

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge  
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RONNIE C. SWOFFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001436  
—————

PETITION FOR WRIT OF CERTIORARI  
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**Jul 11 2022**

S.C. SUPREME COURT

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## **ISSUE PRESENTED**

Whether the PCR court properly granted Petitioner a belated appeal from the denial of his first application for post-conviction relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), where the evidence showed Petitioner wanted to appeal but PCR counsel did not timely serve notice of intent to appeal, and where the State agreed Petitioner was entitled to belated review?

## STATEMENT

During the November term of 2009, a Greenville County Grand Jury indicted Petitioner, Ronnie Swofford, for first-degree burglary, assault and battery with intent to kill, possession of a weapon during the commission of a violent crime, and possession of a pistol by a person convicted of a violent crime. During the September term of 2011, a Greenville County Grand Jury indicted Petitioner for assault with intent to kill. App. 1147 – 1154. Petitioner was tried before the Honorable Edward W. Miller from May 14 – 17, 2012. Petitioner was represented by Andrew Johnston and Gerald Wilson. Kris Hodge prosecuted the case. App. 1. The State sought a life without parole sentence for two of the offenses pursuant to S.C. Code Ann. § 17-25-45 based on Petitioner’s prior convictions. App. 728, l. 25 – 729, l. 22.

Petitioner was convicted as indicted. App. 725, l. 23 – 726, l. 18. The court sentenced him to life without parole for first-degree burglary, life without parole for assault and battery with intent to kill, ten years for assault with intent to kill, and five years for possession of a pistol by a person convicted of a violent crime. The court did not impose a sentence for possession of a weapon during the commission of a violent crime. App. 725, l. 23 – 726, l. 18.

Petitioner’s direct appeal was dismissed by the Court of Appeals at his request on June 28, 2013. App. 733 – 736. Petitioner then filed a motion for a new trial based on after-discovered evidence.<sup>1</sup> *See* App. 737 – 740. On December 9, 2013, the circuit court issued an order denying Petitioner’s motion. App. 741 – 745. Petitioner’s appeal of the order denying his motion for a new trial based on newly-discovered evidence was dismissed by the Court of Appeals at his request on June 23, 2014. App. 752 – 753.

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<sup>1</sup> Undersigned counsel was unable to obtain Petitioner’s motion for a new trial based on after-discovered evidence; the Greenville County Clerk of Court’s Office did not have the motion.

On July 8, 2014, Petitioner filed an application for post-conviction relief (PCR). App. 754 – 761. On January 13, 2015, the State made its return. App. 762 – 768. On October 21, 2015, a hearing was held on the matter before the Honorable Perry H. Gravely. Mills Ariail represented Petitioner. Karen Ratigan represented the State. App. 778. On January 7, 2016, the PCR court issued an order of dismissal. App. 858 – 868. On February 2, 2016, PCR counsel filed and served a motion to alter or amend the judgement pursuant to Rule 59(e), SCRCF. App. 869 – 891. On February 8, 2016, the State made a return. App. 892 – 893. On February 19, 2016, the PCR court denied the motion. App. 894 – 895.

On March 3, 2016, PCR counsel filed and served an untimely notice of appeal of Petitioner’s PCR denial. App. 896 – 897. On September 27, 2018, the Court of Appeals issued an order dismissing the appeal based on the untimely notice of appeal. App. 989.

On November 6, 2018, Petitioner filed a second PCR application alleging ineffective assistance of PCR counsel Ariail for failing to file and serve a timely notice of intent to appeal and seeking appellate review of his PCR denial pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 992 – 1004. On December 13, 2019, the State made its return and partial motion to dismiss. App. 1005 – 1011. An evidentiary hearing was convened via Webex on November 8, 2021 before the Honorable G.D. Morgan, Jr. Susannah Ross represented Petitioner and Taylor Smith represented the State. App. 1012 – 1063.

