

The Supreme Court of South Carolina

Steve Lester, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000665

ORDER

In 1975, petitioner pled guilty to murder and two counts of armed robbery. *State v. Lester*, 1975-GS-23-00430, -00427 and -429. Since that time, he has filed at least ten post-conviction relief (PCR) applications challenging these convictions.¹

Petitioner has now filed a petition with this Court seeking a belated appeal from the denial of PCR in 1998-CP-23-01108 pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). While normally this petition would simply be dismissed because *Austin* relief must be sought by filing a new PCR application in the circuit court, this Court has decided to address this petition since it is so clearly without merit.

The final order in the 1998 case, which is dated March 24, 1999, dismissed the action based on petitioner's request to withdraw the matter. The order indicates that the court questioned the petitioner about the voluntariness of this request.


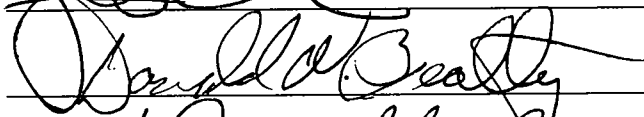

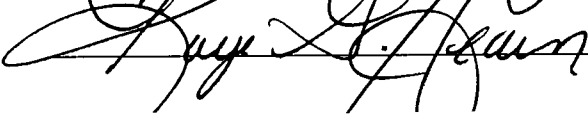
¹ According to the conditional order in 2011-CP-23-03285, which is contained in Appellate Case No. 2012-213422, these cases are: 1995-CP-23-01911, 1998-CP-23-01108, 2003-CP-23-01171, 2004-CP-23-00779, 2006-CP-23-01917, 2006-CP-23-04971, 2007-CP-23-02452, 2008-CP-23-01261, 2009-CP-23-01211 and 2011-CP-23-03285. Based on correspondence petitioner has provided, it appears that he may have also filed an eleventh PCR application earlier this year.

Under *Rush v. State*, 368 S.C. 144, 628 S.E.2d 42 (2006), an appeal cannot be taken from this order. Therefore, petitioner has not been denied any right to appeal from this order.

To the extent petitioner may be arguing that his decision to withdraw the 1998 case was not knowing and voluntary, this was an issue that should have been raised to the circuit court by a timely motion under either Rule 52 or 59, of the South Carolina Rules of Civil Procedure (SCRCP), *Rush, supra*, or at the latest, potentially under Rule 60(b), SCRCP. The time to make these motions to the circuit court has long since expired.

Accordingly, the petition is denied.

Finally, this Court hereby prohibits petitioner from filing any further PCR applications, habeas corpus petitions or other actions collaterally challenging the above criminal convictions and sentences in the circuit court without first obtaining the permission of this Court to make such a filing.


C.J.

J.

J.

J.

Pleicones, J., not participating

Columbia, South Carolina
April 17, 2013

cc: Office of the Attorney General
Mr. Steve Lester, #75259
Division of Appellate Defense
The Honorable Paul B. Wickensimer