

# The Supreme Court of South Carolina

Shawndell Q. McClenton, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2019-000474

Lower Court Case No. 2014CP1003253

**RECEIVED**

**Jul 10 2025**

**SC Court of Appeals**

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## ORDER

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According to the database maintained by the South Carolina Office of Court Administration (see enclosure), the transcript in this case was delivered on July 25, 2019. The petition for a writ of certiorari and appendix have not been filed in this case.

Based on petitioner's failure to timely serve and file the petition for a writ of certiorari and appendix under Rule 243(d) of the South Carolina Appellate Court Rules (SCACR),<sup>1</sup> this appellate case is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

October 11, 2019

Enclosure

cc: Thurmond Brooker, Esquire  
Benjamin Hunter Limbaugh, Esquire

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<sup>1</sup> Petitioner's counsel has not provided this Court with any written notification that he has failed to timely receive the transcript from the court reporter. Rules 243(b) and 207(a)(5), SCACR ("If appellant has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, appellant shall notify the Office of Court Administration, the clerk of the appellate court, and the court reporter in writing.").

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Shawndell Q. McClenton, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2023-CP-10-03189

**ORDER GRANTING BELATED  
APPEAL PURSUANT TO  
AUSTIN v. STATE**

FILED  
2025 JUN 16 PM 12:52  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter came before the court by way of an application for post-conviction relief (PCR) filed by Shawndell Q. McClenton. On May 29, 2025, a hearing was convened before the Honorable Carmen T. Mullen. Christopher L. Murphy, Esquire, represented the Applicant. Assistant Attorney General Kylee M. Kanealey represented Respondent.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections (SCDC), serving a cumulative 24-year sentence pursuant to the orders of commitment of the Charleston County Clerk of Court. In May 2012, the Charleston County Grand Jury indicted Applicant for Burglary in the first degree (2012-GS-10-02892) and one count of Breaking and Entering a Motor Vehicle (2012-GS-10-02893). During its June 2012 term, the Charleston County Grand Jury indicted Applicant on another count of Burglary in the first degree (2012-GS-10-03189).

On April 21, 2014, Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was represented by Benjamin Lewis, Esquire and Christine Parnall, Esquire. The State was represented by Assistant Solicitor Timmy Finch and Assistant Solicitor Greg Voigt. The jury returned a verdict of guilty on all three counts. On April 23, 2014, Judge Clifton Newman sentenced Applicant to concurrent terms of twenty-four years' imprisonment on each Burglary

charge and five years' imprisonment on the Breaking and Entering a Motor Vehicle.

On April 30, 2014, Applicant filed his Notice of Appeal. On appeal, Applicant was represented by Appellate Defender Joshua B. Raffini, who raised the following issues:

1. Whether trial court erred by not granting appellant a directed verdict as to both counts of burglary in the first degree where there was no direct or substantial circumstantial evidence that appellant entered either residence during nighttime hours?
2. Whether the trial court erred in admitting an unreliable identification based on an unnecessarily suggestive procedure and circumstances that created a substantial risk of irreparable misidentification, where the witness had limited time to observe and little need to perceive details?

Following briefing and an oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. McClenton, Op. No. 2016-UP-306 (S.C. Ct. App. filed June 22, 2016). Applicant filed a petition for rehearing which was denied. The Remittitur was sent on October 13, 2016.

#### **First PCR Application**

On May 21, 2014, Applicant filed his first application for post-conviction relief. Applicant filed a second application for post-conviction relief on November 4, 2016. On May 12, 2017, the Honorable Diedre L. Jefferson consolidated the two cases by merging the second case into the first case.

In his application, Applicant alleged:

1. That the Court lacked Subject Matter Jurisdiction over the Trial; and
2. That the Applicant received Ineffective Assistance of Counsel due to:
  - a. The Applicant's Lawyer failed in that there was coercion from the State through the Applicant's Defense Attorney;
  - b. The Applicant's Lawyer failed to have his client properly evaluated by Medical personnel based on the Applicant's behavior; and
  - c. The Applicant's Lawyer failed to object to the Prosecution misleading the Jury during closing arguments.

An evidentiary hearing was held on December 6, 2019. Applicant was present and

represented by Thurmond Booker, Esquire. On February 13, 2019, Judge G. Thomas Cooper Jr. filed an Order of Dismissal. Applicant filed his notice of Appeal. The Appeal was dismissed based on petitioner's failure to timely serve and file the petition for a writ of certiorari and appendix under Rule 243(d) of the South Carolina Appellate Court Rules. The Remittitur was issued on November 1, 2019.

#### CURRENT APPLICATION

On June 13, 2023, Applicant filed this current PCR application alleging he is being held in custody unlawfully for the following reasons:

1. Ineffective Counsel
  - a. October 30, 2019, Supreme Court of South Carolina "Remittitur"
2. Violation of Rule 243(d) of the (SCACR)
  - a. Appellate Case No 2019-000474 Order
  - b. Lower Court Case No. 2014-CP-1003253

Applicant requests relief in the form of "belated appeal; entry into Supreme Court". At the PCR hearing, Applicant proceeded forward only on the allegation that he was entitled to a belated appeal of his first PCR action.

Before this Court are the records of the Charleston County Clerk of Court regarding the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the records of Applicant's prior post-conviction relief action, and the records of this post-conviction relief action.

#### AUSTIN REVIEW

This Court finds Applicant is entitled to a belated appeal of the denial of his first PCR application. An evidentiary hearing may be conducted regarding a successive PCR application "on the issue of whether, in fact, the petitioner requested and was denied an opportunity to seek appellate review" of his first PCR action. *Austin v. State*, 305 S.C. at 454, 409 S.E.2d at 396. "If

the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." *Id.* at 455, 409 S.E.2d at 396. *Austin* allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial PCR application outside of the ordinary time limits for bringing such an appeal.

Here, the record reflects PCR counsel Thurmond Brooker failed to timely serve and file the petition for a writ of certiorari and appendix under Rule 243(d) of the South Carolina Appellate Court Rules (SCACR). The State conceded that Applicant was entitled to a late appeal of his first PCR. This Court finds that Applicant was denied an opportunity to seek appellate review of his first PCR action.


#### CONCLUSION

Based on the foregoing, this Court finds Applicant is entitled to petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his first PCR application.

#### **THEREFORE, IT IS ORDERED**

1. Applicant is entitled to appellate review of the dismissal of his prior PCR application, 2014-CP-10-3253, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991);  
and
2. Applicant shall be remanded and remain in the custody of the State.

AND IT IS SO ORDERED this 3 day of June, 2025.

  
CARMEN T. MULLEN  
Presiding Judge  
Ninth Judicial Circuit

Beaufort, South Carolina