

pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Pursuant to state procedure, Asbury filed a *pro se* brief<sup>2</sup> raising seven issues. On December 4, 2001, the South Carolina Supreme Court dismissed the petition for writ of certiorari pursuant to state procedural rules because the petition for writ of certiorari and appendix were not served. The Remittitur was returned on December 20, 2001.

Asbury then filed a second PCR seeking a belated appeal of his first PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The State consented to the appeal and it was granted on March 3, 2004. Michael L. Brown, Jr., Esquire was appointed to represent Asbury. Mr. Brown filed a petition for writ of certiorari raising the following issues:

- I. Whether the lower court erred in concluding that counsel rendered effective assistance when he failed to accept the trial court's offer to charge the jury on mere presence?
- II. Whether the lower court erred in concluding counsel rendered effective assistance when he failed to proffer the testimony concerning Officer Sadler's affair with the Defendant's wife?
- III. Whether the lower court erred in concluding counsel rendered effective assistance when he failed to call the Defendant's half-brother as a witness to cooperate(sic) his defense?

By order dated August 22, 2006, the South Carolina Supreme Court transferred the matter to the Court of Appeals. On September 20, 2007, the petition for writ of certiorari was denied. Asbury did not seek further review by the South Carolina Supreme Court. The Remittitur was returned on October 9, 2007.

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<sup>2</sup>The *pro se* brief was captioned "Petition for Writ of Certiorari."



# The South Carolina Court of Appeals

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October 9, 2007

## REMITTITUR

The Honorable David Hamilton  
1675 -1G York Highway  
PO Box 649  
York, SC 29745-0649

Re: Asbury, Willie J. v. State  
1998-CP-46-00710

Dear Mr. Hamilton:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in cursive script that reads "V. Claire Allen".

V. Claire Allen  
Deputy Clerk of Court

VCA/lf

cc: Joseph L. Savitz, III, Esquire  
Michael Langford Brown, Jr., Esquire  
Assistant Attorney General Julie Thames

# The South Carolina Court of Appeals

Willie J. Asbury, a/k/a Sa'id Abdullah  
al-Rashid, Petitioner

v.

State of South Carolina, Respondent

The Honorable Lee S. Alford  
York County  
Trial Court Case No. 1998-CP-46-00710

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ORDER

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This matter is before the Court on a petition for a writ of certiorari following the denial of petitioner's application for post-conviction relief. The petition for a writ of certiorari is denied.

*Key L. Hearn*, C.J.  
*Thomas A. Huff*, J.  
*John H. Hedges*, J.

Columbia, South Carolina

September 20, 2007

**FILED**

Sept. 20, 2007