

Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Doyet A. Early, III, Circuit Court Judge

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S.C. Supreme Court

JORGE A. RODRIGUEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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South Carolina Commission on Indigent
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Jessica Thill - Direct examination
by Mrs. Magargle

1 back here?

2 A Yes, both subjects were both then extradited back to
3 Spartanburg County, and Judge Cole unsealed the sentence. I
4 believe it was around April 2nd of 2004.

5 MRS. MAGARGLE: Your Honor, I believe that's all I
6 have.

7 THE COURT: Cross.

8 MR. ALFORD: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. ALFORD:

11 Q This statement you made about Juan having a cell phone
12 conversation with Mr. Warder, Mr. Warder was Juan's
13 attorney?

14 A Yes, sir.

15 Q Now, did you -- were you part of that conversation?

16 A I was not. But I was there---

17 Q Well---

18 A ---while he was on the telephone. And I was also there
19 when he conveyed to the Court that Juan and other members
20 including I believe Jorge were in the parking lot, and that
21 they refused to come into the courthouse for trial.

22 Q Okay. But, but, again, in, in -- you got -- again,
23 that would be considered hearsay unless it would be on the
24 transcript, correct?

25 A It is in the transcript.

Jessica Thill - Cross-examination
by Mr. Alford

1 Q Can you point out where in the transcript that---

2 A I don't believe it refers to the cell phone
3 conversation in the courtroom. But I believe it refers to
4 Judge Cole specifically asked Mr. Warder did he tell you
5 he's not gonna appear and Mr. Warder says yes, sir, he did.

6 Q That -- and that's concerning Juan?

7 A Yes.

8 Q There's nothing in the transcript concerning Jorge
9 being present with Juan, does it?

10 A No, but I---

11 Q So all that is speculation or either rumor or opinion?

12 A No, I believe there was eye witnesses that saw them in
13 the parking lot.

14 Q Is it on the transcript to Judge Cole that Jorge was
15 with John?

16 A I don't believe it's in the transcript.

17 MR. ALFORD: Okay. No further questions, Your Honor.

18 THE COURT: You may step down.

19 WITNESS: Thank you, Your Honor.

20 THE COURT: Any additional witnesses?

21 MRS. MAGARGLE: Your Honor, we would just briefly
22 recall John to get something into evidence.

23 THE COURT: You got one letter you want to put in?

24 MRS. MAGARGLE: Yes.

25 THE COURT: You can stand right there.

1 MRS. MAGARGLE: I don't think there's any objection,
2 Your Honor, to these.

3 MR. ALFORD: No objection, Your Honor.

4 MRS. MAGARGLE: We'll just put them into evidence.

5 THE COURT: All right. Mark them.

6 MRS. MAGARGLE: Your Honor, just for the record, it is
7 the letter showing that he's or the envelope showing that he
8 sent it to 246 and the---

9 THE COURT: Bond sheet. Thank you.

10 MR. ALFORD: No objection.

11 (Whereupon, the bond sheet and envelope were marked as
12 State's Exhibit No. 1 and received into evidence at this
13 time.)

14 THE COURT: Anything else?

15 MRS. MAGARGLE: No, sir, Your Honor.

16 THE COURT: All right, sir. Anything you want to tell
17 me?

18 Mr. Alford, anything?

19 MR. ALFORD: Oh, no, sir. I'm sorry. I have no other,
20 no other witnesses.

21 THE COURT: All right, sir. I have carefully listened
22 to the testimony. I've reviewed the transcript of the trial
23 where Judge Cole made inquiry for both Mr. Warder and to
24 the, Mr. Gutierrez and I have also reviewed the case law
25 that you provided to me along with Rule 16 of the South

1 Carolina Rules of Criminal Procedure, and I find that the
2 testimony of the applicant is not credible. I find the
3 testimony of Ms. Thill and defense counsel to be credible,
4 and I find that the trial judge complied with the mandates
5 of Rule 16 and the record establishes the trial judge made
6 the requisite inquiry and findings and I dismiss the P.C.R.
7 application with prejudice.

8 MRS. MAGARGLE: Thank you, Your Honor.

9 THE COURT: State prepare me an order.

10 MRS. MAGARGLE: Thank you, Your Honor.

11 THE COURT: Please remind your client of his right to
12 appeal, Mr. Alford.

13 MR. ALFORD: Yes, sir.

14

15 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

16

17

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

2005-CP-42-449

Jorge Rodriguez, # 300992,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

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PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 17, 2005. An evidentiary hearing into the matter was convened on September 18, 2006, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by David C. Alford, Esquire. The Respondent was represented by Paula Magargle of the South Carolina Attorney General's Office.

The Applicant is currently in the custody of the South Carolina Department of Corrections pursuant to orders by the Spartanburg Clerk of Court. The Applicant was indicted at the February 2002 term of the Court of General Sessions for Spartanburg County for Trafficking in Cocaine (+200 g) (02-GS-42-0715), Possession of a Weapon During the Commission of a Violent Crime (02-GS-42-0715), and Pointing and Presenting (02-GS-42-0715). He was represented by John C. Gutierrez, Esquire. On December 9-11, 2005, Applicant was tried in his absence and found guilty of the indicted offenses. The Honorable J. Derham Cole, sentenced him to twenty-five (25) years for Trafficking and five (5) years for Possession of a Weapon and Pointing and Presenting. These sentences were run consecutively. The Applicant did not appeal his conviction or sentence.

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II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

The Applicant testified that counsel was ineffective for failing to give him notice of his trial date and failing to inform him he would be tried in his absence if he was not present. The Applicant testified that he was living on Cooper Bridge Road in Woodruff at the time of the trial. He received no mail at this house.

Trial Counsel's Testimony

Counsel testified that he sent a letter to the Applicant's last known address in Woodruff, informing him of the date of trial, but this letter was returned. Counsel also testified that he informed him of the trial date and that he would be tried in his absence if he failed to appear.

Maria Leatherwood's Testimony

Ms. Leatherwood testified that she attended the trial because of her connections with the defendants.

Solicitor's Testimony

Jessica Thill testified the Applicant was instructed at his bond hearing that he would be tried in his absence if he failed to appear. Ms. Thill also testified that the Applicant would have been required to inform the State of any change of address as a condition of his bond. Ms. Thill testified that the Applicant and his co-defendant were spotted at the courthouse on the day of the trial. The Applicant's co-defendant was on the phone with his attorney on the day of the plea. Ms. Thill testified that many of the Applicant's family members were present in the courtroom throughout the trial.

III. APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in

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their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Trial in Absence

Before a defendant's trial *in absentia* can begin, the trial judge must make a finding of fact regarding (1) whether the appellant had received notice of his right to be present, and (2) whether the appellant had been warned that the trial would proceed in his absence upon a failure to attend court. State v. Jackson, 288 S.C. 94, 341 S.E.2d 375 (1986).

