harrington granted relief and asked Applicant to submit a proposed order for the Court's review.

It appears Judge Harrington then signed an order granting Applicant the right to seek belated appellate review and this order was sent to the Orangeburg County Clerk of Court for filing. The public index reflects that a "Consent Order Granting Right to Seek Belated Appellate Review" was filed on May 7, 2018, but a copy of this order was not sent to either party.

<sup>1</sup> As will be discussed below, an original order granting Applicant the right to seek belated appellate review was signed by Judge Harrington and sent directly to the Orangeburg County Clerk of Court's Office for filing, and there is a notation on the public index that the order was filed on May 7, 2018, but the Clerk's Office cannot find a copy of the order. Neither party has a copy of the order, and, accordingly, this amended order is being issued with the consent of both parties.

<sup>2</sup> Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

Additionally, the order cannot be located by the clerk's office.

Judge Harrington then retired from the bench before the original order could be located or an amended order was issued. Accordingly, this Court is issuing this order pursuant to Rule 63, SCRPC, with the consent of both parties. As provided in Rule 63, SCRPC, this Court has been provided with and thoroughly reviewed the entire record, including the transcript of the evidentiary hearing before Judge Harrington. After this review of the record, this Court certifies familiarity with the record and determines that the matter may be completed based on the record without prejudice to the Applicant or Respondent. Moreover, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

### **PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the April 2009 term of the Orangeburg County Grand Jury for criminal sexual conduct with a minor-victim 16 years of age or under (2005-GS-38-1817). He was represented by Assistant Public Defenders Sara Ford and Douglas Mellard of the Orangeburg County Public Defender's Office. Assistant Solicitors Bryan Jeffries and Tommy Scott of the First Circuit Solicitor's Office prosecuted the case. On June 8-10, 2009, Applicant proceeded to a jury trial before the Honorable James C. Williams, Jr., circuit court judge, wherein Applicant was convicted of the lesser-included offense of assault with intent to commit criminal sexual conduct with a minor. Applicant was sentenced by Judge Williams to a term of imprisonment of sixteen years.

A notice of appeal was filed on the Applicant's behalf. Appellate Defender Elizabeth A.

Franklin-Best of the South Carolina Commission on Indigent Defense-Office of the Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on August 19, 2011. State v. Jones, Op. No. 2011-UP-396 (S.C. Ct. App. filed August 19, 2011). The Remittitur was returned to the circuit court on September 8, 2011.

**First PCR Application: 2011-CP-38-1240**

Applicant filed his first PCR application, alleging the following grounds for relief:

1. Ineffective assistance of counsel.
  - a. "Counsel failed to properly object to jury charge."
2. "U.S. Constitutional Violation(s) 14<sup>th</sup>."
  - a. "Lack of subject matter."
  - b. "Denial of due process and equal protection."

Respondent filed its return on February 14, 2012. An evidentiary hearing was held on October 31, 2012, before the Honorable Carmen T. Mullen, circuit court judge. Charles H. Williams, III, Esquire, appearing on behalf of C. Bradley Hutto, Esquire, represented Applicant. Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office, represented Respondent. Judge Mullen denied and dismissed the application with prejudice by written order signed November 29, 2012, and filed on December 6, 2012. Applicant, though counsel, was served with this order on December 12, 2012.

On December 28, 2012, Applicant filed *a pro se* motion pursuant to Rule 59(e), SCRCP, to alter or amend the judgment. On January 11, 2013, counsel Williams filed a subsequent motion to alter or amend. Respondent made its return to the motion and asked that it be summarily dismissed as untimely and without merit. By order filed on February 11, 2013, Judge

Mullen issued an order summarily dismissing the motion as untimely and without merit.

Applicant then filed an appeal of the denial of his post-conviction relief action. The Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals pursuant to Rule 243(l), SCACR. On March 21, 2014, the South Carolina Court of Appeals dismissed the appeal as untimely. The Remittitur was issued on April 24, 2014. Applicant then attempted to file his own *pro se* motion to reinstate the appeal, which was stricken because he was represented by counsel.

### **ALLEGATIONS IN CURRENT ACTION**

In his current application, Applicant alleges he is being held in custody unlawfully for the following reason:

1. "Ineffective Assistance of PCR Counsel"
  - a. "PCR Counsel failed to subpoena witnesses/produce exhibits"
  - b. PCR Counsel failed to file a timely motion to alter of Amend. 59(e)"
2. Austin Claim
  - a. "PCR Counsel failed to timely file for appellate review"

Respondent made its return on August 14, 2017, consenting to Applicant's ability to seek belated appellate review pursuant to Austin. Attached to this return were the records from Applicant's general sessions matter, direct appeal, prior post-conviction relief action and subsequent appeal, and the records from this current action.

