

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Grace Gilchrist Knie, Circuit Court Judge
Honorable Edgar w. Dickson, Circuit Court Judge

RECEIVED

Jul 25 2024

S.C. SUPREME COURT

ERNEST FLOYD JACKSON II,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001931

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge correctly grant belated appellate review pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), finding that Petitioner did not knowingly and intelligently waive his right to appellate review of the order denying post-conviction relief?

STATEMENT

In May of 2017, the York County Grand Jury indicted Petitioner, Ernest Floyd Jackson, II, for trafficking crack cocaine over ten grams, indictment #2017-GS-46-01958. (App. pp. 263-264). On April 11, 2018, Petitioner appeared before the Honorable Edgar W. Dickson and pled guilty to the charge as a second offense. (App. p. 5, lines 1-6). Mindy Hervey Lipinski represented Petitioner at the plea. Thomas Matthew Hogge prosecuted the case. Pursuant to negotiations with the State, Judge Dickson sentenced Petitioner to seventeen (17) years to be served concurrently to a ten-year sentence Petitioner was serving on indictment #2017-GS-46-01962, for trafficking crack cocaine over ten grams. (App. p. 265). Petitioner did not appeal the sentence or conviction.

On February 21, 2019, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 16-22). On April 29, 2019, the State filed a return and motion for a more definite statement. (App. pp. 23-32). On June 30, 2021, Petitioner filed an amended PCR application. (App. pp. 33-34). On June 30, 2021, an evidentiary hearing was held before the Honorable R. Lawton McIntosh. Thurmond Brooker represented Petitioner at the PCR hearing. Michael Neubauer and Lindsey McCallister represented the State. In a written order signed September 22, 2021, Judge Lawton denied relief and dismissed the application. (App. pp. 192-219). Counsel for Petitioner failed to file the notice of intent to appeal.

On June 16, 2022, Petitioner filed a second PCR application. (App. pp. 220-224). The State filed a return on September 7, 2022. (App. pp. 229-238). On December 5, 2023, an evidentiary hearing was held before the Honorable Grace Gilchrist Knie. Michael Lifsey represented Petitioner. Zachary Jones represented the State. In a written order signed December 6, 2023, Judge Knie granted a belated appeal pursuant to Austin v. State. (App. pp. 260-262).

A timely notice of intent to appeal was served on December 16, 2023. This petition for writ of certiorari and separately filed Austin petition follow.


ARGUMENT

The PCR judge correctly granted belated appellate review pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), finding that Petitioner did not knowingly and intelligently waive his right to appellate review of the order denying post-conviction relief.

Petitioner testified at the PCR hearing that PCR counsel advised him that once the PCR application was denied, that decision would be appealed. (App. p. 248, lines 2-5). PCR counsel testified at the hearing that an appeal was not filed and Petitioner did not waive his right to appeal. (App. p. 250, lines 6-23). In the order granting belated appellate review pursuant to Austin v. State, the PCR judge wrote, “Based on the testimony of both Applicant and Mr. Brooker, and the concession of the State, this court finds that Applicant requested that the denial of his prior post-conviction relief action be appeal, Applicant did not knowingly and intelligently waive his right to appeal, and that no appeal was ever filed.” (App. p. 262). The PCR judge correctly granted belated appellate review pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

CONCLUSION

Based on the above argument, this Court should allow the belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).


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This 25th day of July, 2024.