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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to
Jasper County
J. Cordell Maddox, 2012 PCR Action Judge
Kristi F. Curtis, 2019 PCR Action Judge

Appellate Case No. 2023-001228

TARA MARIE WEBER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RETURN TO PETITION
FOR A WRIT OF CERTIORARI**

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QUESTION PRESENTED

Did Petitioner voluntarily waive her right to appeal the denial of the order dismissing her first PRC action?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections serving a twenty-three-year sentence. In August 2011, the Jasper County Grand Jury indicted Petitioner for voluntary manslaughter (2011-GS-27-0378). On September 12-14, 2011, Petitioner proceeded to a jury trial before the Honorable Michael G. Nettles. Robert M. Hughes, Esquire, represented Petitioner, and Assistant Solicitors Robert Ferguson and Tameaka Legette prosecuted the case. The jury found Petitioner guilty as indicted, and Judge Nettles sentenced him to twenty-three years.

Petitioner filed a timely notice of appeal, which was perfected by Appellate Defender Robert M. Pachak through the filing of a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The Court of Appeals dismissed the appeal pursuant to Anders, and the remittitur was sent February 21, 2013.

On May 6, 2013, Petitioner filed a PCR application. On July 30, 2014, an evidentiary hearing convened before the Honorable J. Cordell Maddox, Jr. Petitioner was present at the hearing and represented by Tristan M. Shaffer, Esquire. Assistant Attorney General Ashleigh R. Wilson represented the State. On May 1, 2017, Judge Maddox issued an order denying and dismissing the application with prejudice. On August 7, 2017, Petitioner untimely appealed the denial of her first PCR application. On July 2, 2019, the Court of Appeals dismissed the appeal as untimely.

On August 6, 2019, Petitioner filed a second PCR application seeking a belated appeal of her first PCR action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). On July 20, 2022, an evidentiary hearing convened before the Honorable Kristi Curtis. James Falk, Esquire, represented Applicant, and Assistant Attorney General Lauren Mims represented the State. On July 6, 2023, Judge Curtis issued an order granting Petitioner a belated appeal of her first PCR action.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

Respondent concedes Petitioner did not voluntarily waive an appeal of the denial of her first PCR application.

Petitioner asserts she did not voluntarily waive her right to appeal the denial of her initial PCR application. Specifically, she contends counsel filed an untimely notice of appeal, which was then dismissed.

Respondent concedes the evidence shows Respondent did not voluntarily waive an appeal of her first PCR application. At the 2022 PCR hearing, PCR counsel testified he filed the notice of appeal late due to an error in his calendaring. (App. 469-70). Based on the foregoing, the PCR court correctly found Petitioner did not voluntarily waive her right to appeal the first PCR action.

CONCLUSION

Based on the foregoing, Respondent concedes Petitioner did not knowingly waive her right to appeal the denial of her first PCR application.

Respectfully Submitted,

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ATTORNEYS FOR THE RESPONDENT

This 6th day of May, 2024