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APR 01 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY

Jennifer B. McCoy, Circuit Court Judge

Case No.: 2025-000507

James R. Rose, #293938, _____ Appellant

v.

The State of South Carolina, _____ Respondent

RECORD ON APPEAL

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EXPLANATION PURSUANT TO RULE 243 (c)

The order of the circuit court barring Appellant's PCR action as being successive and/or as being untimely under the statute of limitations, was improper because pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991), a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal. *id*; see also *King v. State*, 308 S.C. 348, 417 S.E. 2d 868 (1992).

Our courts have consistently held a PCR applicant is "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). In other words, an "applicant is entitled to one full bite at the apple." *Bannon v. State*, 345 S.C. 437, 440 n.1, 548 S.E. 2d 866, 867 n.1 (2001).

"The right to seek appellate review of the denial of PCR is expressly authorized by state law." *Austine v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (citing S.C. Code Ann. § 17-27-100 (1985)). "A PCR applicant is entitled to an Austin appeal if the PCR [court] 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." *Odom*, 337 S.C. at 262, 523 S.E.2d at 756.

"[T]o determine whether a waiver is effective, the court examines the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused." *Narciso v. State*, 397 S.C. 24, 33, 723 S.E.2d 369, 373 (2012). "A defendant's knowing and voluntary waiver of a statutory or constitutional rights must be established by a complete record, and may be accomplished by [a] colloquy between [the] court and defendant, between [the] court and defendant's counsel or both." *Brannon*, 345 S.C. at 439, 548 S.E.2d at 867.

In *Hughes v. State*, (Ct. App. 2016), the appellate court ruled that "the second PCR court erred in summarily dismissing Hughes's

2007 PCR application without holding an evidentiary hearing to determine whether he voluntarily waived the right to appeal the first PCR court's order."

The record before this Court contains no evidence of an evidentiary hearing to determine whether Appellant knowingly and intelligently withdrew the appeal from his first PCR.

WHEREFORE, PCR court's order dismissing Appellant's second PCR application without an evidentiary hearing was improper, and this matter must proceed.

Respectfully submitted,

James R. Rose
James R. Rose
APPELLANT

March 26, 2025

Pelzer, South Carolina

cc: Danielle Dixon