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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
The Honorable Daniel D. Hall, Circuit Court Judge
The Honorable Patrick Cleburne Fant, III, Circuit Court Judge
Appellant Case No. 2025-001171

THE STATE,

RESPONDENT

v.

RONALD TYRONE DOWNS, JR.,

PETITIONER

**RETURN TO PETITION FOR WRIT OF CERTIORARI
PURSUANT TO *AUSTIN V. STATE***

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PETITIONER'S ISSUE PRESENTED

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

RESPONDENT'S COUNTER STATEMENT TO ISSUE PRESENTED

1. Did the PCR court err in finding that the Petitioner was not allowed an appeal pursuant to *Austin v. State* due to the fact he delayed filing a PCR when he was informed of that opportunity he knowingly and intelligently waived his right to appeal by waiting eight years to file his application for PCR pursuant to *Atkins*?

2. Did the PCR Court err in finding that the Petitioner is not entitled relief due to the doctrine of Laches?

STATEMENT OF THE CASE

On January 8, 2013, Ronald Tyrone Downs, Jr. (Petitioner) was indicted by the Greenville County Grand Jury for the offenses of kidnapping (App. pp. 450-451), armed robbery (App. pp. 452-453); and assault and battery in the first degree (App. pp. 454-455).

On August 14, 2013, Petitioner appeared before the Honorable Eugene C. Griffith for a trial before a jury of his peers. Representing the Petitioner was attorney Clifford F. Gaddy. Representing the State of South Carolina was Assistant Solicitor L. Mark Moyer of the Thirteenth Circuit Solicitor's office.

After two days of testimony, a jury of his peers found the Petitioner guilty of armed robbery and assault and battery in the first degree; however, Petitioner was found not guilty of kidnapping. After the reading of the verdict Petitioner appeared before the trial judge for sentencing. The trial judge proceeded to sentence the Petitioner to a twenty-five-year period of incarceration for the offense of armed robbery and ten years for assault and battery in the first degree. (App. p. 269 l. 4-5; 7-8). The trial judge ordered that these sentences were to be served concurrently. (App. p. 269 l. 6-7). The Petitioner never appealed the trial nor sentencing.

On May 2, 2014, Petitioner filed an application for post-conviction relief (PCR). (App. p. 287). Within this application Petitioner alleged that he is entitled to post-conviction relief due to:

1. Ineffective assistance of counsel;
 - a. Erroneously advised the Applicant not to accept a 15-year plea offer;
 - b. Failed to consult with the Applicant about his right to appeal. (App. p. 288).

A return was filed by the Respondent on October 21, 2014. (App. p. 287). Within this return the Respondent requested a hearing on the merits.

On February 19, 2015, Petitioner appeared before the Honorable Daniel D. Hall for a hearing on the merits. Appearing with the Petitioner was his appointed counsel Brian P. Johnson.

Appearing on behalf of the State of South Carolina was Assistant Attorney General Karen C. Ratigan of the South Carolina Office of the Attorney General. Testifying was the Petitioner, as well as his trial counsel, Clifford F. Gaddy now deceased.

On March 2, 2015, the PCR judge issued an order of dismissal. (Att. pp. 287-292). Within this order the PCR judge determined that Petitioner failed to meet his burden of proof. PCR judge determined that the Petitioner failed to testify that he requested that an appeal be filed on his behalf. Trial counsel testified that he informed the Petitioner that he was not aware of any grounds to appeal, however, if the Petitioner had requested he file a notice of appeal he would have done so. (Att. p. 291). PCR judge also determined that the Petitioner failed to present any specific and compelling evidence revealing that his trial counsel committed any errors or omissions in his representation of the Petitioner. The PCR judge also found that Petitioner failed to prove he was prejudiced by trial counsel's performance. (App. p. 291). The PCR court ordered that this application for post-conviction relief be denied and dismissed with prejudice. (App. p. 292). Within this order of dismissal the PCR judge notified Petitioner he had a right to file a notice of appeal within thirty days of receipt of the order. (App. p. 292).

An appeal was never filed after the denial of post-conviction relief. On July 5, 2023, Petitioner filed a second application for post-conviction relief pursuant to the South Carolina Supreme Court case of *Austin v. State*.¹ On February 28, 2024, the Respondent filed a return. Within this return the Respondent argued that the Petitioner was not entitled to a belated appeal due to Petitioner being informed of his right to appeal, and yet he knowingly and intelligently waived this right, and this appeal should not be allowed pursuant to the doctrine of laches. (Att.

