

RECEIVED

Nov 03 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County
Honorable Diane S. Goodstein, Circuit Court Judge
Honorable Brian M. Gibbons, Circuit Court Judge

JAMAQUES SALLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001320

PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT OF THE CASE.....2

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
agreed that Petitioner was entitled to belated appellate review.4

CONCLUSION.....5

ISSUE PRESENTED

Whether 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 agreed that Petitioner was entitled to belated appellate review?

STATEMENT OF THE CASE

Petitioner was indicted during the May 2013 term of the Aiken County grand jury for armed robbery and kidnapping. App. 244-247. The state, represented by Kevin Malony and Nicholas R. McCarley, called the case to trial on August 8, 12-13, 2013, before the Honorable Doyet A. Early, III, and a jury. Petitioner was represented by Thomas D. Broadwater. App. 1. Petitioner was found guilty as indicted and sentenced to an aggregate thirty-five years' imprisonment. App. 238, l. 8-15; App. 242, ll. 11-16; App. 248-249.

Petitioner timely filed a notice of appeal from his convictions and sentences. At Petitioner's request, the Court of Appeals issued an order on September 30, 2014, allowing Petitioner to withdraw his appeal. The remittitur was issued on October 16, 2014. On August 14, 2014, Petitioner filed an application for post-conviction relief. App. 250-256. The state filed a return on January 26, 2015. App. 257-261. PCR Counsel Aimee J. Zmroczek filed an amended PCR application on May 16, 2016, alleging eleven grounds of ineffective assistance of counsel and one claim of prosecutorial misconduct. App. 262-266. The first evidentiary hearing held in the matter was convened on May 24-25, 2017, before the Honorable Diane S. Goodstein. Petitioner was represented by PCR Counsel Zmroczek. The state was represented by Julie Coleman. App. 267. On August 14, 2017, the parties reconvened to take testimony from digital forensic experts Christopher Watkins and Robert Watkins. App. 426-427.

On May 7, 2019, the state moved to admit the transcript of the guilty plea of Petitioner's co-defendant into the record. App. 511-528. Petitioner opposed the motion, arguing the plea transcript should not be considered without an opportunity to cross-examine the co-defendant. App. 529. The state responded that it did not object to reopening the record for further testimony. App. 530-538. Subsequently, the parties reconvened on October 6, 2021, for a third

evidentiary hearing in the matter where testimony was presented by Petitioner's co-defendant and the prosecuting solicitor. App. 538-541. An order of dismissal was filed on December 27, 2021. App. 592-633.

An appeal of the denial of Petitioner's PCR application was not filed. On August 7, 2023, Petitioner filed a second PCR application alleging the ineffective assistance of prior PCR counsel for failing to file an appeal of the denial of his PCR application. App. 634-641. The state filed a return on March 22, 2024. App. 642-648. An evidentiary hearing was convened on July 16, 2024, before the Honorable Brian M. Gibbons. Petitioner was represented by Tommy Thomas. The state was represented by Zachary Jones. App. 649.

At the hearing, Counsel Zmroczek testified that she had intended to file an appeal of the denial of Petitioner's PCR application but became ill and was hospitalized. She confirmed she had spoken with Petitioner and his mother about filing the appeal, and that, but for her illness, the appeal would have been filed. App. 654, l. 18 – 655, l. 14. Petitioner testified that he had requested Counsel Zmroczek file an appeal, and she had confirmed that she would file one on his behalf. He later tried to contact Counsel Zmroczek to see if the appeal had been filed but could not reach her. His family hired Counsel Thomas, who then discovered that no appeal had been filed. App. 658, l. 7 – 661, l. 18. Petitioner's mother's testimony corroborated the testimony of Petitioner and Counsel Zmroczek. App. 662, l. 15 – 663, l. 21.

At the conclusion of the hearing, the state agreed that Petitioner had timely requested an appeal that Counsel Zmroczek was unable to file due to unforeseen circumstances. App. 664, ll. 5-14. The court agreed, finding based on the totality of the evidence presented that Petitioner was entitled to a belated appeal. App. 664, ll. 19-25. On August 13, 2024, a consent order granting an appeal pursuant to *Austin v. State* was filed. App. 667-672.

ARGUMENT

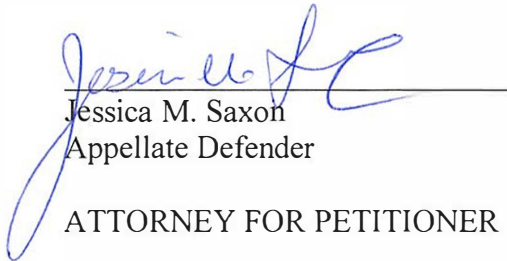
The PCR court properly granted Petitioner relief pursuant to *Austin v. State*, 305 S.C. 453, 246 S.E.2d 395 (1991), where Petitioner's PCR counsel failed to file a Notice of Appeal, and where the state agreed that Petitioner was entitled to belated appellate review.

In *Austin v. State*, 305 S.C. 453, 246 S.E.2d 395 (1991), counsel failed to file a timely appeal following the denial of the petitioner's first PCR application. Subsequently, the petitioner filed a second PCR application alleging counsel was ineffective for failing to appeal the denial of his first PCR. *Id.* at 454, 246 S.E. 2d at 396. This Court recognized that the right to seek appellate review was expressly authorized by state law under the PCR Act. *Id.* To safeguard that right, this Court crafted a remedy allowing belated appellate review of an order dismissing a PCR application if the petitioner could show that they in fact requested and were denied an opportunity to seek appellate review. *Id.*

In Petitioner's case, the testimony of Counsel Zmroczek, Petitioner, and Petitioner's mother established that 1) Petitioner requested an appeal be filed, 2) Counsel Zmroczek agreed to file the appeal, and 3) Counsel Zmroczek was unable to file the appeal due to an illness that left her hospitalized. Counsel Zmroczek believed there were meritorious issues to be pursued on appeal from the denial of Petitioner's PCR, and she had fully intended to file the appeal prior to becoming ill. Additionally, the state conceded that Petitioner was entitled to relief under *Austin*. The PCR court's order properly provided that relief. The record reflects that the grant of relief pursuant to *Austin* was warranted in Petitioner's case. Petitioner, through no fault of his own, was denied the opportunity for appellate review of the dismissal of his first PCR application. This unjust procedural defect can only be remedied by granting him belated appellate review.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests this Court grant certiorari, affirm the lower court's determination that Petitioner is entitled to belated review, and review the petition for writ of certiorari pursuant to *Austin* that was filed simultaneously with this petition.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of November, 2025.