

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Kristi F. Curtis, Circuit Court Judge

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Sep 22 2025

S.C. SUPREME COURT

JOHN ALEXANDER DARRIEUX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000303

PETITION FOR WRIT OF CERTIORARI

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The lower court properly granted petitioner belated review pursuant to *Austin v. State*, 305 S.C. 453, 246 S.E.2d 395 (1991), where post-conviction relief counsel failed to timely file a notice of appeal, petitioner did not knowingly and voluntarily waive his right to appellate review, and the state conceded petitioner was entitled to a belated appeal.....4

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ISSUE PRESENTED

Whether the lower court properly granted petitioner belated review pursuant to *Austin v. State*, 305 S.C. 453, 246 S.E.2d 395 (1991), where post-conviction relief counsel failed to timely file a notice of appeal, petitioner did not knowingly and voluntarily waive his right to appellate review, and the state conceded petitioner was entitled to a belated appeal?

STATEMENT

On June 23, 2015, a Berkeley County grand jury indicted petitioner for third-degree burglary, first-degree burglary, three counts of armed robbery, three counts of kidnapping, and possession of a weapon during the commission of a violent crime. App. 673—688. Petitioner’s case was called to trial on January 26-29, 2016, before the Honorable Benjamin H. Culbertson. App. 1—537. Rodney Davis represented petitioner. App. 1. Mason West and Daniel Poulos prosecuted for the state. App. 1.

The jury found petitioner was not guilty of third-degree burglary but guilty of first-degree burglary, three counts of armed robbery, three counts of kidnapping, and possession of a weapon during the commission of a violent crime. App. 518, l. 20—519, l. 1. The trial court sentenced petitioner to concurrent terms of thirty years’ imprisonment for first-degree burglary, thirty years’ imprisonment for each count of armed robbery, thirty years’ imprisonment for each count of kidnapping, and five years’ imprisonment for possession of a weapon during the commission of a violent crime. App. 535, l. 22—536, l. 6. The South Carolina Court of Appeals affirmed petitioner’s convictions and sentences on May 9, 2018. *State v. Darrieux*, Op. No. 2018-UP-197 (S.C. Ct. App. filed May 9, 2018).

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 566—576. An evidentiary hearing was held on July 26, 2019, before the Honorable Michael G. Nettles. App. 595—611. Christopher Murphy represented petitioner and Benjamin Limbaugh appeared on behalf of the state. App. 595. The sole allegation raised during the hearing was that defense counsel was ineffective for failure to effectively object where the trial court issued an *Allen*¹ charge to the jury. App. 599, l. 6—601, l. 1.

¹ *Allen v. United States*, 164 U.S. 492 (1896).

On December 26, 2019, Judge Nettles signed an order denying PCR. App. 612—626. The PCR court found the trial transcript “directly refute[d] this allegation, showing that counsel did object to the Allen charge.” App. 624. The court found this allegation was not proper for PCR and that the charge was “pristine in quality, stating that the majority should consider the views of the minority and vice versa.” App. 625. The court concluded, finding petitioner failed to show deficiency or prejudice. App. 625.

On July 6, 2021, petitioner filed an application for PCR seeking belated review of the 2019 denial of PCR. App. 627—633. The state filed its return on January 21, 2022. App. 634—642. An evidentiary hearing was held before the Honorable Kristi F. Curtis, on June 29, 2023. App. 643—649. Denise Swope represented petitioner and Danielle Dixon appeared for the state. App. 643.

Judge Curtis signed an order granting belated review pursuant to *Austin*.² App. 667—672. Judge Curtis found petitioner requested and was denied an opportunity to seek appellate review. App. 672.

Petitioner now files this petition for writ of certiorari concerning Judge Curtis’ finding petitioner was entitled to a belated appeal of the denial of PCR.³

² *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

³ 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 did not knowingly and intelligently waive his right to appellate review of the previous PCR order. As required, petitioner is filing a separate petition addressing the question from the previous PCR order that petitioner seeks to have reviewed.

ARGUMENT

The lower court properly granted petitioner belated review pursuant to *Austin v. State*, 305 S.C. 453, 246 S.E.2d 395 (1991), where post-conviction relief counsel failed to timely file a notice of appeal, petitioner did not knowingly and voluntarily waive his right to appellate review, and the state conceded petitioner was entitled to a belated appeal.

In *King v. State*, this Court set forth the procedure for cases where review is sought pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991):

(1) When the post-conviction relief judge has affirmatively found that the right to appellate review of a previous post-conviction relief order was not knowingly and intelligently waived, the petition shall raise this question along with all other questions petitioner seeks to have reviewed from that order. At the same time this petition is served, petitioner shall serve and file an *Austin* petition addressing the questions from the previous post-conviction relief order. The *Austin* petition shall comply with the requirements of Rule 227(d). The Appendix shall contain the entire records from both post-conviction relief proceedings. Respondent's return to the petition shall address the questions from the latest post-conviction relief order, including whether the right to appellate review of the previous post-conviction relief order was knowingly and intelligently waived. At the same time this return is served, respondent shall serve and file an *Austin* return addressing the questions from the previous post-conviction relief order.

(2) When the post-conviction relief judge has found that the applicant is **not** entitled to an *Austin v. State* review, the petition shall raise the question of waiver of the right to appellate review of the previous post-conviction relief order along with all other questions petitioner seeks to have reviewed from that order. The petition shall also contain a "Statement of *Austin* Questions" listing the questions to be raised if an *Austin v. State* review is granted. An *Austin* petition addressing the questions will not be allowed unless certiorari is granted on the *Austin v. State* question.

King v. State, 308 S.C. 348, 349, 417 S.E.2d 868, 868–69 (1992).

In petitioner's case, he did not voluntarily waive the appeal of the 2019 denial of PCR. The state consented to *Austin* review. App. 646, ll. 9-12; 647, l. 25—648, l. 1. Petitioner's PCR counsel failed to timely file a notice of appeal on the denial of PCR. The court found petitioner

“requested and was denied an opportunity to seek appellate review.” App. 648; 671. The PCR court properly granted belated review.

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.

This Court held 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.*

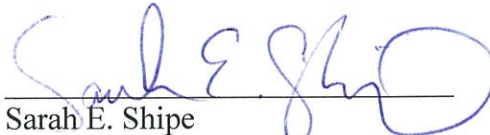
In *Austin*, this Court framed the question as whether the PCR applicant “requested and was denied an opportunity to seek appellate review.” *Austin* at 454, 409 S.E.2d at 396. The appropriate scope of review of the PCR court’s holding is whether there is any evidence of probative value to uphold the 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 2019 denial of his application for PCR.

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 22nd day of September, 2025.