RECEIVED
Apr 17 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County
The Honorable Daniel D. Hall, Circuit Court Judge
Honorable Patrick Cleburne Fant, III, Circuit Court Judge

RONALD TYRONE DOWNS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001171

PETITION FOR WRIT OF CERTIORARI PURSUANT TO AUSTIN v. STATE

W. CHANDLER NORVILLE
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 PRESENTED 1

STATEMENT 2

ARGUMENT

The PCR court erred in denying *Austin* relief to Petitioner. 8

A. Petitioner did not waive his right to appeal the denial of PCR. 8
B. Petitioner's claim is not barred by laches. 11

STATEMENT OF BELATED APPEAL ISSUES 15

CONCLUSION 16

ISSUE PRESENTED

Whether the PCR court erred by denying *Austin v. State*[1] relief to Petitioner?

[1] 305 S.C. 453, 409 S.E.2d 395 (1991).

STATEMENT

Petitioner has been incarcerated for nearly fourteen years. Due to the failings of two consecutive attorneys, he has not yet received any opportunity for appellate review.

Trial

In January of 2013, the Greenville County grand jury indicted Petitioner for armed robbery, kidnapping, and assault and battery, first degree. App. 450-455. On August 14-15, 2023, he was tried before the Honorable Eugene C. Griffith and a jury. App. 1. The late Clifford F. Gaddy, Jr., represented Petitioner; assistant solicitor L. Mark Moyer represented the state. App. 1.

The state alleged that Petitioner robbed a Dollar General and supported its allegation with very strong evidence.[2] A police officer arrived at the store while Petitioner was still inside. App. 132, ll. 18-23. Petitioner ran from the officer who ran after him. App. 132, ll. 18-23. The officer caught Petitioner and arrested him. App. 142, ll. 2-15. Trial counsel argued several times during trial that Petitioner could not have committed armed robbery because the state did not prove he had either a gun or "an object which the victim reasonably believed to be a deadly weapon." App. 192, ll. 15-21.

Petitioner was acquitted of kidnapping but convicted of armed robbery and assault and battery, first degree. App. 264. Judge Griffith sentenced Petitioner to twenty-five years' imprisonment for armed robbery and ten years' imprisonment for assault and battery, first degree, to run concurrently. App. 265. Petitioner did not appeal.

---

[2] Petitioner was nineteen years old at the time of the offense.

Application for Post-Conviction Relief

On May 1, 2014, Petitioner filed a timely application for post-conviction relief (PCR). App. 271-81. On February 19, 2015, an evidentiary hearing was held before the Honorable Daniel D. Hall. App. 287. Brian P. Johnson represented Petitioner (hereinafter "first PCR counsel"); assistant attorney general Karen C. Ratigan represented the state. App. 287. The transcript of this PCR hearing was never produced, and the recording of same was lost due to the passage of time. App. 395. On November 19, 2025, this Court ordered the PCR court to reconstruct the record. App. 395-96. On February 11, 2026, a hearing was held before the Honorable Daniel D. Hall. App. 397. Undersigned counsel represented Petitioner; assistant attorney general Tommy Evans, Jr. represented the state. App. 397. The court found the record reconstructed without objection from either party. App. 444-449.

In his 2014 PCR application, Petitioner alleged that he had received ineffective assistance of counsel. App. 273. Specifically, he alleged that trial counsel was ineffective by: (1) advising him not to accept two plea offers from the state for ten and fifteen years; and (2) failing to file a direct appeal. App. 274-75. Petitioner testified that trial counsel told him not to accept the state's plea offers because the state could not produce evidence that he was in possession of a weapon. App. 445. He testified that trial counsel told him that he could not be convicted of armed robbery unless the state proved that he used a weapon. App. 446. Petitioner testified he would have accepted one of the state's plea offers had he known that armed robbery could be accomplished with the representation of a weapon, even in the absence of an actual weapon. App. 446. Further, Petitioner testified that he asked trial counsel "what could be done" about his conviction, and trial counsel told him that "his money wouldn't be well spent" on an appeal. App. 446-47.