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IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds trial counsel's testimony and solicitor's testimony to be credible. This Court finds the Applicant's testimony to be not credible.

This Court finds that counsel was not ineffective for failing to give the Applicant notice of his trial date. Counsel testified that he sent a letter informing the Applicant of the trial date to his last known address, but this letter was returned. (PCR transcript, page 10, line 15). Counsel also testified that he informed the Applicant of his trial date. (PCR transcript, page 15). Furthermore, this Court notes that counsel informed the trial judge that he told the Applicant over the phone of the trial date. He also told him as late as the week before trial that he would be tried in his absence if he failed to appear. (Trial transcript, page 12, lines 1-25).

Therefore, this Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. The Court finds that the Applicant cannot satisfy either requirement of the Strickland test.

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CONCLUSION

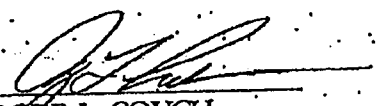
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of August, 2008.


 ROGER L. COUCH
 Presiding Judge
 Seventh Judicial Circuit

Spartanburg, South Carolina.

5

A CERTIFIED COPY

 CLERK OF COURT
 SPARTANBURG COUNTY
 BY: [Signature] D.C.
 DATED 8-11-08

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 SPARTANBURG COUNTY
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 MARC KITCHENS

510-A

State of South Carolina

Spartanburg County Court House
180 Main Street
Spartanburg, S.C. 29340
Phone (864) 596-2375
Fax (864) 596-2382

Cherokee County Court House
Flynn Baker Blvd.
Gaffney, S.C. 29340
Phone (864) 487-2576
Fax (864) 487-2753

TREY GOWDY

Solicitor, Seventeenth Judicial Circuit

September 5, 2003

John Gutierrez, Esquire
413 Garden Grove Court
Spartanburg, South Carolina 29302

Re: State v. Jorge Rodriguez

Dear Mr. Gutierrez:

The above case is currently set on the September 8, 2003 docket. The State had previously agreed to allow your client to plead to a negotiated sentence of 16 years. At this time, that offer has expired. The State will honor the negotiated sentence for this term of court. However, if your client has not plead guilty by Friday, September 12, 2003, all offers will be revoked and the case will be placed on the General Sessions trial docket for the December 8, 2003 term of court.

If you have any questions, please contact me at 864-596-2575

Sincerely,

Jessica J. Thill
Jessica J. Thill
Assistant Solicitor

JJT/rtr



510-B

John C. Gutierrez
Attorney at Law
413 Garden Grove Court
Spartanburg, SC 29302
(864) 542-8585

November 26, 2003

Jorge Rodriguez

Woodruff, SC

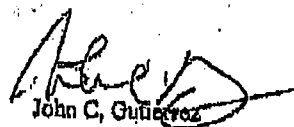
RE: trial date

Dear Jorge:

Please be advised that your Trial for Trafficking Cocaine has been scheduled for December 8, 2003, at 9:00 am at the Spartanburg County Court of General Sessions. Your cousin Juan will also be tried on this date, I've been told. Please contact me at once to discuss the trial strategy of your case.

I remain

Yours truly,


John C. Gutierrez

jcg



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
7TH JUDICIAL CIRCUIT

George Rodriguez, #300992
Applicant

CA: 2005-CP-42-0449

Vs

CERTIFICATE OF SERVICE

State of South Carolina
Respondent

I certify that, on this date, I served a copy of the order of dismissal
in this action dated August 6th, 2008 on August 8th, 2008

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in
and envelope with sufficient postage affixed, addressed as follows:

Michelle J. Parson's, Esq.
David C. Alford, Esq.
George Rodriguez, #300992

August 11th, 2008

(DATE)

Sharon Winstead

(SIGNATURE)

STATE OF SOUTH CAROLINA

County of SpartanburgJorge A. Rodriguez #300992
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2010-CP-42-0407

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst. P.O. Box 205,
Bridgeville, SC, 29472
2. Name and location of Court which imposed sentence: Spartanburg
County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Juan Rodriguez; Bro. Ketterwood
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2002-GS-42-0715 / Trafficking Cocaine

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SPARTANBURG COUNTY

- (b) 2002-GS-42-0715 Pointing Fire Arm
- (c) 2002-GS-42-0715 possession firearm.
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Dec. 11, 2003
- (b) SAME AS ABOVE
- (c) SAME AS ABOVE
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty
- (b) after a plea of not guilty Jury Trial
- (c) after a plea of nolo contendere
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii.
- iii.
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii.
- iii.
- (c) the date of each such result:
- i. N/A
- ii.
- iii.
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii.
- iii.
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel failed to file appeal

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SPARTANBURG COUNTY

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APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Jorge A. Rodriguez, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jorge Rodriguez
Applicant

SWORN or affirmed to and subscribed before me this
24th day of January, 2010.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

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SPARTANBURG COUNTY

MARC KITCHENS

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Jorge Rodriguez, #300992,	)	2010-CP-42-0407
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO
	)	DISMISS EXCEPT <u>AUSTIN</u> CLAIM
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed January 25, 2010, the Respondent would show this Court:

I.

The Applicant is currently in the custody of the South Carolina Department of Corrections pursuant to orders by the Spartanburg Clerk of Court. The Applicant was indicted at the February 2002 term of the Court of General Sessions for Spartanburg County for Trafficking in Cocaine over 200 grams (02-GS-42-0715, count 1), Possession of a Weapon During the Commission of a Violent Crime (02-GS-42-0715, count 2), and Pointing and Presenting (02-GS-42-0715, count 3). He was represented by John C. Gutierrez, Esquire. On December 9-11, 2005, Applicant was tried in his absence and found guilty of the indicted offenses. The Honorable J. Derham Cole sentenced him to twenty-five (25) years for Trafficking and five (5) years each for Possession of a Weapon and Pointing and Presenting, concurrent. Judge Cole also sentenced Applicant to serve the five year sentence consecutive to the twenty-five year sentence.. The Applicant did not appeal his conviction or sentence.