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

pp. 301-304). The Respondent also requested an evidentiary hearing so the court could review the *Austin* claim and the defense of *Laches*. (Att. p. 304).

On October 9, 2024, a hearing was held before the Honorable Patrick Cleburne Fant. Appearing was the Petitioner along with his counsel Isaac L. Johnson. Representing the State of South Carolina was Assistant Attorney General Tommy Evans, Jr. of the South Carolina Office of the Attorney General. During this hearing Petitioner, his PCR counsel Brian Johnson, and Petitioner's grandmother Ms. Betty Downs all testified. At the conclusion of this hearing Judge Fant decided to release his decision at later date.

On May 6, 2025, Judge Fant issued his order of dismissal. (Att. pp. 385-394). Within this order Judge Fant determined that Petitioner is not entitled to a belated appeal pursuant to *Austin* due to the Petitioner knowing the time frame for a PCR appeal, because it was stated within the initial order of dismissal and Petitioner testified he was provided a copy. (Att. p. 390). There was also evidence that his PCR counsel was going to file a notice of appeal, however, Mr. Johnson was informed by the Petitioner's grandmother that the Petitioner wish him to file a Rule 59(e) motion instead. Petitioner also told Mr. Johnson to wait for further instructions. Mr. Johnson testified that he did not hear from the Petitioner prior to the expiration of the thirty-day time limit to file an appeal. (Att. p. 590). Judge Fant ruled that the application for post-conviction relief filed by Petitioner was barred due to the doctrine of laches. (Att. p. 393). In conclusion, Judge Fant ordered that this application be dismissed with prejudice. (Att. p. 394).

After this decision on September 9, 2025, Petitioner filed before the South Carolina Supreme Court a motion to remand for a transcript reconstruction of a post-conviction relief hearing. On November 19, 2025, the members of this court issued an order holding this case in abeyance and to remand the matter to the Honorable Daniel D. Hall for a reconstruction of the

record. (Att. pp. 395-396). On February 11, 2026 a hearing was held before the Honorable Daniel D. Hall for a record reconstruction. Appearing was the Petitioner along with his counsel Mr. W. Chandler Norville. Appearing on behalf of the State of South Carolina once again was Assistant Attorney General Tommy Evans, Jr. During this hearing Petitioner's PCR counsel Mr. Brian Johnson, former Assistant Attorney General Karen Ratigan and the Petitioner testified. On March 9, 2026, Judge Hall issued an order that the record was now reconstructed. (Att. pp. 444-449).

Petitioner now files this petition for writ of certiorari pursuant to the South Carolina Supreme Court decision of *Austin v. State*. Petitioner argues that he is entitled to a belated appeal due to his counsel informing him that he was going to file an appeal, yet never following through. Petitioner also argues that since the record has been reconstructed there is no prejudice; therefore, the doctrine of laches does not apply. The Respondent will argue that the Petitioner has failed to reveal that the decision of Judge Fant was in error. He had knowledge of his appeal date, and informed his counsel to wait prior to filing a Rule 59(e) motion, Petitioner knowingly and intelligently waived his right to appeal. Respondent also argues that although the record was reconstructed the doctrine of laches still applies due to the fact that if this case is subject to reversal, Petitioner's counsel is now deceased, he will not be available to testify, and there exists no record of his prior testimony under oath, only notes made by Ms. Ratigan. So there is prejudice that would allow the doctrine of laches to apply. Respondent would respectfully request this Court dismiss this petition.

STATEMENT OF FACTS

On October 11, 2012 the Petitioner walked into a Dollar General wearing a gray mask posing his hand as a weapon. (App. p. 66 l. 14-16). Petitioner walked up to employee Brenda Wilkinson who was working behind the register, and told Ms. Wilkinson, “this is a gun open your drawer.” (App. p. 67 l. 6-7). Ms. Wilkinson tried to run out of the store; Petitioner then grabbed her. (App. p. 68 l. 9-11). Petitioner then hit Ms. Wilkerson with a clip board. (Att. p. 68 l. 5-8). Ms. Wilkinson then began to throw store items at Petitioner. (App. p. 69 l. 3-5). Petitioner started hitting Ms. Wilkinson demanding that she open the safe. Petitioner forced Ms. Wilkinson to go back to the register. (App. p. 69 l. 22-24). Ms. Wilkinson informed Petitioner that she could not open the register unless she had a sale. (App. p. 69 l. 24-25). Petitioner got angry and continued to hit Ms. Wilkerson, so she scanned something at the counter just to get the register open. (App. p. 71 l. 2-6). Ms. Wilkerson then gave Petitioner everything out of the register. (App. p. 71 l. 18-25). Ms. Wilkerson could not get the second register opened, so Petitioner knocked her on the ground. (App. p. 72 l. 21-24). Petitioner told Ms. Wilkerson that he had a gun and she believed him. (App. p. 74 l. 10-11).

