

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 25 2025
S.C. SUPREME COURT

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Certiorari to Charleston County

Honorable Maite Murphy, Circuit Court Judge

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ISHMEL J. LEMON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001348

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RETURN TO MOTION TO DISMISS
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Petitioner Ishmel J. Lemon hereby makes a return to the state's motion to dismiss. Petitioner respectfully requests this Court deny the state's motion to dismiss and consider Petitioner's appeal in the interests of judicial economy.

A Charleston County grand jury indicted Petitioner on March 10, 2014, for first degree burglary. App. 508-509. His case was called to trial on March 2, 2015, before the Honorable W. Jeffrey Young, and a jury. App. 1. Petitioner was tried in his absence after he did not appear for trial. App. 43, l. 23 – 44, l. 3. Assistant Solicitors David Osborne and Gregory Voight represented the state. James Smiley represented Petitioner. App. 1. On March 4, 2015, the jury found

Petitioner guilty as indicted. App. 396, ll. 9-13. Because Petitioner was not present, Judge Young sealed his sentence. App. 401, l. 10.

On December 15, 2015, Petitioner's sealed sentence was opened before the Honorable Kristi Lea Harrington. App. 414. Assistant Solicitor David Osborne represented the state. James Smiley represented Petitioner. App. 414. Petitioner was sentenced to thirty years imprisonment. App. 416, ll. 13-15.

On December 22, 2015, Petitioner filed a motion to reconsider sentence with the assistance of new counsel, Lauren Williams. App. 418-420. The state filed a response in opposition on January 19, 2016. App. 421-424. It is unclear from the record exactly when a hearing was held on Petitioner's motion to reconsider sentence. However, during Petitioner's subsequent PCR hearing, the parties stipulated that a hearing was held before Judge Young in February 2016. App. 497, ll. 1-18. It is also unclear from the record when Petitioner's motion to reconsider was ruled upon. According to the state, the motion remained outstanding for years. However, Petitioner testified at his PCR hearing that he "attended court" on the motion to reconsider and the judge denied the motion "from the bench." App. 499, l. 17 – 500, l. 4.

On February 22, 2016, Petitioner filed a *pro se* notice of appeal. App. 425. By order filed May 18, 2016, the Court of Appeals dismissed the appeal because Petitioner failed to timely serve the state as required by Rule 203(b), SCACR. App. 427. The remittitur was sent on June 14, 2016. App. 428.

On March 29, 2017, Petitioner filed an application for post-conviction relief (PCR) seeking *inter alia* a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The state filed a return to Petitioner's application and motion to dismiss without prejudice on February 1, 2018. App. 448-452. The state argued Petitioner's motion to reconsider sentence

remained pending before the trial court and, consequently, “the time to file a notice of appeal remains stayed.” App. 450. On February 16, 2018, Judge Harrington dismissed Petitioner’s PCR application without prejudice finding Petitioner’s post-trial motion was still pending. App. 453-455.

On August 9, 2018, Petitioner’s motion to reconsider sentence was ruled upon in a written order by the Honorable Roger M. Young. Judge Young denied Petitioner’s motion “after thoroughly considering [Petitioner’s] motion and supporting material.” App. 456-457. There is no evidence in the record that Petitioner was served with a copy of the order denying his motion to reconsider sentence or that he actually received notice of the order.

On March 3, 2022, Petitioner filed a second application for post-conviction relief again seeking a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The state filed a return to this application on March 28, 2023, and an amended return and partial motion to dismiss on April 7, 2023. App. 469-491.

An evidentiary hearing was held on October 18, 2023, before the Honorable Maite Murphy. Assistant Attorney General Danielle Dixon represented the state. Christopher L. Murphy represented Petitioner. App. 492. By order filed January 18, 2024, the PCR court denied Petitioner relief. App. 503-507. The court found Petitioner was not entitled to a belated direct appeal pursuant to White v. State.

Petitioner’s counsel, Christopher Murphy, filed a notice of appeal with this Court on August 16, 2024. Undersigned counsel was assigned to represent Petitioner on appeal and filed the petition for writ of certiorari and accompanying appendix on May 12, 2025. Petitioner argued in the petition for writ of certiorari that the PCR court erred by finding Petitioner is not entitled to

a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), when there is no evidence Petitioner knowingly and intelligently waived his right to appeal.

On September 24, 2025, the state filed a motion to dismiss this case because the notice of appeal was not timely filed. The state's motion was accompanied by an affidavit from Christopher Murphy, Petitioner's PCR counsel, stating he received written notice of entry of the order of dismissal by June 1, 2024. However, Murphy did not state in his affidavit why he failed to timely file the notice of appeal.


The notice of appeal in a case appealed from the Court of Common Pleas must be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. In Elam v. S.C. Dep't of Transp., this Court held, "The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (citing Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985)).

Despite the jurisdictional nature of the service of the notice of appeal, the interests of judicial economy support a finding in this case that the notice of appeal was timely served and filed. The notice of appeal was accepted by this Court when it was filed on August 16, 2024. The state did not move to dismiss this case until over a year after the notice of appeal was filed and over four months after Petitioner filed his petition for writ of certiorari and accompanying appendix. Given these circumstances, respectfully, this Court should deny the motion to dismiss in the interests of judicial economy.

If this Court finds the notice of appeal was not timely filed and dismisses the appeal, Petitioner will be entitled to file another subsequent PCR application, asking for a belated Austin review. “The right to seek appellate review of the denial of PCR is expressly authorized by state law. S.C. Code Ann. § 17-27-100 (1985); Supreme Court Rule 50(9).” Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991).

WHEREFORE, undersigned counsel respectfully requests this Court deny the state’s motion to dismiss in the interests of judicial economy.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of September, 2025.