2005-CP-42-0449

The Applicant subsequently filed an application for post-conviction relief (PCR) on February 15, 2005. The State filed its Return on August 15, 2005. An evidentiary hearing was

convened on September 28, 2006, at the Spartanburg County Courthouse, at which the Applicant was present and represented by David C. Alford, Esquire. The Applicant raised the following issues in his first PCR:

I. Ineffective assistance of counsel.

The Honorable Roger L. Couch denied and dismissed Applicant's application by written Order on August 6, 2008. The Applicant did not appeal the denial of his PCR application. — no notice

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel;
2. Ineffective Assistance of PCR Counsel; in that,
 - a. "Numerous IAC claims were not adjudicated,"
 - b. "Prior PCR Counsel failed to file appeal from PCR," — A
 - c. "Petitioner did not receive full and fair hearing on merits;" and
3. Denial of Due Process.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records and the South Carolina Department of Corrections' records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has

taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application, with the exception of Applicant's Austin claim. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on December 11, 2005. The Applicant was therefore required to file his application before December 11, 2006. This Application was filed on January 25, 2010, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation . . ." Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Accordingly, Respondent requests an evidentiary hearing to fully resolve the issue.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of whether the Applicant was denied a right to appeal his previous post-conviction relief application. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law. Therefore, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

[signatures continued on next page]

SUZANNE H. WHITE
Assistant Attorney General

By: Mary A. Williams for
ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

JUNE 23 2010.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Jorge A. Rodriguez,

2010-CP-42-0407

Applicant,

vs.

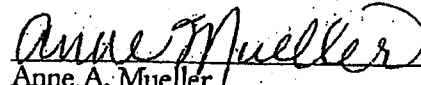
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

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 Respondent's Return and Motion to Dismiss Except Austin Claim in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

M. Terry Haselden, Esquire
P.O. Box 727
Spartanburg, South Carolina 29304-0727


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 23rd day of June, 2010.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Jorge A. Rodriguez

☐ Plaintiff

v.

State of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-42-0407

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
M. Terry Haselden, Bar No.
Address:
P.O. Box 727
Spartanburg, South Carolina 29304-0727
phone: fax:
e-mail: other:

Defendant's Attorney:
Suzanne H. White Bar No.
Address:
P.O. Box 11549
Columbia, SC 29211-11549
phone: (803) 734-3737 fax: (803) 734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the Return and Motion to Dismiss Except Austin Claim.

Nancy S. Williams
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant

June 23, 2010
 Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

- ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
 (check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF SPARTANBURG } COURT OF COMMON PLEAS NONJURY

3
 4 JORGE RODRIQUEZ,
 5 APPLICANT,
 6 VS.
 7 STATE OF SOUTH CAROLINA,
 8 RESPONDENT. }
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TRANSCRIPT
 OF
 RECORD
 2010-CP-42-0407

September 14th, 2010
 Spartanburg, South Carolina

B E F O R E :

THE HONORABLE ROGER L. COUCH, Judge.

A P P E A R A N C E S :

M. TERRY HASELDEN
 ESQ.
 Attorney for the Applicant

SUZANNE H. WHITE
 ESQ.
 Attorney for the Respondent

PAMELA E. GREEN
 Circuit Court Reporter
 Seventh Judicial Circuit

INDEX OF WITNESSES

(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

THE COURT: All right. Ms. White, you may proceed.

MS. WHITE: Thank you, Your Honor.

This is the case of Jorge Rodriquez versus the State of South Carolina. It's Case Number 2010-CP-42-0407. He's represented today by Mr. Terry Haselden.

Mr. Rodriquez was convicted, tried in his absence and convicted of trafficking cocaine, possession of a weapon during a violent crime, and pointing and presenting a firearm. Received a total sentence of 30 years. There was not a direct appeal. There was a prior PCR in September of '06, which was dismissed August of '08. He filed this application January 25th, 2010, alleging various claims, ineffective assistance of counsel, and ineffective assistance of PCR counsel for failing to file an appeal essentially requesting a belated PCR appeal.

So, we have made a motion to dismiss all of the claims with the exception of the Austin claim and I'll turn it over to Mr. Haselden at this time.

THE COURT: Mr. Haselden, how are you today?

MR. HASELDEN: I'm doing good, judge.

THE COURT: Yes, sir.

MR. HASELDEN: Judge, this is, is something of a bizarre situation, and I'm not sure really where to start.

1 My client is gonna testify that he did not receive a copy of
2 that prior order. Now, curiously, Mr. Alford is gonna
3 testify to the same thing, that he has no record of ever
4 receiving a copy of that prior order.

5 THE COURT: When you say prior order, are you talking
6 about---

7 MR. HASELDEN: Your order denying the PCR---

8 THE COURT: The PCR.

9 MR. HASELDEN: ---in '08.

10 THE COURT: Okay.

11 MR. HASELDEN: And, and that would -- you, you were the
12 one that sat on that case.

13 THE COURT: All right. Okay.

14 MR. HASELDEN: All right. But both are gonna say they
15 never received a copy of that order. So, I, I'm having
16 trouble working this through my feeble mind, but, but it
17 seems to me that if we take testimony, and, you know, you're
18 either gonna find that Mr. Alford got the order or he
19 didn't, and if you find that they didn't get the order,
20 then, you know, the first time my client saw the order is
21 when I gave him a copy of it this morning, which in that
22 case I assume he's entitled to an appeal.

23 But if you find, under the Mailbox Rule, that they
24 mailed it, that they're presumed to have received it, then,
25 under Austin, you know, he didn't file the appeal and I

1 think that's a prima facia case, more or less, of
2 ineffective assistance of counsel in which case he would be
3 entitled to, I guess, a belated appeal.

4 But it just seems to me like, under the facts, that
5 there's probably gonna have to be some relief somewhere, you
6 know. Either it's, either it's even in the granting of the
7 application for PCR or---

8 THE COURT: Well, let's hear what Ms. White has to say
9 about that.

10 MS. WHITE: Well -- and I -- we received the order
11 August 12th of 2008. It was served from the Clerk of
12 Court's office in Spartanburg accordingly to our office, Mr.
13 Alford, and Mr. Rodriguez. They, they have an affidavit or,
14 you know, the form that says they served it on that date.
15 We received it four days after they claim they served it.

16 So, you know, that is what I know about it. I do know
17 that Mr. Alford has told me that he never received the
18 order. So, obviously there was some kind of issue. I don't
19 know as to Mr. Rodriguez's receipt of the order. But I do
20 know that, you know, in the past, we have been able to
21 consent to a belated PCR appeal if the attorney agrees that
22 they did not receive it or didn't file the appeal. So --.

23 THE COURT: Are you consenting to a belated appeal?

24 MS. WHITE: I mean I think, unfortunately, based on
25 the, the testimony that's gonna be presented, I'm not gonna

1 be able to really have any testimony that, that can prove
2 one way or the other that, that Mr. Alford received the
3 order and just didn't file the appeal because he does say
4 that he did not receive the order. So, clearly an appeal
5 has not be filed, and he probably does, at this time, need
6 one based on the fact that they're just receiving the order.

7 THE COURT: All right. Well, Mr. Alford, as an officer
8 of the Court, I'll just ask you, did you receive a copy of
9 the order as far as you know?