While the robbery was occurring another Dollar General employee, Ms. Ashley Johnson, was in the rear of the store. She saw Petitioner go behind the register and then heard Ms. Wilkerson screaming. (App. p. 88 l. 11-15). That is when Ms. Johnson dialed 911. (App. p. 88 l. 24). Ms. Johnson saw the Petitioner’s hand raised and from a distance she also believed he had a gun. (App. p. 88 l. 13-16). Ms. Johnson and a customer ran out of the back door, and the police arrived. (App. p. 89 l. 3-10).

Officer Sean Calhoun of the Greenville police department was the first officer to arrive. When he got to the store he heard people yelling “He’s still inside the store.” (App. p. 131 l. 17-

21). Officer Calhoun then saw the Petitioner running out of the store. (App. p. 133 l. 4-5). Officer Calhoun saw something what he believed was a weapon, so he pulled out his weapon and told the Petitioner to “get on the ground.” (App. p. 133 l. 7-10). The Petitioner looked in officer Calhoun direction and ran away. (App. p. 134 l. 7-9). Petitioner ran to a fence and as he climbed over, money from the store, came out of his pockets. (App. p. 138 l. 2-7). Officer Calhoun caught up with the Petitioner and ordered him to get on his knees. Petitioner did not comply, so Officer Calhoun tazed him. (App. p. 143 l. 15-16). Officer Calhoun then cuffed Petitioner and as they were walking back to the store money from the robbery continue to fall out of his pockets. (App. p. 148 l. 12-18).

Officer George Miller of the Mauldin Police Department also arrived at the scene. Officer Miller was a member of the K-9 unit. So with him was his trained dog. Officer Miller was sent to the location with his dog to look for a weapon or money. (App. p. 172 l. 24-25). The dog twice found piles of money, but no gun was found. (App. p. 176 l. 9-11; p. 188 l. 19-22).

ARGUMENTS

- 1. The Circuit Court did not err in their determination that Petitioner knowingly and intelligently waived his right to appeal due to the fact he delayed for years prior to the filing of a PCR pursuant to *Austin v. State*.**

The Petitioner seeks certiorari regarding the claim on his second application of PCR that the circuit court erred in deciding that Petitioner is not entitled a belated appeal pursuant to this Court’s decision in *Austin v. State*. In *Austin* this court decided:

Where convict alleged in his second postconviction relief application that he expressed desire to seek review of denial of his first PCR application, but his counsel failed to timely seek review, convict stated claim of ineffective assistance, thus requiring remand for an evidentiary hearing on issue of whether in fact convict requested and was denied opportunity to seek appellate review.

Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

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. *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999).

In order for the circuit court to determine that Petitioner's counsel was ineffective by not filing an appeal, the burden of proof is on the Petitioner. The circuit court is then obligated to use the standards found in the United States Supreme Court case of *Strickland v. Washington*. Pursuant to *Strickland* the burden is on the Petitioner to first reveal that his counsel's performance was deficient as measured by the standard of "reasonableness under prevailing professional norms." Second, the Petitioner must prove that he was prejudiced by such deficiency to the extent of there being "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Smith v. State*, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992), quoting *Strickland v. Washington*, 466 U.S. 668 (1984).

Petitioner claims that his PCR his attorney Mr. Brian Johnson told him that he would be filing an appeal. During the PCR Mr. Johnson testified that he was contacted by the Petitioner's grandmother Ms. Betty Downs and was informed that the Petitioner wanted him to file a Rule 59(e) motion.² (App. p. 354 l. 5-7). Mr. Johnson testified that he was told to wait for more information prior to filing this Rule 59(e) motion. (App. p. 354 l. 8-11). The time ran out for the filing of an appeal and Mr. Johnson never heard from the Petitioner, so he decided to write the Petitioner informing him that the time has elapsed; however, he had an additional remedy. Within this letter Mr. Johnson explained to Petitioner that he could file an additional PCR against his PCR

² On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment. Rule 59(a), SCRPC.

hearing counsel and “request the relief of a belated appeal.” This letter was dated April 30, 2015, however, the application for post-conviction relief was not filed until July 5, 2023, over eight years later.

