

STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable George M. McFaddin, Jr., PCR Judge

S.C. SUPREME COURT

Appellate Case No. 2022-000710

GEORDI J. HEYWARD, #374238,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RETURN TO MOTION TO REINSTATE AND REQUEST FOR
LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI
AND APPENDIX OUT OF TIME**

COMES NOW, Respondent, by and through the undersigned counsel, making its Return to Motion to Reinstate and Request for Leave to File Petition for Writ of Certiorari and Appendix Out of Time, would show unto this Court:

Introduction

On October 19, 2022, this Court dismissed Petitioner Geordi J. Heyward's post-conviction relief (PCR) appeal due to his failure to file a Petition for Writ of Certiorari and Appendix within the time period prescribed by the South Carolina Appellate Court Rules. Twelve days later, Petitioner submitted a Motion to Reinstate and Request for Leave to File Petition for Writ of

Certiorari and Appendix Out of Time. Through that motion, Petitioner asks this Court to reinstate his appeal and grant him ten days to file his Petition for Writ of Certiorari and Appendix from whatever date the appeal is reinstated. To date, Petitioner has still not submitted his Petition for Writ of Certiorari and Appendix in this matter.

Relevant Procedural History

By filing a Notice of Appeal on May 24, 2022, Petitioner, through appellate counsel who also represented him during the circuit court proceedings, initiated an appeal of the Order of Dismissal issued by the Honorable George M. McFaddin, Jr., denying Petitioner's application for PCR. Counsel for Petitioner ordered and received the transcript of the PCR hearing held on June 14, 2021, before there was an Order entered on the PCR action. Counsel for Petitioner filed a first extension to file the Petition for Writ of Certiorari and Appendix, which was granted, and his time to file was extended to July 25, 2022. Counsel for Petitioner filed a second extension request, which was granted, and his time to file the Petition for Writ of Certiorari and Appendix was extended to August 24, 2022. Counsel for Petitioner filed a third extension request, which was granted, and his time to file the Petition for Writ of Certiorari and Appendix was extended to September 22, 2022.

Five days after the September 22, 2022, filing deadline, counsel for Petitioner filed a fourth extension request asking the Court to grant twenty additional days in which to serve and file the Petition for Writ of Certiorari and Appendix.¹ By Order dated September 28, 2022, this Court granted the request until October 10, 2022, but stated no further extensions would be granted. On October 10, 2022, counsel for Petitioner sent a letter to the Clerk of Court requesting more time to

¹ Counsel for Petitioner emailed the Court on September 26, 2022, informally requesting the extension and providing that a formal motion would be filed the following day, September 27, 2022.

serve and file the documents. In this letter, counsel for Petitioner indicated she "hoped" to have the documents filed and served by the "end of the week," but that could not be guaranteed.

On October 11, 2022, counsel for Petitioner filed a fifth extension request in which to file and serve the documents. In this request, counsel for Petitioner indicated that the documents were almost complete and asked this Court for an additional twenty days to file and serve the documents. By Order dated October 11, 2022, this Court granted Petitioner's extension to October 14, 2022.

On October 17, 2022, counsel for Petitioner emailed Ms. Ethel Clark, indicating the Court's Order had been overlooked and that the documents would be filed the following day, October 18, 2022. Later that day, counsel for Petitioner emailed Ms. Ethel Clark and the Clerk of Court, asserting that the documents would be filed by Wednesday, October 19, 2022, but no promise could be made that the documents would be filed and served that day. On October 19, 2022, this Court dismissed the matter for failure to comply with Rule 243(d), SCACR.

On October 20, 2022, counsel for Petitioner emailed the Court requesting that the Remittitur be stayed.² On October 31, 2022, counsel for Petitioner filed a Petition to Reinstate Post-Conviction Relief Appeal and Request for Leave to File Petition for Writ of Certiorari and Appendix Out of Time.

State's Position of Petitioner's Motion to Reinstate

In response to Petitioner's request for his appeal to be reinstated and for him to be permitted to file his Petition for Writ of Certiorari and Appendix out of time, Respondent takes no position on the motion and wishes to leave the matter to the Court's discretion. However, while doing so,

² Respondent notes that Petitioner's "motion" to stay the Remittitur was an *ex parte* email to the Court. To date, Respondent has not been served with this request, and only discovered it after reviewing C-Track.

Respondent desires to call two points to the Court's attention.

First, under the circumstances involved, Respondent submits the decision of this Court to dismiss Petitioner's appeal was not unwarranted. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review."). Demonstrating that fact, Petitioner was afforded great latitude in extensions before the matter was dismissed and consistently missed the deadlines set out in this Court's Orders. Meanwhile, in the motion to reinstate, Petitioner requests an additional extension of ten more days from the date the appeal is reinstated but still cannot guarantee that the documents will be filed within that timeframe.


Second, while the dismissal of an appeal is a harsh sanction, Respondent submit this Court's decision to dismiss Petitioner's appeal will not unduly prejudice Petitioner under the circumstances involved. That is true because, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Petitioner has an available avenue through which he will still be able to seek a belated appellate review of the PCR ruling even if his current appeal is not reinstated. See Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (creating a process by which an unsuccessful PCR applicant can obtain appellate review when such review was desired but unable to be obtained due to PCR counsel's actions).

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