

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
Case No: 2020-CP-42-4247

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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Jerry Simpson, SCDC# 255266,)
Applicant,)

ORDER
(Granting Austin appeal)

v.)

The State of South Carolina,)
Respondent.)

This matter come before the Court by way of an Application for Post-Conviction Relief. The Court convened a hearing on September 13, 2021. Respondent was represented by Chelsey F. Marto, Esquire of the South Carolina Attorney General's Office. Applicant was represented by Rodney W. Richey, Esquire. Applicant was present at the hearing.

Procedural History

Applicant is presently confined to the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During the March 2016, the Spartanburg County Grand Jury indicted Applicant for trafficking in cocaine, more than 200 grams (2016-GS-42-1697), Applicant was subsequently indicted in August 2016 for conspiracy to traffic cocaine, more than 200 grams (2016-GS-42-4459). Applicant was represented by Joseph Watson, Esquire. Assistant Solicitor, James Farr of the Seventh Circuit Solicitor's Office prosecuted the case. On October 14, 2016, Applicant appeared before J. Derham Cole, circuit court judge, and pled guilty to the lesser included offenses of conspiracy to traffic cocaine 28 to 100 grams, second offense (2016-GS-42-4459) and possession with intent to distribute cocaine, second offense (2016-GS-42-1687). Pursuant to a negotiated sentence, Judge Cole sentenced Applicant to imprisonment for twelve years for conspiracy to traffic cocaine to be served

concurrently with Federal supervised release Applicant had violated which was approximately thirty-seven months. Also, pursuant to a negotiated sentence, Judge Cole sentenced Applicant to thirty years suspended to five years of probation for possession with intent to distribute cocaine, to be served consecutively to the twelve- year conspiracy sentence.

Applicant filed a timely notice of appeal on October 26, 2016. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on February 17, 2017.

Applicant filed his first PCR application (2017-CP-42-3259) on September 11, 2017. An evidentiary hearing was held on October 7, 2019 at the Spartanburg County Courthouse before Judge G. Thomas Cooper, circuit court judge. Applicant was represent by William Yarborough III, Esquire. Jacob Isenberg represented the State. By Order filed January 6, 2020, Judge Cooper denied and dismissed the action with prejudice.

Counsel Yarborough filed a notice to appeal and motion to allow late filing on August 18, 2020. In his motion, Counsel Yarborough stated that Applicant's family was communicating with him in Applicant's stead.

FINDINGS OF FACT AND CONCLUSION OF LAW

1. Applicant testified that he requested that counsel appeal the denial of his PCR Application (2017-CP-42-3259).
2. Applicant testified that he had his girlfriend communicate with counsel Yarborough about appealing the denial of his PCR application.
3. Applicant presented text messages from his girlfriend to Counsel Yarborough about appealing the denial of his application.
4. In the text messages, Applicant requested that Counsel appeal the denial of the

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Application.

5. The requests to appeal ^{were} ~~where~~ made within the statutory time to appeal.
6. Counsel Yarborough testified that he may have misread the text messages.
7. He stated that he attempted to file the notice of appeal outside of time to file.
8. The court finds that Counsel Yarborough authenticated the text messages from Applicant's girlfriend to counsel about filing an appeal of the denial of the PCR application.
9. The court finds that the request to appeal was made within the statutory time by the Applicant.
10. The Court finds that counsel failed to perfect the notice of appeal within the statutory time.
11. The Court finds that the Applicant is entitled to an Austin appeal of the denial of his PCR application.

CONCLUSION

The Court finds that the Applicant is entitled to an Austin appeal of the denial of his PCR application (2017-CP-42-3259)

AND IT IS SO ORDERED this 17 day of September, 2021.

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William A. McKinnon
Judge of the Seventh Judicial Circuit

Spartanburg, South Carolina

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