

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Kristi F. Curtis, Circuit Court Judge

TARA MARIE WEBER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001228

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT OF THE CASE.....2

ARGUMENT

The post-conviction relief (PCR) court correctly granted Petitioner a belated appeal from the denial of her first application for post-conviction relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) since the undisputed evidence showed Petitioner did not knowingly and intelligently waive the right to appellate review of her original PCR application.4

CONCLUSION.....6

ISSUE PRESENTED

Did the post-conviction relief (PCR) court correctly grant Petitioner a belated appeal from the denial of her first application for post-conviction relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), where the undisputed evidence showed Petitioner did not knowingly and intelligently waive the right to appellate review of her original PCR application?

STATEMENT OF THE CASE

A Jasper County grand jury indicted Petitioner on August 23, 2011 for voluntary manslaughter. App. 481. Her case was called to trial on September 12, 2011 before the Honorable Michael G. Nettles, and a jury. App. 1. Assistant Solicitors Robert Ferguson and Tameka Legette represented the state. Robert Hughes represented Petitioner. App. 1. On September 14, 2011, the jury found Petitioner guilty as indicted. App. 328, ll. 20-25. Petitioner was sentenced to twenty-three years imprisonment. App. 338, ll. 8-11.

The Court of Appeals dismissed Petitioner's appeal after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Weber, 2013-UP-042 (S.C. Ct. App. filed January 30, 2013); App. 352-353. On May 6, 2013, Petitioner filed an application for post-conviction relief (PCR). App. 354-359. The state filed a return to this application dated June 5, 2014. App. 360-363. An evidentiary hearing was convened on July 30, 2014 before the Honorable J. Cordell Maddox, Jr. App. 364. Assistant Attorney General Ashleigh Wilson represented the state. App. 364. Tristan Shaffer represented Petitioner. App. 364.

By order filed May 1, 2017, the PCR court denied Petitioner relief. App. 407-414. On August 7, 2017, Petitioner's then PCR counsel, Tristan Shaffer, filed a notice of appeal with our Supreme Court. In the notice of appeal, Shaffer stated that the order of dismissal was filed on May 1, 2017 and received by Petitioner on July 5, 2017.

On March 14, 2018, Petitioner filed a petition for writ of certiorari and accompanying appendix with the Supreme Court challenging the denial of her application for post-conviction relief. App. 415-424. The state filed a return to this petition on July 30, 2018. App. 425-440. By order dated August 13, 2018, this Court transferred the appeal to the Court of Appeals pursuant to Rule 243(1), SCACR. App. 441. By order filed July 2, 2019, the Court of Appeals

dismissed the appeal because Petitioner failed to timely serve the notice of appeal as required by Rule 243, SCACR. App. 442.

On August 6, 2019, Petitioner filed a second application for post-conviction relief seeking a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 443-449. The state filed a return to this petition on December 8, 2020. App. 450-459. An evidentiary hearing was held on July 20, 2022 before the Honorable Kristi Curtis. App. 460. Assistant Attorney General Lauren Mims represented the state. James Falk represented Petitioner. App. 460. Petitioner's original PCR counsel, Tristan Shaffer, testified at the hearing that he failed to timely file a notice of appeal based on a calendaring error. App. 469, l. 8 – 470, l. 11.

By order filed July 6, 2023, the PCR court granted Petitioner a belated appeal. App. 473-480. The court found Petitioner desired appellate review from the denial of her first PCR application but the appeal was dismissed based on her counsel's failure to timely file the notice of appeal. App. 479.

Because the PCR court correctly granted Petitioner a belated appeal pursuant to Austin v. State, this petition for writ of certiorari follows.

ARGUMENT

The post-conviction relief (PCR) court correctly granted Petitioner a belated appeal from the denial of her first application for post-conviction relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991) since the undisputed evidence showed Petitioner did not knowingly and intelligently waive the right to appellate review of her original PCR application.

The PCR court correctly granted Petitioner a belated appeal from the denial of her first application for post-conviction relief. See *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). “All applicants are entitled to a full and fair opportunity to present claims in one PCR application.” *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). Pursuant to the rules and statutes governing PCR proceedings, an applicant is entitled to a full adjudication on the merits of the original petition. *Id.* This includes the right to seek appellate review of the denial of PCR and the right to assistance of counsel in that appeal. *Id.* at 261, 523 S.E.2d at 755-756. This Court held an individual can appeal a denial of a PCR application after the statute of limitations has expired if the individual either (1) requested and was denied an opportunity to seek appellate review or (2) did not knowingly and intelligently waive the right to appeal. *Austin*, 305 S.C. at 455, 409 S.E.2d at 396.

The undisputed evidence showed Petitioner wished to appeal the PCR court’s denial of her first PCR application. However, due to a calendaring error, Petitioner’s PCR counsel failed to timely file a notice of appeal. See App. 469, l. 8 – 470, l. 11. Notably, the state consented to Petitioner being granted a belated appeal pursuant to *Austin* given PCR counsel’s testimony at the evidentiary hearing. See App. 470, ll. 21-24.

Under these circumstances, the PCR court’s decision to grant Petitioner belated appellate review of the denial of her first PCR application should be upheld. See *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (“The appropriate scope of review of this Court is that

‘any evidence’ of probative value is sufficient to uphold the PCR judge’s findings.”). Simply stated, Petitioner is entitled to her one fair bite at the apple. See Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002).

CONCLUSION

Petitioner respectfully requests this Court affirm the PCR court's conclusion that Petitioner is entitled to a belated appeal of the denial of her first application for post-conviction relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and consider her belated appeal.

Respectfully submitted,

s/ Lara M. Caudy _____
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of December, 2023.

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STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001228
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CERTIFICATE OF SERVICE
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The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case have been served upon Danielle E. Dixon, Esquire, at her primary email address listed in the Attorney Information System (AIS); and upon Tara Marie Weber, #347905, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 20th day of December, 2023.

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER