

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Kershaw County
Honorable D. Craig Brown, Circuit Court Judge
Honorable G. Thomas Cooper, Circuit Court Judge
Honorable Daniel McLeod Coble, Circuit Court Judge

ALONZO TARELL JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000158

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the post-conviction relief court properly granted petitioner relief pursuant to *Austin v. State*, 305 S.C. 453, 246 S.E.2d 395 (1991), where petitioner's PCR counsel failed to file a Notice of Appeal, and where the state consented to petitioner's pursuit of a belated review?

STATEMENT

On February 20, 2013, a Kershaw County grand jury indicted petitioner for unlawful carrying of a pistol. App. 157-158. On April 9, 2013, petitioner waived indictment for the offense of resisting arrest and pled guilty to both unlawful carrying of a pistol and resisting arrest before the Honorable Deandrea G. Benjamin. App. 1-12; 9, ll. 1-4; 159-160. Cornelius J. Riley represented petitioner and deputy solicitor Brett Perry prosecuted for the state. App. 1. Judge Benjamin sentenced petitioner to concurrent terms of one year imprisonment, suspended to six months of probation. App. 11, l. 25—12, l. 4; 161-162.

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 14-21. On July 16, 2015, an evidentiary hearing was held before the Honorable G. Thomas Cooper, Jr. Petitioner was not present at the hearing. Ronald Moak represented petitioner. J. Clayton Mitchell, former assistant attorney general, represented the state. App. 29. On December 3, 2015, Judge Cooper signed an order denying PCR. No appeal was taken from this order. App. 29-35.

On March 15, 2017, petitioner filed an application for PCR alleging previous PCR counsel, Mr. Moak, failed to file an appeal from the denial of his PCR application. App. 37-38. Almost five years later, on January 24, 2022, the Honorable D. Craig Brown held a hearing on the matter. App. 76-106. Michael Lifsey represented petitioner and Michael Davidson represented the state. App. 76. Without objection from the state, Judge Brown granted petitioner a belated appeal of his 2015 PCR action on January 31, 2022. App. 107-110.

During preparation for petitioner's belated appeal, undersigned counsel learned the transcript from his July 16, 2015, evidentiary hearing was no longer available. Undersigned counsel filed a petition to reconstruct the record of petitioner's 2015 PCR hearing. App. 111-

116. By order dated August 23, 2022, this Court granted the petition and ordered the parties reconstruct the hearing. The order provided for the circuit court to determine whether the hearing could be reconstructed. If determined reconstruction were not possible, then the court was directed to notify this Court. In the alternative, if the court found reconstruction were possible, then the matter would proceed upon petitioner's receipt of the transcript. App. 118-119.

On December 17, 2024, petitioner appeared via Webex before the Honorable Daniel Coble to reconstruct the record of his July 16, 2015, hearing. Undersigned counsel represented petitioner, and Russ Barlow appeared on behalf of the state. App. 126. At the conclusion of the reconstruction hearing Judge Coble took the matter under advisement. App. 144, ll. 3-5. On February 21, 2025, Judge Coble signed an order holding the PCR evidentiary hearing was adequately reconstructed. App. 148-156.

Petitioner now files this petition for writ of certiorari concerning the 2015 PCR judge's finding that petitioner was entitled to a belated appeal of the denial of post-conviction relief.¹

¹ Pursuant to *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992), petitioner files this petition for writ of certiorari raising the issue of whether the PCR judge correctly held that petitioner had not knowingly and intelligently waived his right to appellate review of the previous PCR order. As required, petitioner is filing a separate petition addressing the questions from the previous post-conviction relief order that petitioner seeks to have reviewed.

ARGUMENT

The PCR court properly granted petitioner relief pursuant to *Austin v. State*, 305 S.C. 453, 246 S.E.2d 395 (1991), where petitioner’s PCR counsel failed to file a Notice of Appeal, and where the state consented to petitioner’s pursuit of a belated review.

