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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Stephanie P. McDonald, Circuit Court Judge

LORD BYRON SLATER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212846

PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN v. STATE

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court correctly granted petitioner a belated appeal of the denial of his prior post-conviction relief application because of his attorney's failure to file an appeal, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

STATEMENT

On May 1, 2001, a Charleston County grand jury indicted Lord Byron Slater (“Slater”) for murder and a related weapons charge. App. 856 - 59. On November 13 – 15, 2001, Slater was tried before the Honorable Edward B. Cottingham and a jury. App. 1. Dale DuTremble and Elizabeth Sumner represented the State. App. 1. Ashley Pennington and Boyd Young represented Slater. App. 1. The jury convicted Slater on both counts. App. 557, l. 24 – 558, l. 10. Judge Cottingham sentenced Slater to life imprisonment. App. 579, l. 2 – 581, l. 4. The Court of Appeals reversed Slater’s conviction. State v. Slater, 360 S.C. 487, 682 S.E.2d 90 (Ct. App. 2004); App. 681 - 86. The Court of Appeals held that the trial judge erred in refusing to give a self-defense charge. Id. This Court reversed the Court of Appeals. State v. Slater, 373 S.C. 66, 644 S.E.2d 50 (2007); App. 741-43. This Court held a self-defense charge was not warranted. Id.

On May 23, 2007, Slater filed a PCR application. App. 744. On November 16, 2009, a hearing was held on Slater’s PCR application before the Honorable Deadra L. Jefferson. App. 764. Matthew Friedman represented the State. App. 764. William Runion represented Slater. App. 764. On December 21, 2009, Judge Jefferson denied Slater’s PCR application. App. 814 No appeal was filed. App. 853. On May 10, 2011, Slater filed another PCR application. App. 823. On July 24, 2012, a hearing was held on this PCR application before the Honorable Stephanie P. McDonald. App. 839. Ashleigh Wilson represented the State and Charles T. Brooks represented Slater. App. 839. Slater and the State entered into a consent order granting Slater a belated appeal of his first

ARGUMENT

The PCR court correctly granted petitioner a belated appeal of the denial of his prior post-conviction relief application because of his attorney's failure to file an appeal, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

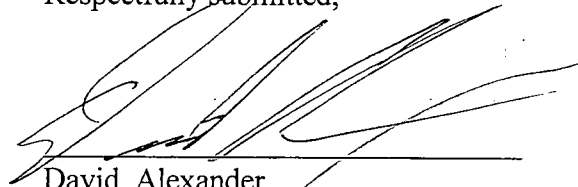
“An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal.” Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). The appropriate scope of review of the PCR court's holding is whether there is any evidence of probative value to uphold the PCR court's findings. Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984).

The PCR judge correctly found that petitioner “did not knowingly and voluntarily waive his right to appeal his first PCR application.” App. 854. The State consented to the belated appeal of his first PCR application. App. 855. At the hearing, the State told the court that petitioner's attorney “recalled the applicant indicating he wanted to appeal from the denial of his PCR application.” App. 841, ll. 6 – 9. Petitioner's attorney “also said that because of something set up with the receipt of his final order, he did not file an appeal in a timely manner.” App. 841, ll. 9 – 12. Because substantial evidence supports the PCR judge's finding, this court should grant certiorari and allow petitioner a belated appeal from his prior PCR application.

CONCLUSION

For the above-stated reasons, the Court should grant certiorari and allow petitioner a belated appeal from his first PCR application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of August, 2013.

STATE OF SOUTH CAROLINA
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LORD BYRON SLATER,

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CERTIFICATE OF SERVICE

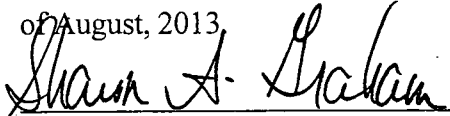
I certify that a true copy of the petition for writ of certiorari pursuant to Austin v. State in this case have been served on Ashleigh R Wilson, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also served upon Mr. Lord Byron Slater 279992 McCormick Correctional Institution 386 Redemption Way McCormick, SC 29899 this 5th day of August, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 5th day
of August, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: April 27, 2022.