

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Bamberg County  
Edgar W. Dickson, Circuit Court Judge

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Appellate Case No. 2012-212581

MICHAEL MILLER,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ALAN WILSON  
Attorney General

MEGAN E. HARRIGAN  
S.C. Bar No. 100108  
Assistant Attorney General

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

**RECEIVED**

AUG 26 2013

**S.C. Supreme Court**

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## **QUESTION 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 the Petitioner requested one?

## **STATEMENT OF THE CASE**

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

## ARGUMENT

### **The PCR court was correct in ruling that Petitioner was entitled to a belated appeal of his first PCR application pursuant to Austin v. State.**

Petitioner's first PCR counsel admitted that he failed to file an appeal from the denial of the first PCR application, even though Petitioner timely requested that he file an appeal. Respondent agrees that Petitioner should be allowed to petition this Court for belated review of his first PCR application, since he did not knowingly and voluntarily waive his right to an appeal.

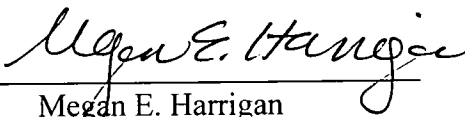
## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this Court grant the Petitioner for Writ of Certiorari to allow belated review pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,

ALAN WILSON  
Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

BY:   
Megan E. Harrigan

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

August 26, 2013

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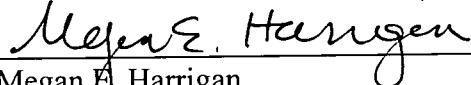
Petitioner.

\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, Megan E. Harrigan, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This 26<sup>th</sup> day of August, 2013

  
\_\_\_\_\_  
Megan E. Harrigan  
Assistant Attorney General

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737



ALAN WILSON  
ATTORNEY GENERAL

August 26, 2013

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AUG 26 2013

**S.C. Supreme Court**

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

**Re: Michael Miller v. State of South Carolina  
Appellate Case No. 2012-212581**

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. As Petitioner's counsel filed a Johnson Petition for Writ of Certiorari Pursuant to Austin v. State, I am not filing a response to this second Petition.

Sincerely,

Megan E. Harrigan  
Assistant Attorney General  
S.C. Bar No. 100108

MEH  
Enclosures

cc: Susan B. Hackett, Esquire  
Trisha Allen, Victim Services