10 MR. ALFORD: No, sir, we, we received the proposed
11 order submitted to you.

12 THE COURT: Yes, sir.

13 MR. ALFORD: Did not receive it back and,
14 unfortunately, it's just been sitting in my file waiting on
15 appeal, and I didn't realize the age of the case.

16 THE COURT: I understand.

17 MR. ALFORD: So---

18 THE COURT: All right. Well, I'm -- based on what I've
19 heard I will grant the belated appeal.

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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23

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 14th day of September, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 15th, 2011



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Jorge A. Rodriguez, #300992,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-0407

ORDER OF DISMISSAL WITH
PREJUDICE AND FINDINGS
PURSUANT TO AUSTIN V. STATE

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 25, 2010. The Respondent made its Return on June 23, 2010.

I.

The Applicant is currently in the custody of the South Carolina Department of Corrections pursuant to orders by the Spartanburg Clerk of Court. The Applicant was indicted at the February 2002 term of the Court of General Sessions for Spartanburg County for Trafficking in Cocaine over 200 grams (02-GS-42-0715, count 1), Possession of a Weapon During the Commission of a Violent Crime (02-GS-42-0715, count 2), and Pointing and Presenting (02-GS-42-0715, count 3). He was represented by John C. Gutierrez, Esquire. On December 9, 2005, Applicant was tried in his absence and found guilty of the indicted offenses. The Honorable J. Derham Cole sentenced him to twenty-five (25) years for Trafficking and five (5) years each for Possession of a Weapon and Pointing and Presenting, concurrent. Judge Cole also sentenced Applicant to serve the five-year sentence consecutive to the twenty-five year sentence.

The Applicant did not appeal his conviction or sentence.

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2005-CP-42-0449

The Applicant subsequently filed an application for post-conviction relief (PCR) on February 15, 2005. The State filed its Return on August 15, 2005. An evidentiary hearing was convened on September 28, 2006, at the Spartanburg County Courthouse, at which the Applicant was present and represented by David C. Alford, Esquire. The Honorable Roger L. Couch denied the Application by written Order filed August 8, 2008. The Applicant did not appeal the dismissal of his application.

2010-CP-42-0407

At the hearing on September 14, 2010, Applicant was present and represented by M. Terry Haselden, Esquire. At that time, the State consented to allow the Applicant to pursue a belated Austin appeal, but moved to dismiss any and all other PCR allegations. David C. Alford acknowledged at the hearing that he had never received a copy of the Order of Dismissal from the previous PCR and therefore, had never filed a Notice of Appeal. The Applicant stated that he wished to go forward only on the belated appeal issue and to withdraw all other allegations. The Applicant was sworn and questioned by the Court about his withdrawal request to ensure that the withdrawal of the Application was free and voluntary and that the Applicant had not been promised anything or threatened, coerced, or induced into withdrawing the application. The Applicant was informed and testified he understood that this withdrawal would be considered with prejudice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the evidence and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), the Court makes the following findings of fact and conclusions of law.

Appeal

State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (1985). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).¹

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to appellate review. The Court concludes that the Applicant is entitled to a belated review of the denial of his first application. The Applicant's lack of a PCR appeal can be remedied by a petition for belated review pursuant to Austin v. State, Id. This court notes that it will be necessary for counsel for the Applicant to appeal this order to secure appropriate review pursuant to Austin.

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MICHELE BRACKLEY

¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for... review (emphasis added)." Davis v. State, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

Plc
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All Other PCR Allegations

Based upon the Applicant's testimony, this Court finds that the dismissal of all allegations not related to the Applicant's belated Austin appeal is voluntary and that the Applicant has knowingly and intelligently elected to have said allegations dismissed with prejudice.

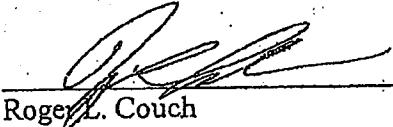
CONCLUSION

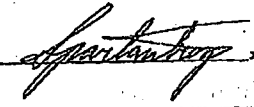
The Applicant has proven by a preponderance of evidence that his first post-conviction relief counsel failed to properly advise him of his appellate rights and that he is entitled to an appeal pursuant to Austin v. State. The Applicant voluntarily withdrew all other issues and allegations.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED WITH PREJUDICE**.
2. 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 the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 243² for the appropriate procedure for a belated appeal; and;
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 16th day of November, 2010.


Roger L. Couch
Presiding Judge

, South Carolina.

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M. HOPE BLACKLEY

² Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Presiding Judge

JORGE RODRIGUEZ, #300992,

Petitioner,

vs.

THE STATE,

Respondent,

**MOTION TO REMAND FOR CORRECTION
OF SCRIVENER'S ERROR AND
MOTION TO HOLD APPEAL IN ABEYANCE**

The State, by and through undersigned counsel, would respectfully show unto this Court:

1. Petitioner's Application for Post-Conviction Relief (2010-CP-42-0407) was voluntarily withdrawn after the State consented to allow the Petitioner to have a belated appeal of his previous Application for Post-Conviction Relief (2005-CP-42-0449), signed by the Honorable Roger L. Couch by Order dated November 16, 2010.
2. The judgment was entered on November 17, 2010, and a copy was mailed to the attorneys of record on November 18, 2010. A timely notice of appeal was filed.
3. Subsequent to service of the Notice of Appeal, it came to the parties' attention that the Original Order of Dismissal (2005-CP-42-0449) contained a scrivener's error, listing the presiding

judge as Roger L. Couch. This led to Judge Couch being sent the Order of Dismissal and signing the Order of Dismissal. However, it appears The Honorable Doyet A. Early III was the presiding judge in this matter.

4. Rule 60(a), SCRCF provides that, during the pendency of an appeal, leave to correct a clerical mistake in an order must be obtained from the appellate court.

5. Because scrivener's error was found after the Notice of Appeal was filed, Respondent moves this Court to remand the matter to the circuit court, so that the signed Order of Dismissal (2005-CP-42-0449) signed by Judge Couch can be vacated and Judge Early can sign the correct order.

6. Respondent also moves this Court to hold Petitioner's appeal in abeyance until this matter can be resolved.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

April 18, 2011.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBUG COUNTY
In The Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case Nos.: 2005-CP-42-0449
2010-CP-42-0407

JORGE RODRIGUEZ,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Remand for Correction of Scrivener's Error and Motion to Hold Appeal in Abeyance was served upon Petitioner by depositing the same in the United States mail, postage prepaid, addressed to his attorneys of record:

Wanda H. Carter, Esquire
SCCID, Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina, 29211

David C. Alford, Esquire
David C. Alford, PC
P.O. Box 6326
Spartanburg, South Carolina 29304

M. Terry Haselden, Esquire
P.O. Box 727
Spartanburg, South Carolina 29304

this 18th day of April, 2011.

