

RECEIVED

Apr 17 2026

S.C. SUPREME COURT

STATE OF THE SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenville County
The Honorable Patrick Cleburne Fant, III, Circuit Court Judge
Appellate Case No. 2025-000388

THE STATE.

RESPONDENT,

v.

JAQUESE KAVON HYATT,

PETITIONER

PCR ORDER CASE NO. 2016-CP-23-4850

**RETURN TO PETITION FOR *JOHNSON* PETITION
FOR WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General
S.C. Bar No. 65282

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
Telephone No. (803) 734-6305

ATTORNEY FOR THE RESPONDENT

TABLE OF CONTENTS

PETITIONER’S QUESTION PRESENTED.....2

RESPONDENT’S COUNTER STATEMENT TO QUESTIONS PRESENTED.....3

STATEMENT OF THE CASE.....4

WHY CERTIORARI SHOULD BE DENIED.....8

STATEMENT OF FACTS.....9

ARGUMENTS

1. The PCR court did not err in granting the State’s motion to dismiss the Petitioner’s second PCR application due to the fact South Carolina law is clear that an inmate can only have file one application for post-conviction relief.....10

2. The Petitioner is not entitled an appeal due to the fact he never requested to the lower court another opportunity pursuant to *Austin v. State*, so that issue is waived for appeal, and Petitioner never filed a notice of representation or an initial brief within the 20 day period ordered by this Court so this court’s dismissal of his appeal was lawful.....13

CONCLUSION.....16

PETITIONER'S QUESTION PRESENTED

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

RESPONDENT'S COUNTER STATEMENT TO QUESTIONS PRESENTED

1. Did the PCR court err in granting the State's motion to dismiss the Petitioner's second PCR application due to the fact pursuant to South Carolina law an inmate is not allowed a second application for post-conviction relief?
2. Did the Petitioner preserve this argument when there was no motion made before the Circuit Court for an appeal pursuant to *Austin v. State*, and was his previous appeal properly dismissed due to the fact the Petitioner failed to follow the order of this Court by failing to notify the court of representation or file a petition for certiorari within the 20 day time limit established by this Court?

STATEMENT OF THE CASE

During the April 2015 term, the Greenville County Grand Jury indicted the Petitioner for the offenses of two counts of armed robbery, and possession of a weapon during the commission of a violent crime. (Indictment no. 2014-GS-23-11556-11579). On October 15, 2015, Petitioner along with his counsel Ivan J. Toney, appeared before the Honorable Robin B. Stilwell. Representing the State of South Carolina were Assistant Solicitors William Timmons and Sloan Ellis of the Thirteenth Judicial Circuit. After hearing testimony Petitioner decided to enter a guilty plea.

As part of this guilty plea the State was not going to recommend a sentence, however, the State agreed to the dismissal of twenty-three additional warrants. At the conclusion of his guilty plea the sentencing judge decided to sentence the Petitioner to a fourteen-year period of incarceration for both armed robberies and a five-year period for the weapons offense. The Court decided that each of these offenses were to be served concurrently. The Petitioner decided not to file a notice of appeal for this guilty plea.

On August 16, 2016, Petitioner decided to file his initial application for post-conviction relief. On December 4, 2020, Petitioner along with his counsel William G. Yarborough, III appeared before the Honorable R. Lawton McIntosh via WebEx for a hearing regarding Petitioner's application for PCR. Representing the State of South Carolina was Assistant Attorney General Lillian L. Meadows, of the Office of the Attorney General. The court heard testimony from the Petitioner and plea counsel Ivan J. Toney. On March 10, 2021, the PCR Judge issued an order denying Petitioner's application for PCR, it was dismissed with prejudice.

On March 22, 2021, Petitioner's PCR counsel filed a notice of appeal before this court. On April 6, 2021, Petitioner filed a notice to this court of termination of counsel. On June 17, 2021,

this Court issued an order stating that within twenty days of the date of the order Petitioner must notify this Court whether he wished to proceed *pro se*, or request to be represented by Mr. Yarborough, or the Division of the Appellate Defense. On July 10, 2021, the Petitioner filed a “Affidavit of facts giving judicial notice; motion 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 Torrance v. S.C. Dept. of Corrections; motion to challenge the Greenville Common Plea’s Court’s jurisdiction due to the continued acts of fraud upon the court involving these matters and motion to motion therefore.” On October 6, 2021, this Court issued an order of dismissal as the Petitioner failed to file a petition for writ of certiorari as required by Rule 243(d) of the South Carolina Appellate Court Rules.

