

RECEIVED

Mar 17 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

JAQUESE KAVON HYATT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000388

JOHNSON PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

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 PRESENTED.....1

AUSTIN ISSUE PRESENTED2

STATEMENT.....3

ARGUMENT

The PCR court erred in granting the State’s motion to dismiss
petitioner’s action as untimely and successive.5

CONCLUSION.....9

PETITION TO BE RELIEVED AS COUNSEL10

ISSUE PRESENTED

Did the PCR court err in granting the State's motion to dismiss petitioner's action as untimely and successive?

AUSTIN v. STATE ISSUE PRESENTED

Did the PCR court err in finding that plea counsel's advice regarding the State's plea offers was not deficient and did not prejudice petitioner?

STATEMENT

On April 21, 2015, a Greenville County grand jury indicted petitioner for two counts of armed robbery and weapons charges. App. 238-40. On October 15, 2015, petitioner's trial began before the Honorable Robin B. Stilwell. App. 1. Sloan Ellis and William Timmons represented the State. App. 1. Ivan Toney represented petitioner. App. 1. After several witnesses testified, petitioner pled guilty. App. 132-152. Judge Stilwell sentenced petitioner to consecutive terms of fifteen years' imprisonment on the armed robberies and concurrent five year terms of imprisonment on the weapons charges. App. 150-51. No appeal was filed.

Petitioner filed a PCR action given the civil action number 2016-CP-23-04850, and on December 4, 2020, a hearing was held before the Honorable R. Lawton McIntosh. App. 228. William G. Yarborough, III, represented petitioner and Lillian L. Meadows represented the State. App. 228. Before Judge McIntosh entered a final order, petitioner erroneously filed a notice of appeal on January 29, 2021. App. 241. On February 10, 2021, the Supreme Court dismissed that appeal without prejudice after petitioner moved to withdraw the appeal because the Order was not final. App. 246.

Judge McIntosh denied petitioner's PCR claims on March 16, 2021. App. 228. On March 22, 2021, Yarborough filed a notice of appeal with the Supreme Court along with the Order of Dismissal. App. 248. On June 17, 2021, the Supreme Court issued an Order noting that petitioner filed a pro se document indicating he wanted to represent himself in the appeal. App. 277. The Court warned petitioner of the dangers of proceeding pro se and gave petitioner twenty days to notify the Court of his intentions. App. 277. On July 15, 2021, the Court entered an Order construing petitioner's failure to notify the Court of his decision as his desire to

proceed pro se, granted his request, and relieved Yarborough. App. 279. On August 26, 2021, petitioner filed a document he titled an “Affidavit of Facts Giving Judicial Notice. . . .” App. 281. On October 6, 2021, the Court dismissed the appeal because petitioner failed to serve and file the petition for certiorari and appendix. App. 292.

Before the Supreme Court dismissed the appeal, on March 11, 2021, petitioner filed the current PCR action, given the civil action number 2021-CP-23-01199. App. 154. The State moved to dismiss. App. 183. On October 8, 2024, a hearing was held before the Honorable Patrick Cleburne Fant, III. App. 198. Susannah Conyers Ross represented petitioner and Tommy Evans, Jr. represented the State. App. 198. On February 24, 2025, Judge Fant granted the State’s motion to dismiss. App. 224. This petition follows.

ARGUMENT

The PCR court erred in granting the State's motion to dismiss petitioner's action as untimely and successive.

Petitioner did not get his one, full "bite of the apple." See Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002). Petitioner made a meaningful effort to appeal his prior PCR denial, but it was dismissed because petitioner, while incarcerated and representing himself, did not file a petition for certiorari and the appendix. After being allowed to represent himself, petitioner filed a document he titled:

AFFIDAVIT OF FACTS GIVING JUDICIAL NOTICE; MOTION AND OR PETITION TO INVOKE THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION; NOTICE SEEKING LEAVE TO APPEAL TO ASSERT THE CLAIM OF NON PARTY RES JUDICATA AND OR COLLATERAL ESTOPPEL DUE TO OTHER RELATED CASES SEEKING REVIEW UNDER TORRENCE V. S.C. DEPT. OF CORRECTIONS; MOTION TO CHALLENGE THE GREENVILLE COMMON PLEAS COURT'S JURISDICTION DUE TO THE CONTINUED ACTS OF FRAUD UPON THE COURT INVOLVING THESE MATTERS AND MOTION TO MOTION THEREFOR.

App. 281. Petitioner likely intended this document to serve as his petition. However, the Supreme Court dismissed his appeal.

Petitioner now seeks review of this PCR or, more properly, of his first PCR under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). "Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'" Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755-56 (1999). "This 'bite' includes an applicant's right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal." Id. "A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review;

or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived.” Id. at 262, 523 S.E.2d at 756.