During the PCR hearing the Petitioner admitted to knowing about the PCR process because he filed one earlier PCR. (App. p. 330 l. 5-7). Petitioner also admitted that he knew that he had a right to appeal due to his initial PCR the allegation that his trial attorney failed to notify him as to his right to appeal. (App. p. 330 l. 15-19). During his PCR the Petitioner testified that he thought he did not have any remedies that is why he waited so long. Petitioner testified that he did not know that he had any remedies until he was told by a fellow inmate in Mississippi. (App. p. 325 l. 12 – p. 326 l. 4) However, he previously filed a PCR application against his prior attorney for not filing an appeal, and he was informed by letter that he had a right to file an additional PCR due to his lawyer not filing an appeal. Petitioner admitted that he knew about the PCR process. Because not only had he filed a previous PCR application, but he was notified by the court in the order of dismissal that he had thirty days to file an appeal. Although his lawyer failed to file this appeal, he had a remedy that he was notified of and he failed to complete. So this should be considered a knowing and intelligent waiver of this right.

The PCR court made the determination that Petitioner was aware of the opportunity to seek appellate review and the timeframe to file a notice of appeal. The Petitioner never advised counsel that he wished him to file an appeal but informed counsel that he wished to initially file a motion pursuant to Rule 59(e). Petitioner also instructed counsel to wait for further instructions prior to filing this motion. As part of his petition, the Petitioner argued that it was his grandmother Ms. Betty Downs who requested the 59(e) motion. However, during his PCR testimony Petitioner admitted that he asked his grandmother to contact Mr. Johnson. (App. p. 331 l. 9-14; l. 25 – p. 332

l. 2). Ms. Downs also testified that she received information from the Petitioner regarding the rule 59(e) motion and that she did not come up with this on her own. (App. p. 39 l. 1-8). Ms. Downs admitted that she was the “conveyor of information” between the Petitioner and his PCR counsel Mr. Johnson. (App. p. 345 l. 23 – p. 346 l. 1). Ms. Downs also admitted she discussed with the Petitioner to have that 59(e) motion filed first. (App. p. 347 l. 24 – p. 348 l. 1). So this was not a request made by Ms. Downs but by the Petitioner himself. There was never any opposition by the Petitioner as to the truthfulness of what was placed in the April 30, 2015 letter sent from Mr. Johnson to Petitioner. Since the Petitioner waited so long to file the PCR, the only memory that Mr. Johnson had of this case came from this letter. In this letter it stated that Ms. Downs told him that Petitioner wished for him to file a rule 59(e) motion, and Petitioner would call back with further instructions. (App. p. 380). Petitioner never contacted Mr. Johnson again. It was Petitioner’s responsibility to inform Mr. Johnson what information he wished him to include within this motion.

Since Mr. Johnson did tell Petitioner that he was going to file an appeal and he failed to do so he felt obligated to inform Petitioner of the availability of a PCR to get a belated appeal. According to his testimony Petitioner knew how to file an application for post-conviction relief because he had filed one before. (App. p. 334 l. 2-9). However, even though he was informed of this process in 2015, Petitioner waited until 2023 to file this PCR application. Now according to his testimony Petitioner states that he did not know that this was an option until he was told by another inmate in Mississippi. However, he was informed of this back in 2015 through this letter from Mr. Johnson. Petitioner knew this process existed back in 2015.

The Respondent argues that the Petitioner is not entitled to an appeal pursuant to *Austin*. Petitioner had the opportunity to request an appeal from his counsel; however, he informed his

counsel that instead he wished his counsel to file a Rule 59(e) motion, and for him to wait for further instructions. These instructions never came. Petitioner knew he had the right to appeal but he waived that right when he informed his counsel he wished him to file a Rule 59(e) motion and to wait for further instructions. Then Petitioner never contacted him. This was a knowing and intelligent waiver of an appeal, so he is not entitled to a belated appeal pursuant to *Austin*. Therefore, this Petitioner for certiorari should be dismissed.

