

# The Supreme Court of South Carolina

Kevin M. Jenkins, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000877

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## ORDER

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According to the case management system for Charleston County, this matter was disposed by an order filed in June 2010, and the disposition is listed as being "withdrawn or settled by parties." Petitioner has now filed a *pro se* notice of appeal seeking review under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

Since relief under *Austin*<sup>1</sup> must be sought by filing an application for post-conviction relief in the circuit court, the notice of appeal is dismissed without prejudice to whatever right petitioner may have to seek relief under *Austin* by filing an application for post-conviction relief in the circuit court.<sup>2</sup>

  
C.J.  
FOR THE COURT

Columbia, South Carolina

April 29, 2013

cc: Mr. Joseph P. Cerato, #284945  
Ashleigh Rayanna Wilson, Esquire

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<sup>1</sup> *Cf. King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (setting forth the appellate procedures to be followed depending on the findings made by the PCR judge regarding the *Austin* claim).

<sup>2</sup> In this regard, the attention of the parties is directed to the case of *Rush v. State*, 368 S.C. 144, 628 S.E.2d 42 (2006) ("A party cannot appeal an order issued with the consent of the party. [citations omitted] We see no reason why this rule should not be equally applicable to appellate review in post-conviction relief cases.").