Anne Mueller

Anne A. Mueller
Legal Assistant for Petitioner

SWORN to before me this
18th day of April, 2011.

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/28/2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

JORGE A. RODRIGUEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

RETURN TO MOTION TO REMAND
AND HOLD IN ABEYANCE

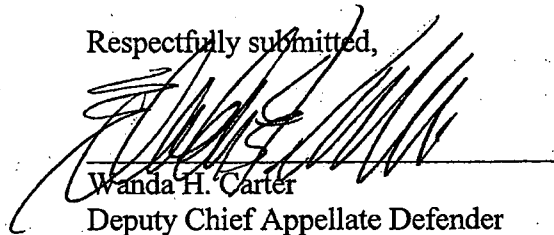
Pursuant to Rule 224(e) of the South Carolina Appellate Court Rules, petitioner's counsel submits the following return to the respondent's motion to remand and hold the case in abeyance. Counsel has no objections to the motion to remand to secure a proper order of dismissal, but counsel objects to the motion to hold the case in abeyance. Rather, counsel requests that the notice of appeal be re-filed after the proper order of dismissal has been signed and the appeal begin de novo. In support of this, counsel submits the following.

1.) The respondent seeks a remand to correct a scrivener's error in the order of dismissal issued in the case. The order of dismissal in the case was erroneously signed by Judge Roger L. Couch, rather than by the presiding judge, who was Judge Doyet A. Early.

- 2.) The undersigned counsel has no objections to the remand to secure a corrected order of dismissal signed by the proper judge.
- 3.) However, counsel objects to the request to hold the appeal in abeyance pending receipt of the properly signed order. The reason being that PCR counsel's notice of appeal also reflects the scrivener's error and names the judge in the case as Judge Couch, which corresponds with the erroneous order, as opposed to recording Judge Early as the presiding and proper judge on the notice of appeal. Therefore, counsel would request that the case remain open for 30 days after the proper order of dismissal is issued per Rule 203(b)(1), SCACR, in order to allow PCR counsel sufficient time to re-file a notice of appeal reflecting the proper judge's name in the case, which would in turn result in a de novo appeal.

WHEREFORE, the undersigned counsel has no objections to the remand to secure the proper order of dismissal, but objects to the holding of the case in abeyance, and instead requests that the case remain open pending receipt of a proper re-filed notice of appeal in the case in order for the appeal to begin de novo.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

April 28, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Roger L. Couch, Special Circuit Court Judge

JORGE A. RODRIGUEZ,

PETITIONER,

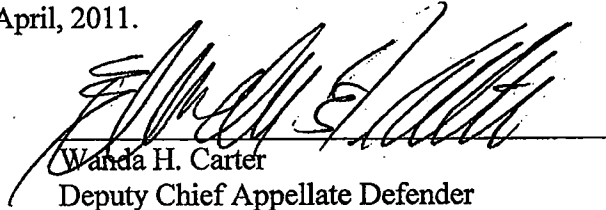
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

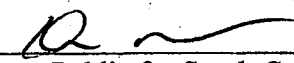
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the return to motion to remand and hold in abeyance in the above referenced case has been served upon Suzanne H. White, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, and on David C. Alford, Esquire, at P.O. Box 6326, Spartanburg, SC 29304, and on M. Terry Haselden, Esquire, at P.O. Box 727, Spartanburg, SC 29304, this 28th day of April, 2011.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 28th day of April, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013

The Supreme Court of South Carolina

Jorge A. Rodriguez, Petitioner,

v.

State of South Carolina, Respondent.

ORDER

This matter is before the Court by way of a notice of appeal from an order of dismissal issued by Judge Couch finding, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), that petitioner is entitled to a belated review of the denial of his first application for post-conviction relief (PCR).¹ The order indicates petitioner's first PCR application was denied by written order of Judge Couch filed August 8, 2008. Petitioner has provided the Court with a copy of the August 2008 order which is signed by Judge Couch.

However, the State has now filed a motion with the Court in

¹ The order indicates the State consented to allow petitioner to pursue an Austin appeal, but moved to dismiss all other PCR allegations. Petitioner's first PCR counsel, David C. Alford, acknowledged at the hearing that he never received a copy of the order of dismissal in the first PCR action and therefore had not filed a notice of appeal. Petitioner stated he wished to proceed only on the Austin claim and withdraw the remaining allegations. Judge Couch found petitioner did not knowingly and intelligently waive his right to appellate review of the denial of this first PCR application and therefore was entitled to a belated review pursuant to Austin.

which it reports that Judge Early, not Judge Couch presided over petitioner's first PCR hearing. The State moves the Court to remand the matter to the circuit court so that the order signed by Judge Couch can be vacated and Judge Early can sign the correct order. The State asks that the current appeal be held in abeyance pending correction of this "scrivener's error."

We hereby vacate the order of Judge Couch granting petitioner an Austin review of the order in the first PCR matter and dismiss this appeal. We also vacate the order of dismissal issued in the first PCR matter and remand the matter to Judge Early for whatever steps are necessary for the issuance of a proper final order, including obtaining a transcript of the original hearing if he is unable to recollect what occurred in the hearing. Judge Early shall have 60 days from the date of this order to issue an order on petitioner's first PCR application. Finally, David C. Alford is hereby reappointed for the purpose of representing petitioner on remand. Judge Early and the Attorney General's Office shall insure Mr. Alford receives written notice of entry of the new final order, along with a copy of the order. Mr. Alford shall thereafter consult with petitioner about his desire for an appeal if he is aggrieved by the new final order, and if petitioner so desire, to serve and file a timely notice of appeal on his behalf.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

Columbia, South Carolina

May 27, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Jorge Rodriquez, #300992,) 2005-CP-42-449
Applicant,)
v.) ORDER OF DISMISSAL
State of South Carolina,)
Respondent.)

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 17, 2005. An evidentiary hearing into the matter was convened on September 18, 2006, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by David C. Alford, Esquire. The Respondent was represented by Paula Magargle of the South Carolina Attorney General's Office.

The Applicant is currently in the custody of the South Carolina Department of Corrections pursuant to orders by the Spartanburg Clerk of Court. The Applicant was indicted at the February 2002 term of the Court of General Sessions for Spartanburg County for Trafficking in Cocaine (+200 g) (02-GS-42-0715), Possession of a Weapon During the Commission of a Violent Crime (02-GS-42-0715), and Pointing and Presenting (02-GS-42-0715). He was represented by John C. Gutierrez Esquire. On December 9-11, 2005, Applicant was tried in his absence and found guilty of the indicted offenses. The Honorable J. Derham Cole, sentenced him to twenty-five (25) years for Trafficking and five (5) years for Possession of a Weapon and Pointing and Presenting. These sentences were run consecutively. The Applicant did not appeal his conviction or sentence.