2. Due to the prejudice to the Respondent that has occurred because of the delay this claim should be barred due to the doctrine of Laches.

Judge Fant decided in his order that the doctrine of Laches applied due to the fact there is no reason given to justify the unreasonable length of time Petitioner waited to assert an *Austin* claim. Judge Fant also ruled that the unavailability of a transcript is prejudicial to the Respondent as well as the Appellant. So Judge Fant decided that Petitioner's PCR claim pursuant to *Austin* should be dismissed due to the doctrine of Laches. (App. p. 392). Petitioner argues that there is no longer any prejudice due to the fact the transcript was reconstructed. Respondent believes that although the transcript was reconstructed, prejudice still exists. If this case is reversed Petitioner's trial counsel is deceased and cannot testify. The issue raised by the Petitioner regarding his counsel failing to persuade him to take the plea deal cannot be addressed by his trial counsel. This will allow a one-sided story made by the Petitioner thereby prejudicing the State.

In *Whitehead v. State* this Court stated as:

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 in assertion of a right does not constitute laches.

Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002).

During his *Atkins* hearing Petitioner testified that he spent three years in the South Carolina Department of Corrections (SCDC), before being transferred to Mississippi. Petitioner was incarcerated in South Carolina from 2015 to 2018. It is undisputed that on April 30, 2015, a letter was mailed and received by Petitioner from his PCR counsel Mr. Brian Johnson. Within this letter Mr. Johnson explained to Petitioner that he had the right to a PCR requesting a belated appeal. Petitioner testified that he thought his case was over, however, this letter clearly explained to him the avenues he had available. At the time he received this letter Petitioner had access to South Carolina law for three years as an inmate in SCDC. However, he failed to file an application for post-conviction relief under *Austin* when he knew how to file a PCR because he had filed one before.

Petitioner testified that he did not become aware of his ability to file a PCR for a belated appeal until he got to Mississippi and was informed this by another inmate. However, the letter, sent three years earlier by his PCR counsel clearly stated this. So he did have notice of this remedy and chose not to investigate the possibility of filing a PCR for a belated appeal. Petitioner did not file a PCR until July 5, 2023, some eight years after he was given notice of this remedy.

Pursuant to South Carolina law, the doctrine of laches only applies if there is prejudice. Within his order Judge Fant mentions that the prejudice is the lack of a transcript. Petitioner argues that that this prejudice was remedied because the transcript was reconstructed. The Respondent disagrees. If this Court accepts Certiorari and decides to reverse the lower court's decision Respondent would be at a distinct disadvantage due to Petitioner's counsel being deceased. Within his Petition for Certiorari Petitioner states that if accepted he would make an argument regarding the ineffective assistance of counsel that the trial counsel failed to advise Petitioner about the

favorable offer made by the Solicitor.³ The only testimony that would be available would be that of the Petitioner. Trial counsel's version of the event would not be available because he is deceased. The original transcript was destroyed due to the actions of the Petitioner. The original PCR testimony of the Petitioner's trial counsel is lost.⁴ There can be no explanation by trial counsel especially since Petitioner wishes to raise an issue that was not in the original PCR application or hearing that was held when trial counsel was still alive.

Petitioner's eight-year delay causes the Respondent not to be able to put forth a viable case against the Petitioner that his trial counsel was not ineffective. Therefore, this petition should be subject to dismissal. "Laches" is defined as neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence to do what in law should have been done. *Id.* Petitioner was informed of this remedy in 2015, however, he waited until 2023 to file an application, putting the Respondent at a great disadvantage due to his trial counsel being deceased. Due to Petitioner's neglect in not seeking this remedy earlier, this case should be dismissed pursuant to the doctrine of laches.

³ This issue was not raised in the original PCR application so this argument should be considered waived. 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 on appeal. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003).

⁴ Due to the unreasonable eight-year delay of the Petitioner in filing this PCR application under *Atkins* the court reporter was not obligated to retain the transcript tapes. A court reporter must retain the primary and backup recordings of a proceeding for at least five (5) years after the date of the proceeding before destroying or deleting any recordings. Rule 607(i)(1), SCACR.

CONCLUSION

Based on the forgoing reasons, the Respondent submits Petitioner has knowingly waived this right to appeal. Petitioner’s eight-year delay in filing his application for PCR pursuant to *Austin* should deny him certiorari due to the doctrine of laches. This Court should deny this petition and let stand the decision of the lower courts.

Respectfully submitted,

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