

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Aiken County

S.C. Supreme Court

Edgar W. Dickson, Circuit Court Judge

BRAHEIM J. HILL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212413

PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ISSUE PRESENTED

Whether the PCR court was correct in ruling that petitioner was entitled to a belated appeal from the denial of his first PCR as his first PCR attorney failed to file an appeal after petitioner requested one?

STATEMENT

In June 2006, the Aiken County Grand Jury indicted Braheim Hill on the charges of armed robbery (AR), and the possession of a weapon during the commission of a crime of violence. On July 26, 2006, Hill proceeded to trial before the Honorable John C. Few and a jury. Hill was represented by David Mauldin, and the state was represented by Lauren M. Willis. The jury returned verdicts of guilty as indicted. Judge Few sentenced Hill to thirty years on the AR and a concurrent sentence of five years for the possession of a weapon during a crime of violence. App. 145, ll. 20 – 25.

Hill's attorney filed a notice of appeal which was perfected by the Division of Appellate Defense of the Commission of Indigent Defense with the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal on August 7, 2008. State v. Hill, Op. No. 2008-UP-452 (Ct. App. filed August 7, 2008).

On January 26, 2009, Hill filed an application for post-conviction relief (PCR). The state filed a return on May 13, 2009. An evidentiary hearing was held on January 29, 2010 before the Honorable W. Jeffrey Young. Hill was represented by Patricia James, and the state was represented by Mary S. Williams. On March 24, 2010, Judge Young issued an order denying Hill's application and dismissing it with prejudice. Hill's attorney did not file an appeal. App. 232.

On March 24, 2011, Hill filed a second PCR application. The state filed a return on September 22, 2011. An evidentiary hearing was held on January 27, 2012 before the Honorable Edgar W. Dickson. Hill was represented by John Andrew Donsbach, and the state was represented by Mary S. Williams. On May 22, 2012, Judge Dickson issued an order granting Hill a belated review of the denial of his first PCR application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d.395 (1991), but denying his second PCR and dismissing it with prejudice. App. 230-233. This petition for

writ of certiorari is filed simultaneously with an Austin petition for writ of certiorari addressing the issues from the first PCR order as set forth in King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).

ARGUMENT

The PCR court was correct in ruling that petitioner was entitled to a belated appeal from the denial of his first PCR as his first PCR attorney failed to file an appeal after petitioner requested one, and this ruling should be affirmed.

A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. If the PCR court finds an applicant was denied his right to appeal, the applicant can petition for certiorari and the appellate court will review whether the petitioner was prejudiced by the failure to obtain appellate review. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999); Wicker v. State, 310 S.C. 8, 425 S.E.2d 25 (1992). An applicant has a right to counsel's assistance in seeking review of the denial of PCR. Austin, 305 S.C. at 454, 409 S.E.2d at 396; Rule 71.1(g), SCRPC.

At Hill's second PCR hearing on January 27, 2012, he told the court that his first PCR attorney did not file an appeal and did not tell him he could. App. 211, ll. 1 – App. 212, ll. 12.

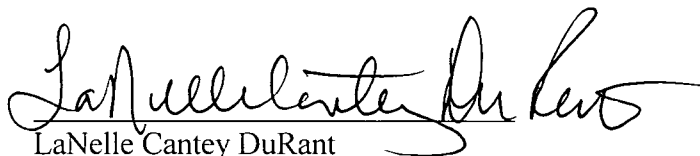
Hill's first PCR attorney testified at his second PCR hearing that she sent the order of dismissal from the PCR judge to Hill and assumed he received it. She had no other communication with him. App. 218, ll. 1 – App. 219, ll. 23.

The PCR judge ruled that Hill was entitled to a belated review of the denial of his first PCR. App. 230-App. 233.

CONCLUSION

For the above reasons, the order of the PCR court granting a belated appeal from the denial of the first PCR should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written in a cursive style.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of August, 2013.

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CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Braheim J. Hill, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, , this 7th day of August, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of August, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.