

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to
Lexington County
Thomas A. Russo, Plea Judge
Walton J. McLeod, IV, PCR Judge

Appellate Case No. 2022-000254

RECEIVED

Jul 14 2022

S.C. SUPREME COURT

MICHAEL YOUNG,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RETURN TO PETITION
FOR A WRIT OF CERTIORARI**

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QUESTION PRESENTED

Did Petitioner voluntarily waive his right to appeal the denial of his order of dismissal from his PRC action?

STATEMENT OF THE CASE

Petitioner Michael Young is presently confined in the South Carolina Department of Corrections serving a fifty-year sentence. In October 2007, the Lexington County Grand Jury indicted him for murder and attempted murder. These charges arose after Petitioner shot his estranged wife and her father (Victim) in a mall parking lot, killing Victim. On April 11, 2011, Petitioner pled guilty to murder and attempted murder. John D. Delgado represented Petitioner and Assistant Solicitor Colleen E. Dixon represented the State. In exchange for the plea, the State dismissed a charge for possession of a weapon during a violent crime that stemmed from this incident as well as charges for stealing dogs, stalking, harassment, and forgery. The plea court imposed concurrent sentences of fifty years' imprisonment for murder and twenty years' imprisonment for attempted murder. Petitioner then filed a direct appeal, which was dismissed due to his failure to provide an explanation as required by Rule 203(d)(1)(B)(iv), SCACR.

On November 21, 2012, Petitioner filed an application for post-conviction relief (PCR). On November 9, 2018, the Honorable Walton J. McLeod, IV held an evidentiary hearing. Robert Mills represented Petitioner and Assistant Attorney General Kelly Oppenheimer represented the State. On December 5, 2018, Judge McLeod issued an order denying relief and dismissing the application. Petitioner filed a Motion to Reconsider, which was denied on January 29, 2019.

On January 27, 2020, Petitioner filed a motion in the South Carolina Supreme Court seeking to appeal the dismissal of his PCR application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). In the motion, Petitioner asserted PCR counsel, Mr. Mills, passed away on February 16, 2019, and as a result Petitioner did not timely discover his Motion to Reconsider had been denied. He further contended he did not knowingly and voluntarily waive his right to appeal the order dismissing his PCR application.

On January 29, 2020, the Supreme Court issued an order dismissing his action without prejudice to whatever right he may have to seek relief under Austin by filing an application for PCR in the circuit court. Thereafter, on June 15, 2020, Petitioner filed the current PCR application seeking a belated review of his first PCR application. On January 24, 2022, the Honorable William P. Keesley issued a Consent Order granting Petitioner an Austin Appeal.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The State has consented to a belated review of the order denying Petitioner's first PCR application.

Petitioner asserts he did not voluntarily waive his right to appeal the denial of his first PCR application. Specifically, he contends PCR counsel passed away during the pendency of the proceedings, and the State consented to a belated review of the denial of his first PCR application.

The consent order issued by the second PCR court found Petitioner's motion to alter or amend the order denying his first PCR application was denied on January 29, 2019; PCR counsel passed away on February 16, 2019; the Supreme Court appointed Peyre Lumpkin as receiver of PCR counsel's files; and the State served the order denying the Rule 59(e) motion on Mr. Lumpkin on June 20, 2019. (App. 210-11). The consent order further found Petitioner indicated he intended to challenge his conviction and sentence by his actions of (1) filing a direct appeal from his guilty plea and (2) filing two PCR applications seeking review of his case. (App. 211).

Should this Court find that evidence shows Petitioner did not knowingly and voluntarily waive his right to appeal the denial of his first PCR application, Respondent respectfully requests this Court consider the question presented in the Austin Petition for Writ of Certiorari and Return to the Austin Petition for Writ of Certiorari in conjunction with the issue raised herein. See Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (finding "allegation that counsel failed to seek review [of denial of PCR] sufficiently states a claim of ineffective assistance" and "remand[ing] for an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review").

CONCLUSION

Based on the foregoing, this Court should consider the question presented in the Austin Petition for Writ of Certiorari and Return to the Austin Petition for Writ of Certiorari in conjunction with the issue raised herein.

Respectfully Submitted,

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This 14th day of July, 2022