After this decision, the Petitioner decided to file a second application for PCR. The Respondent filed a motion to dismiss on July 13, 2021. Within this motion the Respondent argued that this second application should be subject to dismissal due to the Petitioner not being allowed to file a second application for PCR pursuant to South Carolina law and due to the doctrine of *res judicata*. On October 8, 2024, a hearing was held before the Honorable Patrick Cleburne Fant, III. Appearing before the Circuit Court was the Petitioner along with his counsel Susannah Conyers, and representing the State of South Carolina was Assistant Attorney General Tommy Evans, Jr. of the Office of the Attorney General.

On February 24, 2024, Judge Fant issued an order of dismissal. Within this order the Court decided that Petitioner’s second PCR application should be subject to dismissal due to it being filed after the expiration of the statute of limitations; it being successive to the Petitioner’s prior PCR application; being barred by the doctrine of *res judicata*; and, Petitioner failed to make a *prima facie* showing of the existence of fraud.

Petitioner now files this *Johnson* Petition for Writ of Certiorari. Petitioner argues that the Circuit Court erred in the dismissal of the Petitioner's second application for post-conviction relief as untimely and successive. The Respondent argues that the Circuit Court did not err in their dismissal of the Petitioner's second PCR application. The Respondent further argues that the Petitioner is not entitled to an appeal due to the fact he waived his ability to appeal and he failed to raise the *Austin* claim before the Circuit Court waiving that issue. Respondent respectfully request that this Court dismiss this petition.

WHY CERTIORARI SHOULD BE DENIED

The Supreme Court reviews the Court of Appeals by writ of certiorari only where special reasons justify the exercise of that power. *Douglas v. State*, 369 S.C. 213, 216, 631 S.E.2d 542, 544 (2000). Rule 243 of the South Carolina Appellant Court states that a final decision entered under PCR shall be reviewed by this Court upon a petition of either party for a writ of certiorari. Rule 243(a), SCACR.

The Respondent argues that certiorari should be denied due to the fact Petitioner had an opportunity to file and have this court respond to a petition for certiorari; however, it was never filed. Petitioner decided to notify this court of his termination of counsel. This Court issued an order that the Petitioner must inform the court if he was going to go forward *pro se*, or with Mr. Yarborough or with Appellant Defense. This Court ordered Petitioner had twenty days from the date of the order to provide the Court with a notification of his intentions. This order was dated June 17, 2021, the Petitioner failed to give this Court any notification of representation, only an “affidavit of facts,” dated July 10 twenty-three days after this order, thereby violating this Court’s order.

The Petitioner was not unlawfully denied an opportunity to an appeal. A notice of appeal was filed and the Petitioner decided to terminate counsel, and failed to follow the order of this Court. Once that was done he waived his right to appeal. This petition should be subject to dismissal.

STATEMENT OF FACTS

On September 17, 2014, the Appellant contacted Mr. Luis Perez relating to an ad Mr. Perez placed on Craigslist regarding an MP3 he had for sale. (R. p. 75 l. 19). Mr. Perez wanted to meet in a public place. Mr. Perez suggested a Spinx gas station; however, Petitioner told him that his girlfriend worked there and he did not want to meet there. (R. p. 75 l. 21-23). They later decided to meet at Buncombe Park. (R. p. 76 l. 5-7). They met at the park and Mr. Perez showed the Petitioner the MP3 and some video games. (R. p. 77 l. 18-19). Petitioner expressed to Mr. Perez that he wished to buy the MP3 and the games. (R. p. 77 l. 24). After Mr. Perez placed the console and the games back into the bag, and he turned around, Petitioner pointed a gun at him. (R. p. 77 l. 25 – p. 78 l. 1). Petitioner told him, “give me the stuff.” (R. p. 78 l. 1-2). Mr. Perez gave Petitioner his keys, cell phone and everything else he had. Petitioner then told him to take off his pants and lay down on the road. (R. p. 78 l. 3-4). Mr. Perez complied with the Petitioner’s demands. Petitioner then told him that if he turned around, he would shoot him. (R. p. 78 l. 5). Mr. Perez waited a few seconds, then after Petitioner left, Mr. Perez then ran to a nearby house. (R. p. 78 l. 9-10).

A day earlier Petitioner contacted Mr. Lee Rhodes regarding the sale of his Xbox 360. Mr. Rhodes felt that it was too late to deal with it so he suggested that they could meet the next day. (R. p. 86 l. 18-20). On September 17 they planned to meet at the Gorilla carwash. (R. p. 86 l. 24-25; p. 87 l. 5). Mr. Rhodes met the Petitioner and showed him the Xbox and controllers. (R. p. 87 l. 24-25). Petitioner informed Mr. Rhodes that he wanted the Xbox. Petitioner then pointed a gun at Mr. Rhodes. (R. p. 88 l. 2-4). Petitioner demanded that Mr. Rhodes give him his ID and phone, (R. p. 88 l. 5; p. 88 l. 10-12). After taking his ID, Petitioner told Mr. Rhodes, that he knew where he lived and if he called the police he would go to his home and shoot him. (R. p. 88 l. 12-14).

