

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO GREENWOOD COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2012-213306

Michael E. Minor, Petitioner,

v.

State of South Carolina, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
S.C. Bar #78871

P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

QUESTION PRESENTED2

STATEMENT OF THE CASE.....3

STANDARD OF REVIEW4

ARGUMENT

 The PCR court properly found Counsel advised Petitioner of the
 six-year plea offer, that Counsel advised Petitioner of the time by
 which he had to accept it, and that Petitioner failed to timely accept
 the six-year offer5

CONCLUSION.....10

QUESTION PRESENTED

Whether the post-conviction relief court properly granted Petitioner a belated appeal of the denial of his first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

STATEMENT OF THE CASE

The Respondent adopts the statement of the case put forth by the Petitioner.

STANDARD OF REVIEW

The proper standard for reviewing a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

ARGUMENT

Evidence exists to show the post-conviction relief court properly granted Petitioner a belated appeal of the denial of his first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner alleged his first post-conviction relief (PCR) counsel failed to file an appeal from the denial of his first post-conviction relief action. (App. p. 84.) PCR counsel testified he advised Petitioner of the right to appeal at the first PCR hearing, explaining to Petitioner that Petitioner had thirty (30) days to appeal Judge Russo's ruling. (App. p. 129 lines 4-16). PCR counsel also testified Petitioner never asked him to file an appeal until over one year after Judge Russo announced his ruling from the bench. (App. p. 128 line 14- p. 129 line 1; p. 132 lines 9-11). However, PCR counsel further testified that he advised Petitioner that the day of the ruling was not the day on which an appeal should be filed, but that he had thirty (30) days from the entry of the Order in which to file an appeal. (App. p. 135 lines 16-25). Most importantly, Counsel admitted that he did not serve Petitioner with a copy of the Order. (App. p. 136 lines 7-8). Therefore, evidence exists for the PCR court to rule that Petitioner did not knowingly and voluntarily waive his right to appeal the first PCR Order.

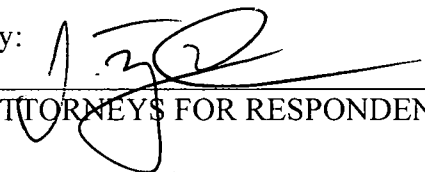
CONCLUSION

For all the foregoing reasons, Respondent respectfully submits to this Court the post-conviction relief court properly granted the Petitioner a belated review of his first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,
ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
S.C. Bar # 78871

By:



ATTORNEYS FOR RESPONDENT

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

June 27, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County

The Honorable Thomas A. Russo, Circuit Court Judge

MICHAEL E. MINOR, 255855

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

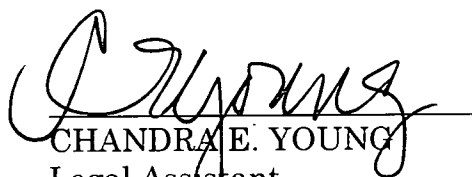
PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak
SC Commission of Indigent Defense
1330 Lady Street; Suite 401
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 27th day of June 2013.



CHANDRA E. YOUNG
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737



ALAN WILSON
ATTORNEY GENERAL

June 27, 2013

RECEIVED

JUN 27 2013

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

**RE: Michael E. Minor, 255855 v. State of South Carolina
2012-213306**

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case.

Sincerely,



J. Rutledge Johnson
Assistant Attorney General

JRJ:cey
Enclosures

cc: Robert M. Pachak, Esquire
Trisha Allen, Victim Services