The PCR court properly granted petitioner belated appellate review of his initial PCR application because petitioner was denied his right to appeal the dismissal of his first PCR application. App. 99, ll. 2-9; 101, ll. 8-25; 102, ll. 1-8; 103, l. 12—104, l. 3; *See Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

At the hearing petitioner testified after he was unaware that his hearing went forward in 2015 and was never told the results of the PCR action. App. 86-90. Petitioner was only ever made aware of the denial of his PCR after he filed a complaint with the office of disciplinary counsel after losing contact with Mr. Moak. App. 86, ll. 3-21.

Mr. Moak, who was at the time of the hearing suspended from the practice of law, admitted he petitioner was not present for his PCR hearing, was not made aware of the result of his hearing, and was not given the opportunity to appeal. App. 93, ll. 11-25; 98, l. 1—99, l. 25; 100, ll. 1-19.

In South Carolina, “[a]ll applicants are entitled to a full and fair opportunity to present claims in one PCR application.” *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). Pursuant to the rules and statutes governing PCR proceedings, an applicant is entitled to a full adjudication on the merits of the original petition. *Id.* This includes the right to seek appellate review of the denial of PCR and the right to assistance of counsel in that appeal. *Id.* at 261, 523 S.E.2d at 755-56. This Court held an individual can appeal a denial of a PCR application after the statute of limitations has expired if the individual either (1) requested and was denied an opportunity

to seek appellate review or (2) did not knowingly and intelligently waive the right to appeal. *Austin*, 305 S.C. at 455, 409 S.E.2d at 396.

The South Carolina Supreme Court held that the procedures prescribed by *Anders v. California*, 386 U.S. 738 (1967) applied in PCR matters. *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1998). Thus, appellate counsel is required to engage in a conscientious investigation of the possible grounds of appeal and brief arguable issues before appellate counsel may ask to withdraw. *Anders*, 386 U.S. at 744. The United States Supreme Court held: “The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of amicus curiae.” *Id.*

At the January 24, 2022 hearing regarding petitioner’s request for a belated appeal of his PCR application and order, the state did not oppose the granting of the belated review. The state in fact conceded petitioner was entitled to belated review where petitioner had clearly not knowingly and intelligently waived the right to appellate review. According to the order, Mr. Moak, petitioner’s PCR counsel admitted petitioner was never told the result of his first PCR action and did not have the opportunity to request an appeal. App. 109.

“An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal.” *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989); *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395, 396 (1991). In *Austin*, this Court framed the question as whether the PCR applicant “requested and was denied an opportunity to seek appellate review.” *Austin* at 454, 409 S.E.2d at 396. The appropriate scope of review of the PCR court’s holding is whether there is any evidence of probative value to uphold the PCR court’s findings. *Webb v. State*, 281 S.C. 237, 314 S.E.2d 839 (1984).

Under *Austin*, the PCR court correctly ruled that petitioner was entitled to appeal the denial of his PCR application because he did not voluntarily waive his right to appeal. Therefore, this Court should grant certiorari and grant petitioner a belated appeal from the 2015 PCR action.²

² In the *Austin* petition, petitioner disputes Judge Coble's finding that the record of his July 16, 2015, hearing could be and was reconstructed. Finding no guidance in *King*, 308 S.C. at 349, 417 S.E.2d at 868, reason dictates this issue be presented in the *Austin* petition. This Court stated that when the PCR judge granted the right to appellate review of a previous post-conviction relief order, "the petition shall raise this question along with all other questions petitioner seeks to have reviewed from that order." *King*, 308 S.C. 349, 417 S.E.2d at 868. The issue of whether the parties adequately reconstructed the record was not a question presented in the order granting *Austin* review. Although this Court directed petitioner to address the questions from the previous post-conviction relief order in the *Austin* petition, *id.*, and this issue was not addressed in the previous order, the factual circumstances and legal analysis pertinent to this issue follow more naturally in the *Austin* petition. In the event undersigned counsel's interpretation is incorrect, petitioner incorporates by reference his claim that the hearing could not be reconstructed into this petition.

CONCLUSION

Petitioner respectfully requests this Court uphold the lower court's ruling that he is entitled to a belated appeal of his PCR application. Thus, petitioner asks this Court to grant the writ and review the companion petition in which he raises the pertinent issues for review.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of March, 2025.