Petitioner left the area and as soon as he got out of sight, Mr. Rhodes drove to his neighbor's house to call the police. (R. p. 88 l. 17-19).

After an investigation, the Petitioner was arrested. A search of his car incident to arrest, revealed the gun and the two game consoles inside the Petitioner's vehicle. (R. p. 113 l. 25 – p. 114 l. 3; 122 l. 20 – p. 123 l. 2) The victim's phone also fell out of the Petitioner's pocket. (R. p. 122 l. 20 – p. 123 l. 2). While handcuffed in the patrol car Petitioner was questioned by Investigator David Weiner. After being read his *Miranda* rights Petitioner at first denied involvement, but he then admitted to the robberies. Petitioner told Investigator Weiner that he was with a co-defendant Mr. Robert Smith who got him to commit these robberies. Law enforcement never found this Mr. Smith. (R. p. 57 l. 12-14; p. 59 l. 18-20).

ARGUMENTS

- 1. The PCR court did not err in granting the State's motion to dismiss the Petitioner's second PCR application due to the fact South Carolina law is clear that an inmate can only have file one application for post-conviction relief.**

The Petitioner initially filed an application for post-conviction relief on August 16, 2016. A hearing was held before the Honorable R. Lawton McIntosh on December 4, 2020 via WebEx. Judge McIntosh issued an order of dismissal on March 10, 2021. Petitioner filed a second application for post-conviction relief on March 11, 2021. The State filed a motion to dismiss on July 13, 2021. Within this motion the State argued that this motion was untimely filed, improperly successive, and barred by the doctrine of *res judicata*.

On October 8, 2024, a hearing was held before the Honorable Patrick C. Fant, III. Upon conclusion of this hearing on February 24, 2024, Judge Fant issued an order of dismissal. Now the Petitioner brings forth this petition for writ of certiorari. Respondent argues that the Circuit Court did not err in the dismissal of this application.

South Carolina law forbids a successive application for post-conviction relief. The South Carolina Code of Laws specifically state:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. §17-27-90.

Within his second PCR application Petitioner did not reveal any issue that could not have been addressed within the first application. In *Aice v. State* this Court decided to refuse to grant a request for a second application for PCR. In *Aice*, this Court decided that a Petitioner could possibly envision the filing of successive PCR applications for the purpose of delaying a just execution of a capital case, as well as causing other abuses within the appellate system. *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991). The allegations raised within the second application could have been addressed in the first application; therefore, the PCR judge was correct in his dismissal of this successive post-conviction relief application.

The PCR judge was also correct in the dismissal of this second application due to the fact it was raised well after the one-year statute of limitations imposed under South Carolina which state:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S.C. Code Ann. § 17-27-45 (A).

Petitioner pled guilty on October 15, 2015. This application was filed on March 11, 2021 – almost five years after the expiration of the filing period. This case was lawfully dismissed due to the failure to file within the one-year statute of limitations period.

The one year period can be tolled if (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and, (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008). During this hearing Petitioner provided no proof that he deserved equitable tolling. He filed this application after the one-year statute of limitations, therefore Petitioner so he is not entitled any relief.

This action was dismissed pursuant to the doctrine of *Res Judicata*. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Petitioner's allegations in his subsequent PCR application were for ineffective assistance of plea counsel. This was raised previously and ruled upon in a previous PCR proceeding. The remaining allegations could have been raised in the previous PCR proceeding, this action is barred under the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Cas. Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). The finality of the previous

court's ruling was respected by this subsequent PCR judge; the dismissal of the second PCR was lawful due to the doctrine of *Res Judicata*.

- 2. The Petitioner is not entitled an appeal due to the fact he never requested to the lower court another opportunity pursuant to *Austin v. State*, so that issue is waived for appeal, and Petitioner never filed a notice of representation or an initial brief within the 20 day period ordered by this Court so this court's dismissal of his appeal was lawful.**

Within this petition the Petitioner argues that he is entitled a new hearing pursuant to *Austin v. State*. The Respondent argues that a request for a new appeal pursuant to *Austin* should have been a part of the second PCR application so a decision could have been made by the Circuit Court. A petitioner is entitled to an *Austin* appeal if the PCR judge affirmatively finds either that: (1) the appellant requested and was denied the opportunity to seek appellate review, or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002). So in order to be granted another appeal under *Austin* this case must be raised and decided by the Circuit Court.¹ Since this was not raised initially before the Circuit Court the Petitioner cannot raise this initially before this Court on appeal or as part of a petition for certiorari. In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court. Issues not raised and ruled upon in the trial court will not be considered for appeal. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). Since the Petitioner waited until this petition to raise an argument pursuant to *Austin* he has waived this issue and is not entitled certiorari.

