

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Kristi Curtis, Circuit Court Judge

Case No. 2022-001326
(2022-CP-22-00684)

Stanley Moultrie,

Petitioner,

vs.

The State of South Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Ranee Saunders
Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, SC 29204
(803) 445-1333

Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, SC 29204
(803) 445-1333

Counsels for Petitioner

Chelsey Marto
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803) 734-0386

Counsel for Respondent

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S.C. SUPREME COURT

INDEX

Table of Authorities	2
Question Presented.....	3
Statement of the Case.....	3
Argument	4
Conclusion	4

TABLE OF AUTHORITIES

Cases:

Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)3
Knight v. State, 284 S.C. 138, 325 S.E.2d 535 (1985).....4
State v. Moultrie, 2019-UP-013 (S.C. Ct. App. filed Jan. 9, 2019)3

S.C. Code and Rule:

Rule 220(b), SCACR3
S.C. Code Ann. §17-27-100 (1985).....4

QUESTION PRESENTED

Whether Petitioner knowingly and intelligently waived his right to appellate review of the order of dismissal signed by the Honorable William H. Seals, Jr. in Petitioner's first PCR action?

STATEMENT OF THE CASE

Petitioner was indicted for kidnapping (2015-GS-22-00458) and armed robbery (2015-GS-22-00459). He proceeded to a jury trial before the Honorable D. Craig Brown August 22-24, 2016, and was found guilty of armed robbery and not guilty of kidnapping. Based on his prior record, the trial court sentenced him to life without the possibility of parole. Petitioner filed a direct appeal, arguing the trial court erred in denying his motion for a mental health evaluation. The Court of Appeals affirmed in an unpublished opinion pursuant to Rule 220(b), SCACR. *State v. Moultrie*, 2019-UP-013 (S.C. Ct. App. filed Jan. 9, 2019).

Petitioner filed a *pro se* application for post-conviction relief (PCR) April 17, 2019, and after retaining counsel, he filed an amended application for PCR November 30, 2020 and a second amended application for PCR March 10, 2021. Petitioner proceeded to an evidentiary hearing before the Honorable William H. Seals, Jr. on June 23, 2021, who ultimately denied and dismissed the application with prejudice by order dated July 31, 2021. Petitioner a subsequent application requesting appellate review of the denial of his first PCR and the State requested a hearing pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). An evidentiary hearing was held before the Honorable Kristi R. Curtis of September 9, 2022. Judge Curtis granted the belated appeal by order dated September 22, 2022. Petitioner now submits this petition for writ of certiorari for the Court's consideration.

ARGUMENT

Petitioner did not knowingly and intelligently waive his right to appellate review of the order of dismissal signed by Judge Seals in his first PCR action.

The right to seek appellate review of the denial of PCR is expressly authorized by state law. S.C. Code Ann. §17-27-100 (1985). Whether such review is granted is within the discretion of the Supreme Court of South Carolina. *Knight v. State*, 284 S.C. 138, 325 S.E.2d 535 (1985).

At the evidentiary hearing before Judge Curtis, PCR counsel testified that the failure to appeal the dismissal of his first PCT action was his fault and did not reflect Petitioner's desire to waive his right to appeal. Counsel had informed Petitioner that if there was an order of dismissal, he would file an appeal, but he failed to do so. Judge Curtis found Petitioner did not waive his right to seek appellate review and had in fact wanted to appeal. On that basis, she granted the belated appeal.

CONCLUSION

Petitioner therefore requests the Court grant the writ of certiorari and allow appellate review of the order of dismissal signed by the Honorable William H. Seals, Jr. on July 31, 2021.

Respectfully submitted,

/s/Ranee Saunders
SC Bar 100073
Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, SC 29204
(803) 445-1333
ranee@franklinbestlaw.com

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