Petitioner testified that he told PCR counsel Ariail he did want to appeal in the event his PCR was denied. App. 1046, ll. 2-7. Petitioner said he had even prepared a Rule 59(e) motion in the event PCR was denied and provided it to PCR counsel Ariail. App. 1046, ll. 7-14. PCR counsel Ariail testified that he knew Petitioner wanted to appeal. App. 1061, ll. 14-16. He was not sure

why his service of the Rule 59(e) motion was untimely.<sup>2</sup> The Assistant Attorney General also conceded that Petitioner was entitled to belated appellate review under *Austin*. App. 1062, ll. 2-3.

Petitioner also sought to introduce testimony he believed necessary to clarify and preserve his arguments from his first PCR. App. 1018, l. 18 – 1034, l. 14. The State moved to dismiss any claims other than the *Austin* claim, arguing the factual record was set regarding ineffective assistance of trial counsel at the first PCR hearing. App. 1022, ll. 4-7. The court granted the motion but allowed Petitioner to proffer the evidence. App. 1032, l. 10 – 1034, l. 4. The court also ruled Petitioner was entitled to *Austin* review. App. 1062, ll. 2-5.

By order filed November 23, 2021, Judge Morgan granted Petitioner a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 1137 – 1142.

This petition for writ of certiorari pursuant to *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992), follows.

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<sup>2</sup> The Court of Appeals dismissed Petitioner’s appeal of his PCR denial because it found that both the Rule 59(e) motion and the notice of intent to appeal were untimely served. App. 989.

## ARGUMENT

The PCR court properly granted Petitioner a belated appeal from the denial of his first application for post-conviction relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), where the evidence showed Petitioner wanted to appeal and PCR counsel did not timely serve notice of intent to appeal, and where the State agreed Petitioner was entitled to belated review.

The PCR court properly granted Petitioner a belated appeal from the denial of his first application for post-conviction relief pursuant to *Austin v. State*. In *Austin*, this Court framed the question as whether the PCR applicant “requested and was denied an opportunity to seek appellate review.” *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. The proper scope of review of the PCR court’s ruling is whether there is any evidence of probative value to uphold the PCR court’s findings. *Webb v. State*, 281 S.C. 237, 314 S.E.2d 839 (1984); *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007).

As seen, Petitioner testified that he did want to appeal if post-conviction relief was denied and that he told his attorney so. App. 1046, ll. 2-7. PCR counsel Ariail testified that he understood Petitioner wanted to appeal. App. 1061, ll. 14-16. However, as found by the Court of Appeals in its order dismissing the appeal, PCR counsel did not timely serve the motion to alter or amend the judgment and he did not timely serve the notice of intent to appeal. App. 989. The State conceded Petitioner was entitled to belated appellate review under *Austin*. App. 1062, ll. 2-3. There is ample evidence to support the PCR court’s finding that Petitioner desired to appeal, told his counsel he wanted to appeal, but the notice of appeal was not timely served.

In *Austin*, this Court recognized that the right to seek appellate review of the denial of PCR is expressly authorized by S.C. Code Ann. § 17-27-100. *Austin*, 305 S.C. at 454, 409 S.E.2d at

396. Under *Austin*, the PCR court correctly ruled that Petitioner's desire for an appeal was communicated to PCR counsel and notice of appeal was not timely served. Under the "any evidence" standard of review of *Webb*, this Court should hold that the PCR court's ruling was correct, grant certiorari, and grant Petitioner a belated appeal from the denial of his original application for post-conviction relief.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for a writ of certiorari and affirm the lower court's determination that Petitioner is entitled to belated appellate review, and review the petition for writ of certiorari pursuant to *Austin* that was filed simultaneously with this petition.

*sl. Joanna K. Delany*

Joanna K. Delany  
Appellate Defender  
S.C. Bar No. 76081

This 11th day of July, 2022.

ATTORNEY FOR PETITIONER

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

s/ Joanna K. Delany

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This 11th day of July, 2022.