¹ We therefore remand for an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review. If the circuit court finds this to be true, this Court shall review whether the petitioner was prejudiced by the failure to obtain review of a meritorious issue. *Austin*, 305 S.C. at 454, 409 S.E.2d at 396.

The Respondent also argues that the Petitioner did not request an opportunity to be before this court because he failed to file a petition for certiorari or inform this court if he would go forward *pro se* or have counsel represent him. Petitioner's failure to abide by the order of his court was an intelligent waiver of his right to appeal.

The Petitioner decided to notify this Court he wished to terminate representation. The Supreme Court notified Petitioner that if he wished to proceed *pro se* he had twenty days to notify this Court so they could determine if they would allow him to do so.

Under *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975), the United States Supreme Court decided that a criminal defendant has the right to waive the right to counsel and proceed *pro se*. However, in *Martinez v. Court of Appeal of California*, the U.S. Supreme Court found that the rationale underlying the *Faretta* decision including reliance on the Sixth Amendment did not apply to appellate proceedings. *State v. Roberts*, 364 S.C. 583, 586, 614 S.E.2d 626, 628 (2005). In *Roberts* this court decided that an Appellant does not have a federal constitutional right to proceed *pro se* in an appeal from a criminal conviction. *Roberts*, 364 S.C. at 588, 614 S.E.2d at 629. The Petitioner argues that he is entitled to an appeal because he deserves "a bite of the apple." Respondent argues that this right was waived when he failed to respond to the order of this Court.

Within the order made by this Court it stated that there were disadvantages and dangers for the Petitioner in proceeding *pro se*. Although a defendant need not have the skill and experience of a lawyer in order to competently and intelligently choose self-representation, he should be made aware of the dangers and disadvantages of self-representation. *Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 2541 (1975). This court also informed Petitioner that he is expected to "fully comply with all applicable rules." The Petitioner failed to notify the court of his intentions regarding who would represent him or if he would represent himself, he also failed to file a Petition

for Certiorari. The Petitioner filed a “Affidavit of facts giving judicial notice.” The Petitioner’s counsel argues that this was “likely” intended to be his petition. This affidavit failed to follow the Rules as it pertains to the filing of petitions for certiorari. Rule 243(e) of the South Carolina Appellant Court Rules establishes what a Petition for writ for certiorari must contain. In this affidavit Petitioner failed to follow these rules, so this Court was correct in not considering the filing as a Petition for Certiorari.

Even if this was a petition it was filed beyond the time limit imposed by this Court. It is clear within the order from this Court that Petitioner must inform the court within twenty days of the order whether he wished to proceed *pro se* or request to be represented by Mr. Yarborough or the Division of Appellate Defense. The date of the order was June 17, 2021. Therefore this “affidavit” had to be filed by July 7, 2021. It was dated July 10, 2021, and not filed in the Supreme Court until August 26, 2021. This “affidavit” did not even follow the order of the Court, nor did it follow the Appellate Court rules as it pertains to what must be found in a Petition for Certiorari. Due to the Petitioner failing to follow the order of this Court he is not entitled to a “bite of the apple” when he obviously waived his opportunity.

Petitioner failed to argue before the lower court his right to an appeal pursuant to *Austin* so that argument was not preserved. Petitioner has also failed to follow the time limits this Court imposed on him through an order presented to the Petitioner. This Court made the correct decision in the determination that the Petitioner failed to file a Petition of Certiorari pursuant to Rule 243(d), SCACR. Respondent requests this Petition for Certiorari be subject to dismissal. And the decision of the Circuit Court regarding the previous successive application for PCR should be affirmed.

CONCLUSION

Based on the foregoing reasons, the Respondent submits Petitioner has failed to reveal this case warrants certiorari review. This Court should deny this petition and let the decision of the Circuit Court stand.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

TOMMY EVANS, JR.
Assistant Attorney General
S.C. Bar No. 65282

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

By: *s/ Tommy Evans, Jr.*
TOMMY EVANS, JR.
S.C. Bar No. 65282

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

Columbia, South Carolina
April 17, 2026

ATTORNEYS FOR RESPONDENT