This Court has reviewed all these records in addition to the transcript from the proceeding before Judge Harrington in accordance with Rule 63, SCRCP.

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

This Court reviewed the record in its entirety, including the transcript from the evidentiary hearing. After this thorough review of the record as required under Rule 63, SCRCP, this Court finds no additional proceedings are necessary and a ruling can be rendered based on

the record. Furthermore, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

Applicant alleges he was denied the right to seek an appeal following the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his or her PCR application.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of allegations in Applicant's post-conviction relief application, the parties below have consented to the granting of an appeal of Applicant's first post-conviction relief application (2011-CP-38-1240) pursuant to Austin. The parties agree Applicant did not voluntarily waive his right to seek an appeal of the post-conviction relief court's denial and dismissal of Applicant's first application for post-conviction relief. Based on the documents submitted from the previous PCR file, it appears to the parties and this Court Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief, and PCR counsel failed to file a timely Notice of Appeal of the application.

At the hearing before Judge Harrington, Counsel for Applicant attempted to argue Marlar v. State, 653 S.E.2d 266, 375 S.C. 407 (S.C., 2007), McCray v. State, 408 S.E.2d 241, 305 S.C. 329 (S.C., 1991), Pruitt v. State, 423 S.E.2d 127, 310 S.C. 254 (S.C., 1992), and Simmons v. State, 788 S.E.2d 220, 416 S.C. 584 (S.C., 2016) in support of Applicant's position that the issues not ruled upon in his original PCR should be ruled upon. Judge Harrington previously found this issue was not properly before the Court and as such declined to rule on Applicant's

arguments. This Court agreed.

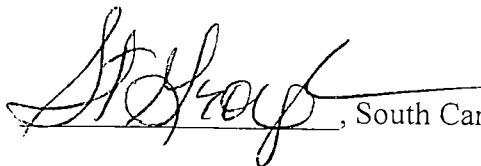
Based upon the foregoing, this Court finds granting Applicant's request to seek belated appellate review of his first PCR (2011-CP-38-1240) pursuant to Austin, is warranted. Counsel for the State and Applicant's current PCR counsel consented to the granting of leave to pursue a PCR appeal in this matter. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

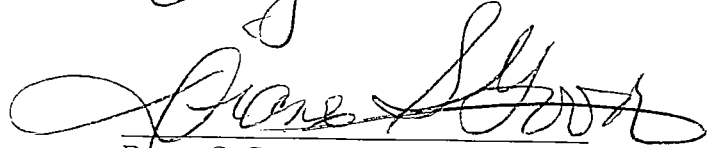
This Court also grants Respondent's motion to dismiss, with prejudice, all allegations beyond Austin review as they are successive, filed after the expiration of the statute of limitations, and are improper because they fail to state a claim cognizable under the Uniform Post Conviction Relief Procedure Act. S.C. Code Ann §17-27-10 to -160.

**IT IS THEREFORE ORDERED:**

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appellate review of his initial post-conviction relief action (C/A No. 2011-CP-38-1240) pursuant to Austin.

AND IT IS SO ORDERED this 18 day of August, 2021.

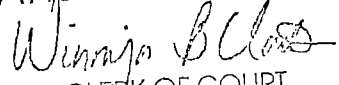
 , South Carolina.

  
DIANE S. GOODSTEIN  
Resident Judge  
First Judicial Circuit

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S.C. SUPREME COURT

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CLERK OF COURT  
ORANGEBURG COUNTY, SC



State of South Carolina  
The Circuit Court of the First Judicial Circuit

DIANE SCHAFER GOODSTEIN  
JUDGE

POST OFFICE BOX 234  
ST. GEORGE, SOUTH CAROLINA 29477  
TELEPHONE: (843) 832-0332  
FAX: (843) 832-0389  
E-MAIL: dgoodstein@cscourts.org

August 19, 2021

Orangeburg County Clerk of Court  
Attn: PCR  
Post Office Box 9000  
Orangeburg, SC 29116

Re: Lindy Lamont Jones #335250 v. State of South Carolina  
Case No.: 2014-CP-38-00682

CLERK OF COURT  
ORANGEBURG, SC  
AUG 19 2021 PM 12:03  
WANDA B. CLARK

Dear Sir or Madam:

I have enclosed signed original order in regards to the above referenced matter. Please file and forward a clocked copy to all parties.

Thank you for your assistance in this matter. Please do not hesitate to give me a call should you have any questions.

Sincerely,

Karen "Kaye" M. Parker  
Administrative Assistant to  
Judge Diane S. Goodstein

Enclosure

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