Trial counsel testified that he explained the elements of the charges to Petitioner and the maximum and minimum sentences on each. App. 447. He testified that he told Petitioner that armed robbery could be committed "if [evidence] showed that [defendant] was [representing] by words/actions that he had a gun, it'd be [the] same as if [defendant] had a gun." App. 447. His trial strategy was to bring out the fact that Petitioner did not have a gun in an attempt to persuade the jury that Petitioner was guilty of common law robbery rather than armed robbery. App. 447. Trial counsel denied that he told Petitioner to reject the state's plea offers; rather, he told Petitioner about the plea offers but made no recommendation about whether to accept or reject them.[3] App. 447. As to his failure to file a direct appeal, trial counsel told Petitioner he "wasn't aware of anything to be done," he "knew of no grounds for [an appeal]," and that his money would not be "well spent on an appeal." App. 447.

On March 2, 2015, the PCR court dismissed Petitioner's application with prejudice. App. 287-292. The PCR court found trial counsel's testimony, specifically that he had advised Petitioner of the elements of armed robbery, to be credible. App. 290. Therefore, Petitioner "failed to meet his burden of proving trial counsel misadvised him about the elements of armed robbery." App. 290. As to the allegation that trial counsel did not file an appeal for Petitioner, the

---

[3]Should this Court grant *Austin* relief, Petitioner will assert that the failure of trial counsel to advise Petitioner to accept one of the state's generous plea offers, especially in the face of overwhelming evidence of guilt, is itself ineffective assistance of counsel. *See, e.g., Turner v. Tennessee*, 664 F. Supp. 1113, 1120 (M.D. Tenn. 1987), *cert. granted, vacated and remanded on other grounds sub nom.*, *Tennessee v. Turner*, 492 U.S. 902 (1989) ("After informing himself or herself fully on the facts and the law, the lawyer should advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.... If the accused's choice on the question of a guilty plea is to be an informed one, the accused must act with full awareness of the alternatives, including any that arise from proposals made by the prosecutor.") (*quoting* ABA STANDARDS FOR CRIMINAL JUSTICE 4-5.1(a), 4-6.2 commentary (2d ed. 1980)); *see also* Rule 2.1, RPC, Rule 407, SCACR ("In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.").

PCR court found that Petitioner "did not testify that he asked for an appeal to be filed on his behalf." App. 291. Further, the PCR court found trial counsel's testimony, that he would have filed an appeal if asked, was credible. App. 291.

Petitioner did not appeal.

Application for Post-Conviction Relief pursuant to *Austin v. State*

On July 5, 2023, Petitioner filed a second PCR application pursuant to *Austin v. State*. 293-299. On October 9, 2024, an evidentiary hearing was held before the Honorable Patrick C. Fant, III. App. 306. Issac L. Johnson represented Petitioner; assistant attorney general Tommy Evans, Jr. represented the state. App. 306.

Petitioner testified that he first met with first PCR counsel the day of the 2015 PCR hearing. App. 314, ll. 12-15. After the hearing, first PCR counsel sent a letter to Petitioner stating the following:

> On March 24, 2015, I wrote you notifying you that I would file an appeal on your behalf. On April 2, 2015, I spoke to Betty Downs who told me you wanted to file a 59(e)[, SCRCP] motion and would call me back with instructions. Therefore, I held off on filing the appeal. On April 30, 2015, Betty Downs contacted me asking to file an appeal. However, the time has passed for filing a timely appeal. I do not believe that I notified you or Ms. Down's [sic] that we had thirty (30) days to file an appeal.
>
> Therefore, I am writing you to notify you of this fact, and to further advise you that you may be entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). This case allows those who did not knowingly waiver their right to appeal to file an application for Post Conviction Relief ("PCR") against their PCR hearing counsel and request the relief of a belated appeal. I have enclosed a copy of White v. State for your review.

App. 300; App. 319, l. 21 – 320, l. 20; App. 380. Prior to receiving this letter, Petitioner believed that first PCR counsel was going to file an appeal on his behalf. App. 321, ll. 9-15. Even after the letter, Petitioner believed that PCR counsel was going to file the subsequent PCR action that he referenced in the letter on his behalf. App. 321, ll. 3-5. Petitioner "waited so long" to file his *Austin* petition because he "thought it was over for [him]…. [He] thought [he] had been procedurally barred." App. 324, ll. 6-8. Later, after speaking to another inmate, Petitioner learned of the existence of *Austin v. State* relief for the first time and filed the *Austin* application. App. 325-26.

Petitioner's grandmother Betty Downs testified that she spoke with first PCR counsel on April 2, 2015 about filing an appeal and a Rule 59(e), SCRCivP motion on behalf of Petitioner. App. 343, ll. 1-10. On April 30, 2015, she spoke to him again "to ensure that…he filed…the…appeal." App. 343, ll. 12-13. During the April 30 conversation, first PCR counsel told her that he would file an appeal. App. 345, ll. 7-9.

