

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

ROBERT WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000605

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

1. Did the PCR court correctly determine Petitioner is entitled to belated review pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), where the state conceded the issue because initial PCR counsel intended to appeal the dismissal of Petitioner's original application but then failed to do so?

STATEMENT OF THE CASE

Petitioner Robert Wilson was indicted for two counts of armed robbery by the Charleston County Grand Jury in April of 2015. App. 386-89. On January 6 and January 7, 2016, he proceeded to trial before Judge Kristi L. Harrington and a jury. App. 1. He was represented by Russell Hilton, and David Osborne prosecuted the case for the state. App. 2. He was ultimately found guilty as charged. App. 376:13-377:2. The trial court issued concurrent thirteen-year-sentences. App. 384, 496.

Petitioner appealed his convictions, and the Court of Appeals affirmed in an unpublished opinion. *State v. Wilson*, Op. No. 2017-UP-444 (S.C. Ct. App. filed Nov. 29, 2017).

On April 3, 2018, Petitioner filed an application seeking post-conviction relief. App. 390. In summary, he alleged the following: (1) trial counsel was ineffective in various ways related to his failure to cross-examine a state's witness about prior charges that were dismissed, and (2) prosecutorial misconduct related to a failure to disclose that those charges were dismissed. App. 392, 418:21-420:13, 496.

The application went before Judge Cordell Maddox, Jr. for consideration. App. 409. He held an evidentiary hearing on January 24, 2019. App. 409. Petitioner was represented by Christopher Murphy, and the state was represented by Benjamin H. Limbaugh. App. 409. During the hearing, Petitioner, his counsel, and the Court discussed the reality that he is serving a relatively short sentence that was likely to run its course by the time any PCR appeal concluded, or at least shortly thereafter, while a successful PCR application carried a risk of substantially increased sentences. App. 412:23-415:15, 417:1-418:20. Ultimately PCR counsel stated, "[M]y client says he does want to withdraw [the application]; which I think is a very wise decision." App. 421:18-20. The Court responded: "Yeah, I do too." App. 421:21. They also discussed a

proposal that those serving "85% time" might be reduced to serving only 65%. App. 413:11-14, 422:4-10. On March 4, 2019, the PCR court ultimately entered a form order dismissing the case because of the withdrawal. App. 425. There was no appeal from this order.

On October 17, 2019, Petitioner filed a second PCR application. App. 426. In it he raised the same allegations as in the initial application and also requested his initial application "be reinstated" because "he did not knowingly, voluntarily, and intelligently withdraw his application for post-conviction relief." App. 428, 435. Petitioner included a letter he received from Murphy which stated he would appeal an adverse decision from the initial PCR application. App. 454. On February 24, 2021, the state filed a return and motion to dismiss the second application as successive and untimely. App. 455.

On March 26, 2021, Judge Roger Young, Sr., issued a conditional order of dismissal allowing Petitioner twenty days in which to explain why the appeal was not untimely or successive and should be allowed to proceed. App. 464, 468:69. Petitioner filed a response to the order asserting Murphy failed to file an appeal from the original dismissal. App. 473. On July 23, 2024, the state filed an amended return and requested an evidentiary hearing on the belated appeal issue. App. 480, 485.

On September 12, 2024, Judge Michael Nettles held an evidentiary hearing on the second PCR application. App. 488. Petitioner was represented by Denise G. Swope, and the state was represented by Danielle Dixon. App. 488. At the hearing, the state stipulated that Christopher Murphy would testify, if he were present, "that he intended to file an appeal from the first PCR application and [it] just didn't happen." App. 491:12-16. It then conceded, based on that fact, Petitioner "did not voluntarily waive the appeal of his first PCR action." App. 491:16-18.

Petitioner then waived his other grounds as they were re-raised in the second application—however, he did not waive them as to the initial application. App. 491:21-25.

Judge Nettles then issued an order to that effect on February 27, 2025. App. 495. In it the Court found Petitioner had not voluntarily waived his right to appeal the initial order. 498-99. The Court ordered belated review pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

This petition for a writ of certiorari and the accompanying *Austin* petition for a writ of certiorari follow.

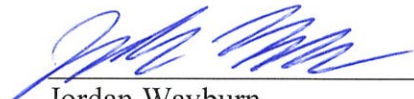
ARGUMENT

I. The PCR Court correctly ruled Petitioner was entitled to belated review pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

The PCR court correctly found Petitioner is entitled to belated review under *Austin*. The state stipulated at the second PCR hearing that initial PCR counsel intended to appeal the initial PCR order dismissing the application but simply failed to do so. The state then correctly conceded that therefore Petitioner did not voluntarily waive his appeal from that order. The second PCR court found Petitioner did not knowingly, voluntarily, and intelligently waive his initial PCR appeal. Therefore, this Court should order the relief available under *Austin* and review the denial of his first PCR application.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant his petition for a writ of certiorari and review of his original PCR proceeding pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).



Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of December, 2025.