CLERK OF COURT
SPARTANBURG COUNTY
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II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

The Applicant testified that counsel was ineffective for failing to give him notice of his trial date and failing to inform him he would be tried in his absence if he was not present. The Applicant testified that he was living on Cooper Bridge Road in Woodruff at the time of the trial. He received no mail at this house.

Trial Counsel's Testimony

Counsel testified that he sent a letter to the Applicant's last known address in Woodruff, informing him of the date of trial, but this letter was returned. Counsel also testified that he informed him of the trial date and that he would be tried in his absence if he failed to appear.

Maria Leatherwood's Testimony

Ms. Leatherwood testified that she attended the trial because of her connections with the co-defendants

Solicitor's Testimony

Jessica Thill testified the Applicant was instructed at his bond hearing that he would be tried in his absence if he failed to appear. Ms. Thill also testified that the Applicant would have been required to inform the State of any change of address as a condition of his bond. Ms. Thill testified that the Applicant and his co-defendant were spotted at the courthouse on the day of the trial. The Applicant's co-defendant was on the phone with his attorney on the day of the plea. Ms. Thill testified that many of the Applicant's family members were present in the courtroom throughout the trial.

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III. APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Trial in Absence

Before a defendant's trial *in absentia* can begin, the trial judge must make a finding of fact

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regarding (1) whether the appellant had received notice of his right to be present, and (2) whether the appellant had been warned that ~~the~~ ^{the} trial would proceed in his absence upon a failure to attend court. State v. Jackson, 288 S.C. 94, 341 S.E.2d 375 (1986).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds trial counsel's testimony and solicitor's testimony to be credible. This Court finds the Applicant's testimony to be not credible.

This Court finds that counsel was not ineffective for failing to give the Applicant notice of his trial date. Counsel testified that he sent a letter informing the Applicant of the trial date to his last known address, but this letter was returned. (PCR transcript, page 10, line 15). Counsel also testified that he informed the Applicant of his trial date. (PCR transcript, page 15). Furthermore, this Court notes that counsel informed the trial judge that he told the Applicant over the phone of the trial date. He also told him as late as the week before trial that he would be tried in his absence if he failed to appear. (Trial transcript, page 12, lines 1-25).

Therefore, this Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense.

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attorney in this regard. Strickland v. Washington; Cherry v. State. The Court finds that the Applicant cannot satisfy either requirement of the Strickland test.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

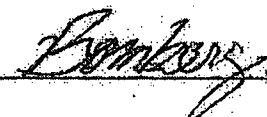
AND IT IS SO ORDERED this 9th day of June, 2011.

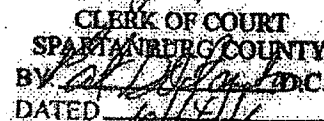

DOYET A. EARLY III

Presiding Judge

Seventh Judicial Circuit

A CERTIFIED COPY

 South Carolina

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SPARTANBURG COUNTY
BY 
DATED 6/14/11

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Doyet A. Early III

Case No. 2005-CP-42-449

Jorge Rodriguez Appellant

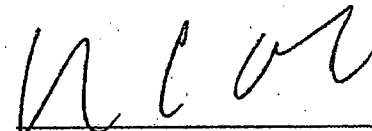
State of South Carolina Respondent

NOTICE OF APPEAL

The Appellant appeals the Order of Dismissal dated June 9, 2011 and recorded in the Clerk of Court Office June 14, 2011, and received June 16, 2011, denying Appellant's post-conviction relief.

Appellant requests waiver of any filing fee for this appeal.

June 16, 2011



David C. Alford, P.C.
Attorney for the Appellant-Petitioner
P.O. Box 6326
Spartanburg, South Carolina 29304

Other Counsel of Record:

Paula Margargle
P.O. Box 11549
Columbia, S.C. 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Doyet A. Early III

Case No. 2005-CP-42-449

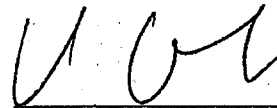
Jorge Rodriquez Appellant

State of South Carolina Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal and Appellant Counsel's Motion to be Relieved upon the Respondent by depositing a copy of same in the United States Mail, postage prepaid, on June 17, 2011, addressed to its attorney of record, Paula Magargle, P.O. Box 11549, Columbia, S.C. 29211, and upon the Appellant Jorge Rodriquez, # 300992, Edisto B-30 Lieber Correctional Institute PO Box 205 Ridgeville, SC 29472

June 17, 2011



David C. Alford, P.C.
Attorney for the Appellant-Petitioner
P.O. Box 6326
Spartanburg, South Carolina 29304

Other Counsel of Record:

Paula Magargle
P.O. Box 11549
Columbia, S.C. 29211

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Doyet A. Early III, Circuit Court Judge

2005-CP-42-0449

JORGE A. RODRIGUEZ,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**MOTION TO AMEND APPENDIX AND
HOLD TIME LIMITS IN ABEYANCE**

The Respondent hereby respectfully moves this Court to hold Respondent's time to respond to the Petition for Writ of Certiorari in abeyance and moves this Court for the following:

Motion to Supplement Appendix

- 1) Respondent's Motion to Remand, dated April 18, 2011.
- 2) Order of South Carolina Supreme Court, dated May 27, 2011.
- 3) Order of Dismissal signed by Judge Early, dated June 9, 2011.

These are part of the lower court record and are necessary for purposes of clarification. This Court requires that a Petition for a Writ of Certiorari include the *entire* lower court record. Rule

227(f)(1), SCACR (*emphasis added*). The Respondent submits that the above items are relevant to the instant proceeding and were presented to the lower court and filed with the clerk of court. These documents are material to this Court's review as to whether the lower court's decision is supported by probative evidence, as well as for clarification of the procedural history of this matter.

Motion to Amend Appendix Cover Pages

- 1) Correct title block from "Roger L. Couch, Special Circuit Court Judge," to "Doyet A. Early, III, Circuit Court Judge," on front page of Appendix Volumes I & II and Supplemental Appendix.

Respondent submits that the cover pages of the Appendices should be corrected to properly represent the fact that the appeal is now proceeding from the signed Order of Dismissal of Judge Early, rather than Judge Couch, as indicated from the May 27, 2011, Order from this Court.

Motion to Clarify and Motion to Strike Petitioner's Brief

Furthermore, Respondent moves that in order to clarify the matter on appeal and properly reflect that the appeal results from the Order of Dismissal of Judge Early, denying the Petitioner's first post-conviction relief application, Respondent submits that Petitioner's Petition for Writ of Certiorari addressing the granting of the belated appeal by Judge Couch should be stricken, and the language "Pursuant to Austin v. State," should be stricken from the second Petition.