First PCR counsel, Brian P. Johnson, testified that he "believe[d]" he told Petitioner he "was going to file an appeal on his behalf." App. 353, ll. 20-23. He testified that he believed his attorney-client relationship with Petitioner ceased when the appeal was not filed. App. 357, ll. 1-7. He confirmed that he had only met with Petitioner the day of the PCR hearing. App. 363, ll. 14-15. He stated the reason that he waited to file the Rule 59(e) motion was because "you need to have grounds for it." App. 367, ll. 6-17.

On May 6, 2025, the court denied the application for post-conviction relief and dismissed it with prejudice. App. 385-394. The court found that "it [was] clear that [Petitioner] was advised of his appellate rights and the timeframe in which to exercise them, yet his failure to inform counsel that he wanted to appeal must be considered as waiver of appellate review." App. 390-

91. Further, the court pointed out that the 2015 Order of Dismissal included a statement that Petitioner had thirty days to appeal. App. 390. Therefore, Petitioner had not established entitlement to *Austin* relief. App. 390.

Further, the court found that the application was barred by laches. App. 391. The court found that Petitioner had not offered any explanation for the delay in filing other than that he had been transferred to a prison in Mississippi and lacked access to South Carolina case law. App. 391-92. Further still, the court found that the state would be prejudiced by a belated appeal because the record of the 2015 PCR hearing had been lost, and "reconstruction of the record would not be feasible…." App. 392.

This petition follows.

ARGUMENT

The PCR court erred in denying *Austin* relief to Petitioner.

First PCR counsel Brian P. Johnson, by his own admission, told Petitioner that he would file an appeal on his behalf. However, due to a conversation with Petitioner's grandmother about filing a motion to reconsider, first PCR counsel decided to file nothing. These facts do not establish an affirmative waiver of the right to appeal by Petitioner. Further, the action is not barred by laches. Since the record of the 2015 PCR hearing has been reconstructed, the state has suffered no prejudice by the delay. For these reasons, Petitioner is entitled to *Austin* relief. This Court should grant certiorari and reverse.

Recognizing that the *Anders v. California*[4] procedure applies to appeals from PCR matters, *see Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), this Court held that a PCR petitioner is entitled to the assistance of counsel on post-conviction relief, and thus, a petitioner who is denied appellate review of the denial of PCR must be afforded belated appellate review if he can establish that his PCR counsel was ineffective in failing to seek appellate review. *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991).

Petitioner is entitled to *Austin* relief for two reasons. First, he established ineffectiveness below because the evidence does not support the PCR court's finding that Petitioner affirmatively waived his right to appeal, especially in light of PCR counsel's assurances to him that he would file an appeal. Second, the affirmative defense of laches does not apply.

A. Petitioner did not waive his right to appeal the denial of PCR.

The standard by which a reviewing court must decide whether Petitioner established a claim to *Austin* relief is the same standard used to analyze typical ineffective assistance of

---

[4] 386 U.S. 738 (1967).

counsel claims. *Austin*, 305 S.C. at 454-55, 409 S.E.2d at 396; *accord, Strickland v. Washington*, 466 U.S. 668 (1984). An attorney has a duty to "*make certain* the defendant is made fully aware of the right to appeal." *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (*citing Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (emphasis added)). "In the absence of an intelligent *waiver* by the defendant, counsel must either initiate an appeal or comply with the procedure in [*Anders*]." *Id.* (quoting *Turner*, 380 S.C. at 224, 670 S.E.2d at 374 (emphasis added)). "To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." *Clark v. State*, 396 S.C. 164, 168, 719 S.E.2d 708, 710 (Ct. App. 2011). It is not sufficient for a petitioner to simply fail to request an appeal, "Petitioner may be entitled to a belated...appeal if this Court does not interpret Petitioner's lack of request...to be an 'intelligent waiver' of his right to appeal." *Id.* Further, the onus to request an appeal is not entirely on Petitioner; PCR counsel has at least some duty to "ascertain whether or not" Petitioner wanted to appeal. *See Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). Even if "a reasonable basis may exist for trial counsel to assume a defendant is fully aware of his rights regarding an appeal, counsel may not rest on that assumption." *Smith v. State*, 309 S.C. 413, 416, 424 S.E.2d 480, 482 (1992).

