

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to the Court of Appeals  
On Appeal from York County

Honorable William A. McKinnon, Chief Judge

Appellate Case No. ~~2021-001280~~ 2024-001905

General Sessions Court 1998-GS-46-2847-2851

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State of South Carolina,

Respondent,

v.

Antonio Gordon,

Appellant.

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Petition for the Appointment of Counsel

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Gordon hereby file this Petition for the appointment of Counsel. Gordon will show unto the Court the interest of justice requires the appointment of Counsel.

I.

Gordon contends the history of his case is very long and extensive so therefore he will speak on important facts. Gordon filed his first Post-Conviction Relief application (PCR). Gordon v. State, 2001-cp-46-1414 In the application Gordon asserted ineffective assistance of Counsel relating to family court matters.

I.

During the pendency of the application Gordon filed a second application and asserted "Lack of Subject Matter Jurisdiction ". The two applications were consolidated and will be referred to as PCR 1414. Gordon made amendments to his applications.

However, Gordon was court-appointed Tara D. Shurling, esq under the Post Conviction Relief statute, rules, and case law. The Respondent made a reply without responding to Gordon's jurisdictional issues and constitutional challenge to the Children's Code of Laws Act. During the PCR no legal arguments was made on Gordon jurisdictional claims and constitutional challenge to the Children Code of Laws Act. The Court instructed the State to do a proposed order. The Respondent prepared the proposed order making a finding of fact and conclusion of law on Gordon's Jurisdictional claims out of time. The court signed the order making specific finding of fact and conclusion of law on Gordon's Jurisdictional issues without giving Gordon adequate notice in advance to respond to the State's claim that General Sessions court properly had jurisdiction under S.C. Code Ann 20-7-6605(1) definition statute.

The record demonstrates Gordon requested PCR counsel to file a Rule 59(e) and or 60(b),SCRCP motion to No avail. Gordon filed a pro se Rule 59(e),SCRCP motion. The PCR court found that all issues had been addressed and this Court nullified and void ab initio Gordon's pro se motion and the PCR Order denying relief as well Gordon's request for a belated appeal and request to file a successive post conviction relief application. Continuously Gordon urged the lower Court to find his first PCR process was not fair and in some way or another violated his rights to a fair proceedings. Recently in 2019 Gordon filed a Declaratory Judgment asking the Court to find the PCR statutes, rules and case law were unconstitutional under the due process clauses both state and federal because it did not provide a judicial remedy to cure the ineffectiveness assistance of pcr counsel. This Court denied Gordon relief finding ineffective assistance of pcr counsel is not a reason to have a second or successive pcr application.

In 2021 Gordon filed in the lower court a Motion to vacate conviction and sentence based on lack of subject matter jurisdiction. The records will demonstrate Gordon asked the lower court to reopen or vacate pcr judgement (1414) because the State and PCR court did not provide Gordon with adequate notice in advance to respond to the State's claim that General Sessions court properly had jurisdiction under section 20-7-

6605(1). The lower court reopen pcr judgement 1414 and found “Court received this Handwritten motion request the court reconsider jurisdictional issues which have already been litigated in which the Court has issued orders denying relief. ....As previously ordered by the Court, the General Sessions court had jurisdiction over the Petitioner's guilty plea on July 16,1999. The Petitioner pled guilty to murder, three counts of possession of a weapon during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty one and criminal conspiracy. Pursuant to the law at the time of his plea,” a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more “is not a juvenile and may be remanded” to the family court for disposition of the charge at the discretion of the solicitor”. See S.C. Code Ann 20-7-6605 (Now section 63-19-20). The Petitioner was sixteen years old and charged with a Class A, B, C, or D felony as defined in section 16-1-20. Consequently, the General Sessions court had jurisdiction, and the sentence and conviction shall not be vacated”.

Gordon alleged the general sessions court was without subject matter jurisdiction because the grand jury did not have jurisdiction to issue true bill indictments in this case because he was a person less than seventeen years of age found violating a criminal law and taken into family court custody jurisdiction based on probable cause under S.C code Ann 20-7-7205(a);20-7-6605(1),(2);20-7-400(a)(1)(d);20-7-7605(1)-State v. Funderburk,191 SE2d, Gordon also alleged because there was no juvenile petition filed the general sessions court was without subject matter jurisdiction and that (2) The Children Code of Laws Act was unconstitutionally vague under the due process clauses of South Carolina Constitution Article one section 3 and the 14<sup>th</sup> amendment to the United States Constitution as applied to him because the term “who is Charged” or the term “[Charged]” as outlined in section 20-7-6605(1) of the Children Code of Laws Act does not set forth the proper standard for adjudication as applied to him being “sixteen years of age found violating a criminal law and taken into family court custody/jurisdiction based on probable cause” under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d). Appellant asserted his conviction under it was not merely erroneous, but illegal and void under Ex Parte Siebold 100 U.S. 371-77 (1879) holding.

On Appeal Gordon argued that the lower court committed error of law when it did not consider all of the Children Code of Laws Act and giving legislative intent to all sections relating to the same general law.

Gordon contends he have not read any case law in this State where a PCR Order were reopened to properly litigate issues raised in the first pcr application but due to some other procedural defects other than a Austin v. State,409 SE2d 395 (1991) Belated Appeal claim appointment of Counsel was given. However, Gordon asserts because the lower court reopen pcr (1414) due to a denial of due process to Gordon, to protect his procedural right to one full fair bite at the apple this Court should appoint Counsel pursuant to Austin where this Court has held “An Austin appeal is used when an applicant is prevented from seeking appellate review of a denial of his or her PCR application, such as when an attorney fails to seek timely review. See Aice, 305 S.C. at 448, 409 S.E.2d at 392; Hope v. State, 328 S.C. 78, 492 S.E.2d 76 n. 1 (1997) (permitting an Austin appeal where original PCR counsel failed to appeal from the first denial of PCR). In Austin, the

defendant never received a full procedural "bite at the apple" because he was \*262 prevented from seeking *any* review of the denial of his PCR application. Aice, 305 S.C. at 452, 409 S.E.2d at 395. As a method of effectuating the purpose of Rule 71.1(g) SCRPC<sup>[3]</sup> and enforcing Austin's entitlement to a PCR proceeding, this Court held Austin could attack his PCR counsel as ineffective by a petition for a writ of certiorari. *Id.*

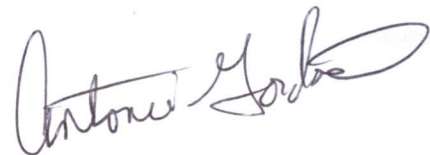
A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. See King, 308 S.C. at 348, 417 S.E.2d at 868. If the PCR court finds an applicant was denied his right to appeal, the applicant can petition For certiorari and this Court will review whether the petitioner was prejudiced by the failure to obtain appellate review. *Id.*; *Gordon asserts PCR Counsel abandoned him through his PCR Appeal process by failing to file a Rule 59(e) and 60 (b), SCRPC motion as the lower court in this case found the need in the interest of justice to reopen pcr judgment claim 5, is therefore the equivalent to an Austin v. State, supra, Belated Appeal and this Court should grant the Petition of Appointment of Counsel to file Gordon's petition for Writ of Certiorari.*

#### Conclusion

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*Gordon request that the filing of his Petition for Writ of Certiorari be held in abeyance until those Court decide his Petition For the Appointment of Counsel. Also Gordon request this Court to Appoint Counsel.*

*Respectfully Submitted*



*Nov 26, 2024*

Antonio Gordon #259798

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