The movant also requests that the time limits for response to the Petition for Writ of Certiorari be held in abeyance until this Court's ruling on the Motion to Supplement Appendix and Motion to Clarify and Strike. The movant further requests that this Court direct the Office of Appellate Defense to supplement the Appendix to include the entire lower court record with the materials listed above or in the alternative requests that the undersigned create and file the Second Supplemental Appendix and correct the Appendices cover pages.

Respectfully submitted,

ALAN WILSON
Attorney General

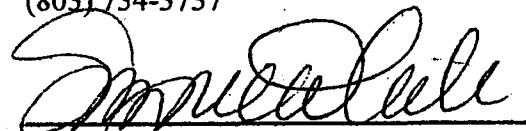
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By:


Attorneys for Respondent

March 19, 2012.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
In The Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2005-CP-42-0449

JORGE A. RODRIGUEZ,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

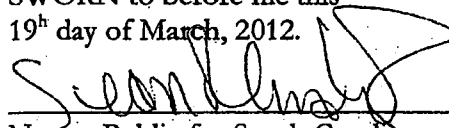
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Amend Appendix and Hold Time Limits in Abeyance was served upon Petitioner by depositing the same in the United States mail, postage prepaid, addressed to his attorney of record, Wanda H. Carter, Esquire, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina, 29211.


Anne A. Mueller
Legal Assistant for Petitioner

SWORN to before me this
19th day of March, 2012.


Notary Public for South Carolina

(L.S.)

My Commission Expires: My Commission Expires
January 30, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg CountyDoyet A. Early, III, Special Circuit Court Judge

JORGE A. RODRIGUEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

RETURN TO MOTION TO AMEND APPENDIX
AND HOLD TIME LIMITS IN ABEYANCE

Pursuant to Rule 224(e) of the South Carolina Appellate Court Rules, petitioner's counsel submits the following return to the respondent's motion to amend appendix and hold time limits in abeyance. In support of this return, counsel submits the following:

1.) Petitioner was tried in his absence during the December 2003 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole. Petitioner did not appeal.

2.) Petitioner filed a PCR application on February 17, 2005, and a PCR hearing was held on September 18, 2006, before Judge Doyet A. Early.

3.) On April 6, 2009, an order of dismissal was issued in the case, but the order was signed by Judge Roger L. Couch. No PCR appeal was taken from this action.

4.) On January 25, 2010, petitioner filed a PCR action requesting an Austin¹ appeal.

5.) An Austin hearing was convened on September 14, 2010, before Judge Couch whereinafter Judge Couch verbally granted petitioner's request for an Austin review.

6.) On November 16, 2010, Judge Couch issued a written order granting petitioner an Austin review.

7.) On April 18, 2011, the respondent filed a motion to remand stating that Judge Couch was not the presiding PCR judge, but rather it was Judge Early who was the presiding PCR judge. The respondent's motion follows.

- 1.) Petitioner's Application for Post-Conviction Relief (2010-CP-42-0407) was voluntarily withdrawn after the State consented to allow the Petitioner to have a belated appeal of his previous Application for Post-Conviction Relief (2005-CP-42-0449), signed by the Honorable Roger L. Couch by Order dated November 16, 2010.
- 2.) The judgment was entered on November 17, 2010, and a copy was mailed to the attorneys of record on November 18, 2010. A timely notice of appeal was filed.
- 3.) Subsequent to service of the Notice of Appeal, it came to the parties' attention that the Original Order of Dismissal (2005-CP-42-0449) contained a scrivener's error, listing the presiding judge as Roger L. Couch. This led to Judge Couch being sent the Order of Dismissal and signing the Order of Dismissal. However, it appears The Honorable Doyet A. Early III was the presiding judge in this matter.
- 4.) Rule 60(a), SCRCP provides that, during the pendency of an appeal, leave to correct a clerical mistake in an order must be obtained from the appellate court.

¹ 305 S.C. 453, 409 S.E.2d 395 (1991)

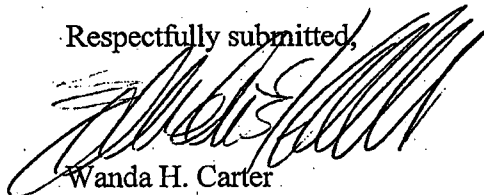
8.) Subsequently, this court issued an order vacating Judge Couch's order that granted an Austin review, and dismissed the Austin appeal, and remanded for Judge Early to issue a final order.

9.) However, since the last order issued was not captioned as a final order as required, but was rather captioned as an order of dismissal, then counsel for petitioner filed a petition and an Austin petition out of an abundance of caution to preserve the Austin issue, which was whether petitioner waived his right to appear at trial, because although Judge Couch's Austin order was vacated, there was a second PCR hearing held where the PCR judge ruled orally from the bench granting petitioner an Austin review.

10.) Therefore, inasmuch as the waiver of the right to appear at trial was addressed in the order in question (although it was not designated as a final order), this issue is nonetheless still preserved for appellate review. Therefore, petitioner has no objections to the motion to supplement appendix and amend appendix cover page or to the motion to strike the petition and file the Austin petition as a petition for writ of certiorari containing the question of the non-waiver of petitioner's presence at trial issue.

WHEREFORE, the undersigned counsel has no objections to the respondent's motion to amend appendix and hold time limits in abeyance.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

March 22, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Doyet A. Early, III, Special Circuit Court Judge

JORGE A. RODRIGUEZ,

PETITIONER,

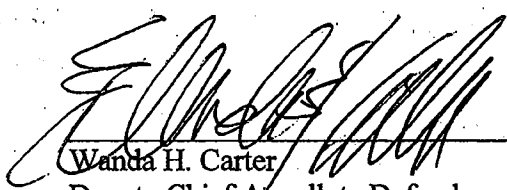
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

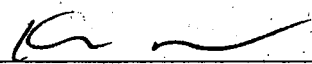
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the return to motion to amend appendix and hold time limits in abeyance in the above referenced case has been served upon Suzanne H. White, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 22nd day of March, 2012.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 22nd day of March, 2012.


Notary Public for South Carolina

My Commission Expires: October 2, 2013

The Supreme Court of South Carolina

Jorge Rodriguez,

Petitioner,

v.

State of South Carolina,

Respondent.

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ORDER

SC OFFICE OF
APPELLATE DEFENSE

This matter was originally before the Court by way of a notice of appeal from an order of dismissal issued by Judge Couch finding, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), that petitioner was entitled to a belated review of the denial of his first application for post-conviction relief (PCR). The order indicated petitioner's first PCR application was denied by written order of Judge Couch filed August 8, 2008. Petitioner provided the Court with a copy of the August 2008 order, which was signed by Judge Couch.