Here, first PCR counsel told Petitioner that he would file an appeal on his behalf. It was not until nine days later, fourteen days after the filing of the PCR court's order of dismissal, that PCR counsel spoke to Betty Downs who inquired about the possibility of filing a Rule 59(e), SCRCivP motion. After that call, counsel did not attempt to contact Petitioner until his April 30, 2015 letter which informed Petitioner that the time for filing an appeal had passed. The PCR court excused all this because the prior order of dismissal informed him he had to appeal within

thirty days and because Petitioner's grandmother inquired about filing a Rule 59(e) motion. The evidence presented to the PCR court does not justify this holding.

First, the court held that "there is no testimony presented that [Petitioner] directly requested [PCR counsel] file an appeal on his behalf." App. 390. However, this holding is illogical. First PCR counsel told Petitioner that he would file an appeal. It defies logic to suggest that the law imposes an affirmative burden on a PCR applicant to ensure that his PCR counsel does what he said he would do. Further, a "lack of request" to file an appeal, without more, is not sufficient for Petitioner to waive his right to appeal. *Clark*, 396 S.C. at 168, 719 S.E.2d at 710.

In *Clark*, the Court of Appeals granted a belated appeal to a defendant whose attorney informed him of the right to appeal but did not speak with him after he was sentenced. *Id.* at 167-68, 719 S.E.2d at 710. The *Clark* defendant testified that he asked his attorney to appeal the case, and his attorney said that they did not speak after sentencing. *Id.* The lower court found the attorney's testimony credible and the defendant's not credible and denied the belated appeal. *Id.* The Court of Appeals reversed. *Id.* That court found that, "even considering the PCR court's credibility findings," there was no evidence that trial counsel had spoken to Petitioner after sentencing, and thus, could not have ascertained whether Petitioner wanted to appeal or not. *Id.* at 169, 710 S.E.2d at 710-11.

Second, first PCR counsel justified his decision not to file an appeal because of the phone call he had with Petitioner's grandmother. However, this does not justify the failure to file an appeal for several reasons. For one, Petitioner was first PCR counsel's client, and Petitioner's grandmother was not. It cannot be said that PCR counsel was justified in not filing an appeal because a third party inquired about alternate avenues. Secondly, first PCR counsel's call with Petitioner's grandmother was on April 2, 2015, and the order of dismissal was filed on March 19,

2015. This means that a Rule 59(e) motion was not even an option, as post-trial motions are time-barred after ten days. Rule 59(b), SCRCivP. Further still, PCR counsel had an affirmative duty to "make certain" that Petitioner did not want to appeal. *Simuel*, 390 S.C. at 270, 701 S.E.2d at 739. Speaking over the phone to Petitioner's grandmother about the option of filing a time-barred post-trial motion is far from making *certain*.

For these reasons, the evidence presented to the PCR court does not show that Petitioner waived his right to an appeal from the denial of his PCR application. On the contrary, PCR counsel seemingly acknowledged Petitioner's desire to appeal but failed to file a timely appeal.

B. Petitioner's claim is not barred by laches.

The court found that Petitioner's claim was barred by laches because Petitioner "failed to justify the unreasonable length of time in which he waited to assert an *Austin* claim, despite being notified he could do so shortly after the deadline to file the notice of appeal concluded." It further found that the state would be prejudiced by a belated appeal because reconstruction of the 2015 PCR hearing was not possible. Both holdings are error.

Laches is: "Neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone is assertion of a right does not constitute laches." *Hallums v. Hallums*, 296 S.C. 195, 198-99, 371 S.E.2d 525, 527 (1988). "If a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct.

App. 2004). Essentially, laches has three elements: (1) delay; (2) unreasonable delay; and (3) prejudice. *Id.* (*citing Hallums v. Hallums*, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988)).

At the outset, there is a significant problem with the PCR court's finding that Petitioner "was notified that he could [assert *Austin* claims] shortly after the deadline to file the notice of appeal concluded." The letter that the PCR court based this finding on informed the Petitioner that he "may be entitled to a belated appeal pursuant to **White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).**" (boldface added). *White v. State* held that a PCR court could grant a belated appeal to an applicant whose *trial* counsel did not file a direct appeal on their behalf. 263 S.C. at 118, 208 S.E.2d at 39. *White* decided *nothing* about whether a PCR applicant could file a second, successive PCR application against his PCR counsel. *See generally id.* In fact, this Court would not make that particular holding until seventeen years later in *Austin*, 305 S.C. 453, 409 S.E.2d 395. Petitioner testified at the *Austin* hearing that, despite receiving PCR counsel's letter, he believed he was procedurally barred from bringing another PCR action. Petitioner had good reason to believe this because it would be true in nearly every other circumstance. *See, e.g., Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (successive PCR applications are only permitted in "rare procedural circumstances" where "the grounds raised in the subsequent application *could not have been* raised in the previous application." (emphasis added)). Reading the opinion that PCR counsel enclosed with his letter, *White v. State*, would not have informed him otherwise. *White* simply did not make that holding. *See generally* 263 S.C. at 118, 208 S.E.2d at 39. Instead, *White* would have informed Petitioner of a belated direct appeal, an avenue which he was told was fruitless by trial counsel. App. 447.

