

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Mar 04 2022**

S.C. SUPREME COURT

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

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Case No. 2020-CP-32-2106

Michael Young Jr. (SCDC #345614),

Petitioner,

vs.

The State of South Carolina,

Respondent.

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**NOTICE OF APPEAL**

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Michael Young Jr. submits this Notice of Appeal granting an *Austin*<sup>1</sup> appeal in this matter.

Respectfully submitted,

/s/ Elizabeth Franklin-Best  
Elizabeth Franklin-Best, P.C.  
Bar No. 72555  
2725 Devine Street  
Columbia, South Carolina 29205  
(803) 445-1333  
elizabeth@franklinbestlaw.com

March 4, 2022.

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<sup>1</sup> *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

**FILED**

STATE OF SOUTH CAROLINA )

2022 FEB -4 ) AM 10:28 Case No. 2020-CP-32-2106

COUNTY OF LEXINGTON )

LISA M. COMER  
CLERK OF COURT  
LEXINGTON SC

Michael Young Jr. (SCDC #345614) ) Consent Order Granting *Austin*<sup>1</sup> Appeal

vs. )

State of South Carolina, )  
Respondent. )

This matter comes before the Court by motion of counsel for the applicant, Elizabeth Franklin-Best and with the consent of Lilly Meadows of the South Carolina Attorney General's Office requesting this Court grant applicant an appeal of the denial of his previous order of dismissal in case 2012-CP32-4648. In granting this motion, I make the following findings of fact:

*CP 32-4648 #1*

- 1) Mr. Young is currently confined in the South Carolina Department of Corrections. He was arrested on June 14, 2007 and indicted for the murder (2007-GS-32-2948), assault and battery with intent to kill (2007-GS-32-2949), and possession of a firearm during the commission on a violent crime (2007-GS-32-2950).
- 2) Mr. Young pleaded guilty as indicted to murder and assault and battery with intent to kill before the Honorable Thomas A. Russo. He was represented by John Delgado. The State was represented by Colleen E. Dixon. Mr. Young was sentenced to concurrent terms of 50 years' imprisonment for murder and 20 years for ABWIK.
- 3) Mr. Young filed a timely notice of appeal. On February 13, 2012, the Court of Appeals dismissed his appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation why his guilty plea appeal should proceed. *Michael Young v. State*, (S.C. Ct. App. filed February 13, 2012). The case was remitted back to circuit court on March 7, 2012.
- 4) On November 21, 2012, Mr. Young filed an application for post-conviction relief. An evidentiary hearing was held November 9, 2018 before the Honorable Walton J. McLeod, IV. Mr. Young was represented by Robert W. Mills, Esquire. The State was represented by Kelly Oppenheimer of the South Carolina Attorney General's Office. Judge McLeod denied the application and the order of dismissal was filed December 5, 2018.
- 5) Counsel filed a timely motion to alter or amend pursuant to Rule 59(e), SCRCP. By order dated January 29, 2019, Judge McLeod denied the motion.

<sup>1</sup> *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

- 6) Mr. Young did not appeal. His PCR counsel, Robert Mills died on February 16, 2019 and the South Carolina Supreme Court entered an order appointing Peyre Lumpkin as receiver of Mr. Mills' files. The State then served the order denying Applicant's 59(e) motion on Mr. Lumpkin on June 20, 2019.
- 7) Counsel for Mr. Young, Elizabeth Franklin-Best, then filed a motion to allow appeal of denial of post-conviction order of dismissal pursuant to *Austin v. State* with the South Carolina Supreme Court. On January 29, 2020, the Court issued an order dismissing the appeal without prejudice to allow Mr. Young to seek *Austin* relief by filing a PCR application in the circuit court.
- 8) Mr. Young filed the present action on June 15, 2020 seeking review of his case.

#2  
I find granting Mr. Young an *Austin* appeal is warranted under the circumstances of this case. Mr. Young has indicated by his actions that he has intended to challenge his conviction and sentence. First, he filed a direct appeal which was denied by the South Carolina Court of Appeals. Additionally, Mr. Young has now filed two PCR applications asking the South Carolina courts to review his case. Also, Elizabeth Franklin-Best has represented to this Court and to the South Carolina Attorney General's Office that Mr. Young seeks further review of his convictions and sentence. Based on these facts, I find Mr. Young did not knowingly and voluntarily waive his right to appellate review of the denial of his order of dismissal and that he is now entitled to that review. I also find it is not necessary to have Mr. Young testify in this matter. In the interests of judicial economy, I issue this order without requiring an evidentiary hearing, as the State does not contest this order.

**IT IS SO ORDERED.**

January 24, 2022

  
\_\_\_\_\_  
William P. Keesley, Circuit Judge

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2020CP3202106**

Michael James Young Jr 345614		South Carolina State of	
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
<b>Submitted by:</b>	<b>Attorney for:</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 43(k), SCRPC (Settled);
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.  
**Note:** Title abstractors and researchers should refer to the official court order for judgment details.

**E-Filing Note:** In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	2/8/2022 Date
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**For Clerk of Court Office Use Only**

This judgment was entered on \_\_\_\_\_, and a copy mailed first class or placed in the appropriate attorney's box on \_\_\_\_\_, to attorneys of record or to parties (when appearing pro se) as follows:

Ola A. Johnson PO Box 549 Lexington, SC 29071

Taylor Zane Smith PO Box 11549 Columbia, SC 29211-1549

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter**

**Lisa M. Comer - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.