However, the State filed a motion with the Court in which it reported that Judge Early, not Judge Couch, presided over petitioner's first PCR hearing. The State moved the Court to remand the matter to the circuit court so that the order signed by Judge Couch could be vacated and Judge Early could sign the correct order. The State asked that the pending appeal be held in abeyance until this "scrivener's error" could be corrected.

By order dated May 27, 2011, we vacated the order of Judge Couch granting petitioner an *Austin* review of the order issued in the first PCR matter and dismissed the appeal. We also vacated the order of dismissal issued by Judge Couch in the first PCR matter and remanded the matter to Judge Early to take whatever steps were necessary for the issuance of a proper final order, including obtaining a transcript of the original hearing in the matter if he was unable to recollect what occurred at the hearing. Judge Early was given sixty days to issue the order.

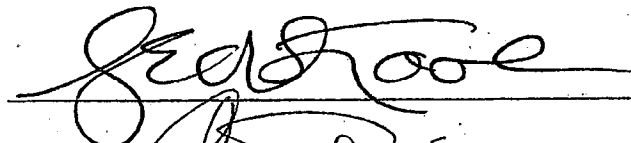
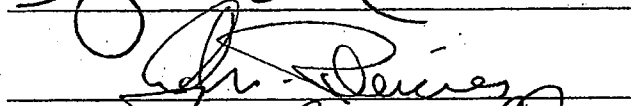
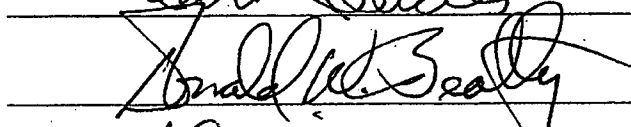
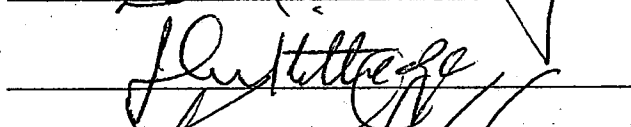
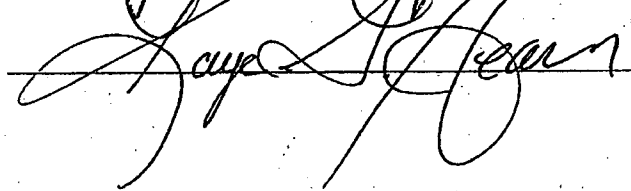
Judge Early issued an order of dismissal dated June 9, 2011, denying and dismissing petitioner's first PCR application. Petitioner filed a notice of appeal, and the Commission on Indigent Defense, Division of Appellate Defense, assumed representation of him in this matter. Wanda Carter has filed a Petition for a Writ of Certiorari and a Petition for a Writ of Certiorari Pursuant to *Austin v. State*. The appendix and supplemental appendix she filed list Judge Couch as the PCR judge and contain the records from the Austin proceeding.

The State has filed a motion to strike Ms. Carter's petition in order to "clarify the matter on appeal and properly reflect that the appeal results from the Order of Dismissal of Judge Early, denying the Petitioner's first post-conviction relief application." The State also submits the cover pages on the appendices should be corrected to properly represent the fact that the appeal is now proceeding from the order of dismissal of Judge Early rather than Judge Couch. Finally, the State moves to supplement the appendix with a copy of the State's motion to remand, a copy of this Court's order remanding the matter to Judge Early, and the order of dismissal issued by Judge Early.

Ms. Carter has filed a return in which she asserts that since the order issued by Judge Early "was not captioned as a final order as required, but was captioned as an order of dismissal," she filed a petition and an *Austin* petition "out of an abundance of caution to preserve the *Austin* issue, which was whether petitioner waived his right to appear at trial, because although Judge Couch's *Austin* order was vacated, there was a second PCR hearing held where the PCR judge ruled orally from the bench granting petitioner an *Austin* review." Ms. Carter submits that "inasmuch as the waiver of the right to appear at trial was addressed in the order in question (although it was not designated as a final order), this issue is . . . still preserved for appellate review." Accordingly, she states she has no objection to the motion to supplement the appendix and to amend the appendix cover page or to the motion to strike the petition and file the *Austin* petition as a petition for a writ of certiorari containing the question of the "non-waiver of petitioner's presence at trial."

We hereby strike the petitions and appendices filed by Ms. Carter. Within ten (10) days of the date of this order, Ms. Carter shall serve and file a

petition and appendix that are relevant to, and accurately reflect the procedural posture of, this case.

 C. J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

April 18, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Suzanne H. White

WITNESSES

D.W. TAYLOR

SPTG CO SHERIFF'S OFFICE

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2. ~~REPORT~~ ☒ **Computer**
3. ~~CARD~~ ☒ **Computer**
4. ~~INDEXED~~ ☒ **Computer**
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7. ~~ARREST~~ ☒ **Computer**
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9. ~~VIOLATIONS~~ ☒ **Computer**

ACTION OF GRAND JURY

True Bill,

W. G. Wilk

Foreperson of Grand Jury

Date: 2/21/02

VERDICT

COUNT I: guilty

COUNT II: guilty

COUNT III: guilty

Sheila Thompson

Foreperson of Petit Jury

Date: 12-11-03

DOCKET NO.

02-GS-42-

0115

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 25 2002

TERM

THE STATE
VS.

JORGE ALBERTO RODRIGUEZ

Indictment for

TRAFFICKING IN COCAINE AND POSSESSION OF A
FIREARM OR KNIFE DURING COMMISSION OF OR
ATTEMPT TO COMMIT A VIOLENT CRIME; POINTING OR
PRESENTING FIREARM

SC Code: 44-53-370; 16-23-490; 16-23-410

CDR Code: 0278; 0549; Class: FEL/E; FEL/F

Bw#13665 - Served 12-8-03

Served 12-31-03

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on FEB 21 2002, the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE - TRAFFICKING IN COCAINE

That Jorge Alberto Rodriguez did in Spartanburg County on or about November 28, 2001 knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (200) two-hundred grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING
 COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

That Jorge Alberto Rodriguez did in Spartanburg County on or about November 28, 2001 possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: TRAFFICKING IN COCAINE, in violation of Code §16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

WEAPONS/POINT & PRESENT FIREARMS AT PERSON

That Jorge Alberto Rodriguez did in Spartanburg County on or about November 28, 2001, point or present a firearm at: B. Rogers, all in violation of §16-23-410 of the Code of Laws of South Carolina, (1976, as amended.)

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

Jason D. Wall
 ASSISTANT SOLICITOR