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**Mar 20 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Lexington County  
Honorable Edgar W. Dickson, Circuit Court Judge

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RODNEY C. BRYAN,

Petitioner/Respondent,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent/Petitioner.

Appellate Case No. 2019-001887

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**REPLY BRIEF OF PETITIONER  
OF RESPONDENT/PETITIONER**

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This Court does not have appellate jurisdiction to a second or supplemental direct review of a conviction and therefore the PCR court erred by ordering a “belated” review despite already directly reviewing the convictions pursuant to Anders; and the PCR court erred in *sua sponte* finding, without Strickland analysis, appellate counsel ineffective for not raising an issue which was not preserved for review and to which trial counsel acquiesced.

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**TABLE OF AUTHORITIES**

**Cases:**

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## STATEMENT OF ISSUE PRESENTED

This Court does not have appellate jurisdiction to a second or supplemental direct review of a conviction and therefore the PCR court erred by ordering a “belated” review despite already directly reviewing the convictions pursuant to Anders; and the PCR court erred in *sua sponte* finding, without Strickland analysis, appellate counsel ineffective for not raising an issue which was not preserved for review and to which trial counsel acquiesced.

## ARGUMENT

**This Court does not have appellate jurisdiction to a second or supplemental direct review of a conviction and therefore the PCR court erred by ordering a “belated” review despite already directly reviewing the convictions pursuant to Anders; and the PCR court erred in *sua sponte* finding, without Strickland analysis, appellate counsel ineffective for not raising an issue which was not preserved for review and to which trial counsel acquiesced.**

1. Issues of appellate jurisdiction may be raised at any time

Bryan argues the State failed to object to the remedy of “belated” review to the PCR court and therefore the State waived the argument. However, the appealability of an order may be raised at any time. Levi v. Northern Anderson County EMS, 409 S.C. 374, 379, 762 S.E.2d 44, 47 (Ct. App. 2014). “South Carolina . . . has made clear appellate jurisdiction can be raised by appellate courts even if none of the parties have raised it.” Levi, 409 S.C. at 380, 762 S.E.2d at 47.

Bryan accuses Respondent of trying to “circumvent” error preservation rules and complains Respondent never objected to the form of relief. But appellate jurisdiction may be raised at any time and there is no provision in the law for a circuit court to grant, or rather order, an appellate court to conduct a second direct review.

“When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter.” Wise v. South Carolina Department of Corrections, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007).

2. Respondent streamlined its statement of issues but retained its principal arguments presented in its petition for a writ of certiorari

Bryan never offered a straight answer on the question of appellate jurisdiction in his brief and also desperately attempts a “gotcha” argument that because Respondent altered its statement of the issue, this Court should dismiss the petitioner as improvidently granted. Bryan fails to cite any authority for this proposition. In its Statement of the Issue, Respondent asserts appellate jurisdiction, which may be raised at any time, and then asserts the PCR court erred in *sua sponte* granting relief without Strickland analysis on an issue that is not preserved. This second argument encompasses all of Respondent’s statement of the issue in its petition and all those arguments continue to be asserted in its Brief. All Respondent’s arguments asserted in its brief are preserved and are properly asserted. Having granted Respondent’s petition, this Court should also reverse the PCR court’s misguided grant of relief.

**CONCLUSION**

Based on the forgoing, the PCR court erred in granting Bryan a “belated” or supplemental appeal due to ineffective assistance of appellate counsel. This Court only has jurisdiction to conduct proper belated review after an involuntary waiver of the right to appeal and does not have appellate jurisdiction to conduct a second or supplemental review. Further, the issue of whether Bryan freely and voluntarily waived the right to testify is not preserved for review and the record reflects that counsel assured the trial court that counsel discussed the right to testify, so the trial court did not commit error.

Respectfully submitted,

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