In Odom, the applicant’s claims were dismissed before counsel was appointed. The Supreme Court found that Odom “was entitled to the assistance of appellate counsel during PCR.” Id. The Court reasoned that one of the reasons Austin appeals exist is to attack procedural errors in PCR cases. Id. “In the instant case, if we applied the statute of limitations to Odom’s Austin appeal, this Court would be holding a *pro se* Austin application to a one-year statute of limitations even though the only reason he is filing an Austin appeal is because he was unaware and uninformed of the statute of limitations that applied to his original PCR application.” Id. at 263-64, 523 S.E.2d at 757. The Court reversed, remanded for a new PCR hearing, and recommended that counsel be appointed for Odom. Id.

Here, the PCR court construed petitioner’s PCR application as successive, untimely, and barred by res judicata. App. 231-35. The court did not consider whether petitioner was actually seeking review of his previously dismissed PCR appeal. The court made no findings regarding the voluntariness of petitioner’s actions in his previous appeal that was dismissed.

The PCR court relied only on a letter sent by the Supreme Court to petitioner dated August 30, 2021. App. 234. App. 293. The letter told petitioner that former PCR counsel advised the Court that the transcripts had been sent to petitioner. App. 293. It gave petitioner thirty days to file his petition and appendix and advised that failure to do so could result in dismissal. App. 293. The PCR court found petitioner had a full opportunity to litigate and appeal the claims in his first PCR. The court also found that blaming PCR counsel did not warrant a successive application because it was petitioner’s fault that his appeal was dismissed.

Petitioner obviously was confused by procedure at both the circuit court and appellate court stages. He filed his “AFFIDAVIT OF FACTS” likely thinking it would serve as a petition necessary for his appeal. But at the same time petitioner’s appeal was pending at the Supreme Court, he filed the instant PCR action.

Petitioner was likely confused by PCR counsel’s withdrawal of the appeal because a formal order had not yet been entered by the PCR judge. Petitioner testified that he wanted a Rule 59(e) motion filed, but it was not done. App. 208-09. Petitioner said he did not know his appeal was withdrawn by PCR counsel. App. 215-16. When the Attorney General asked petitioner if he knew he was not allowed two PCRs, petitioner replied, “All right. Now you’re trying to give me the jargon that you know is wrong” and cited two United States Supreme Court cases. App. 216-17. In his PCR application, petitioner wrote that he filed this PCR “to argue past the procedural hurdles.” App. 159. He also sought to invoke subject matter jurisdiction and argued against the precedent of State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). App. 163.

The Supreme Court has “often considered the tension between the rights at stake in PCR proceedings and the application of traditional procedural requirements for the presentation and preservation of issues.” Mangal v. State, 421 S.C. 85, 98, 805 S.E.2d 568, 574 (2017). The Mangal Court examined the effect of Martinez v. Ryan, 566 U.S. 1 (2012) on procedural default in federal habeas cases when PCR counsel performed deficiently. Id. at 97-101, 805 S.E.2d at 574-76. The Court ultimately encouraged “trial courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable ways—within the flexibility of our Rules—to reach the merits of substantial issues.” Id.

The PCR court did not use the flexibility granted by Mangal to excuse procedural defaults by petitioner. The court could have examined the procedural confusion and allowed, at

the minimum, an Austin appeal for petitioner. In his first PCR, petitioner argued that plea counsel failed to properly advise him regarding the State's plea offers and the strength of the State's case. App. 265-268. Petitioner was unable to fully litigate on appeal whether the PCR court's denial of relief on this ground was proper. This Court should reverse the PCR court's judgment and grant petitioner Austin belated review of his first PCR so that he can complete his one "bite of the apple."

CONCLUSION

For the foregoing reasons, the PCR court's judgment should be reversed and belated appellate review granted.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 17th day of March, 2026.

RECEIVED

Mar 17 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

JAQUESE K. HYATT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

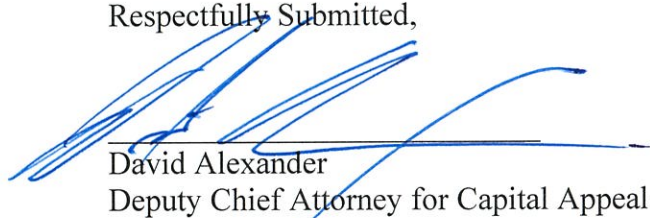
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jaquese Hyatt states:

1. He is Deputy Chief Attorney for Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Patrick Cleburne Fant, III, which was held on Oct. 8, 2024 & Dec 4, 2020, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Jaquese Hyatt.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 17th day of March, 2026.

RECEIVED

Mar 17 2026

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



David Alexander
Deputy Chief Attorney for Capital Appeals

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

ATTORNEY FOR PETITIONER

This 17th day of March, 2026.