However, even if Petitioner was properly informed of the *Austin* procedure, his application would still not be barred by laches because the state has suffered no prejudice.

Prejudice is a dispositive element of laches. "Delay alone in the assertion of a right, *without injury to the adversary*, does not constitute laches." *Gibbs v. Kimbrell*, 311 S.C. 261, 269, 428 S.E.2d 725, 730 (Ct. App. 1993) (*citing Grossman v. Grossman*, 242 S.C. 298, 309, 130 S.E.2d 850, 855 (1963)) (emphasis added). The state, as the party asserting laches, bears the burden to show that it has been "*materially* prejudiced." *Mid-State Trust, II v. Wright*, 323 S.C. 303, 307, 474 S.E.2d 421, 423 (1996) (emphasis added). Not every injury will do. For example, in one case brought to enforce a nineteen-year-old child support obligation, this Court held there was no laches because the husband was only required to pay "the modest rate of" $25 per month, and was thus not materially prejudiced. *See S.C. Dept. of Social Servs. ex rel. State of Texas v. Holden*, 319 S.C. 72, 76, 459 S.E.2d 846, 848 (1995).

The PCR court found that the "unavailability of the PCR transcript is prejudicial to Respondent, as well as Applicant. Additionally, reconstruction of the record would not be feasible...." App. 392. However, reconstruction of the record *was* feasible and has in fact been completed in this case. The basis of the court's prejudice analysis does not survive this fact.

Even to the extent that the state may argue some other, more vague prejudice,[5] none of its prejudice is material. While the law recognizes a public policy preference for the finality of criminal judgments, *see, e.g., Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991), this is because, in the absence of finality, "the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). However, these concerns are not present in this case. Petitioner's primary allegation to the PCR court was that trial counsel was ineffective in advising him to reject a plea deal/not advising him to accept a plea deal. If Petitioner is successful on this claim, his convictions for armed robbery and assault and battery in the first

[5] App. 393 ("[Petitioner's] delay in asserting this right frustrates the critical need for finality....").

degree will remain intact. The remedy for such ineffectiveness is not a new trial, it is "to require the prosecution to reoffer the plea proposal." *Lafler v. Cooper*, 566 U.S. 156, 171 (2012). The state is no less able now to reoffer its plea offer than it was at the time the plea offer was extended. Thus, the state has suffered no "injury, prejudice, or disadvantage." *Harrison v. Owen Steel Co., Inc.*, 422 S.C. 132, 138 n.2, 810 S.E.2d 433, 436 n.2 (Ct. App. 2018) (*quoting Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (Ct. App. 1994)).

The 2015 PCR hearing transcript has been reconstructed and is sufficient to permit appellate review regarding trial counsel's ineffectiveness. Further, should Petitioner show that trial counsel was ineffective, the only thing that will change is a chance that he will be ordered to serve a fifteen-year prison sentence instead of a twenty-five year prison sentence during a new sentencing hearing. The state offered Petitioner pleas for ten and then fifteen years in prison which Petitioner would have accepted but for the failure of trial counsel to properly counsel him. Petitioner's first opportunity for appellate review will come, if at all, thirteen years after his conviction. Equity does not lie in denying him that right.

The PCR court should be reversed.

STATEMENT OF BELATED APPEAL ISSUES PURSUANT TO *AUSTIN*

Pursuant to *King v. State*, 308 S.C. 348, 349, 417 S.E.2d 868, 869 (1992) (Order), Petitioner asserts that, should this Court grant *Austin* relief, he will seek review of the following issues:

I.

Whether the PCR court erred in finding that trial counsel was not ineffective by failing to advise Petitioner to accept an extremely favorable guilty plea when the state's trial evidence was overwhelming?

II.

Whether the PCR court erred in finding that Petitioner waived his right to direct appeal?

CONCLUSION

For the foregoing reasons, this Court should grant *Austin* relief to Petitioner.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of April, 2026.