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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

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

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

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QUESTION 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).

ARGUMENT

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

Petitioner's appointed PCR counsel told him that an appeal would be filed on Petitioner's behalf. After a conversation with Petitioner's grandmother—not Petitioner—about filing a motion to reconsider, PCR counsel filed neither an appeal nor a motion to reconsider. Petitioner did not affirmatively waive his right to appeal the denial of his PCR application and is entitled to a belated appeal. Further, the reconstruction of Petitioner's PCR record extinguishes any prejudice that may have befallen the state, thus defeating laches. This Court should grant *Austin* relief to Petitioner.

After the denial of his PCR, Petitioner's attorney had an affirmative legal duty to "make certain" he was "fully aware of the right to appeal." *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (emphasis added). Speaking with Petitioner's grandmother does not fulfill this obligation. *Id.* at 271, 701 S.E.2d at 739 ("[Trial counsel] stated he discussed a direct appeal with Petitioner's mother. However, there is no probative evidence that [trial counsel] informed Petitioner of his right to a direct appeal, nor is there any evidence that Petitioner waived his right to a direct appeal."). PCR counsel, by his own admission, did not discuss the filing of a Rule 59(e), SCRCivP motion with Petitioner. App. 367, ll. 18-21. Therefore, at the only time PCR counsel discussed the filing of an appeal with Petitioner, PCR counsel told Petitioner that an appeal would be filed. App. 353, ll. 20-23. Telling Petitioner one thing and then doing another is not "mak[ing] certain" that Petitioner's right to appeal would be respected. *See Simuel*, 390 S.C. at 270, 701 S.E.2d at 739. Petitioner is entitled to a belated appeal.

The state resists this conclusion in several ways. All lack merit.

First, the state insists that Petitioner’s grandmother’s communication with PCR counsel—wherein she inquired about filing a Rule 59(e), SCRCF motion—was in fact a request made by Petitioner himself. Return at 12. But two sentences later, the state asserts that “*Ms. Downs* told [PCR counsel] that Petitioner wished for [PCR counsel] to file a Rule 59(e) motion, and Petitioner would call back with further instructions. Petitioner never contacted [PCR counsel] again.” Return at 12 (emphasis added; internal citation omitted).² The state’s argument fails at the first two words of this assertion: *Ms. Downs*. Petitioner’s grandmother—who was not PCR counsel’s client—reached out to PCR counsel and inquired about the possibility of filing a motion.³ PCR counsel’s duty to “make certain” that Petitioner did not want to appeal, *see Simuel*, 390 S.C. at 270, 701 S.E.2d at 739, cannot be satisfied when PCR counsel *did not even speak with his client*. Even if the phone call with Petitioner’s grandmother created a “reasonable basis” for PCR counsel “to assume [Petitioner] [was] fully aware of his rights regarding an appeal,” which Petitioner strongly contests, “counsel *may not rest on that assumption*.” *Smith v. State*, 309 S.C. 413, 416, 424 S.E.2d 480, 482 (1992) (emphasis added).

Second, the state asserts that PCR counsel’s letter to Petitioner served as notice of his right to appeal. Return at 11. This too misses the point. For one, PCR counsel sent this letter to Petitioner *after* the time to appeal had elapsed. The letter may be relevant for the purposes of the laches analysis, *see infra*, but it bears no relevance to whether PCR counsel informed Petitioner of his right to appeal. And even if it did, the letter only informed Petitioner of his right to a

² The state also asserts that “[i]t was Petitioner’s responsibility to inform [PCR counsel] what information [Petitioner] wished to include within this motion.” Return at 12 (cleaned up). If the onus were on the client to tell his attorney what arguments to make in a motion, there would be no need for attorneys to exist at all.

³ As pointed out in Petitioner’s petition for certiorari, at the time of this phone call, a Rule 59(e), SCRCF motion was time-barred. Rule 59(b), SCRCF (post-trial motions must be made within ten days). This means that filing a Rule 59(e) motion was not even an option.

belated appeal from a trial. App. 300 (citing *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974)). If Petitioner read *White*, he would have no way of knowing that it applied to the denial of a PCR rather than a trial. Petitioner's ignorance of that point would be especially well-reasoned considering that there was no belated appeal from a PCR denial at the time *White* was decided; that case law would not come for another seventeen years. See generally *Austin*, 305 S.C. 453, 409 S.E.2d 395.

Third, the state asserts that, in any event, Petitioner's *Austin* claim is barred by laches. A dispositive element of laches is prejudice; if the state suffers no prejudice from Petitioner's delay, no matter how long, there is no 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)). The state attempts to show prejudice by asserting that, due to the death of Petitioner's trial counsel, no one can testify except Petitioner regarding Petitioner's allegations. Return at 13. This, according to the state, would allow "a one-sided story made by the Petitioner...." Return at 13.

This argument ignores the critical fact that, even if Petitioner prevails in this case, there will not be another evidentiary hearing. If Petitioner is granted *Austin* relief and this Court reviews the merits of his PCR claim, it will either affirm the PCR court or reverse the PCR court and order a new trial. Neither Petitioner nor the state has asked this Court to remand for a new PCR hearing. Thus, this case simply does not present the possibility of a remand for the taking of further evidence.

Moreover, the record of Petitioner's PCR hearing has been reconstructed, and all necessary testimony from trial counsel is a part of the record. Petitioner's assertions are: (1) trial counsel was ineffective by not advising him to accept a plea offer; and (2) Petitioner is entitled to

a belated direct appeal. Petition for Writ of Certiorari at 15. The reconstructed record contains trial counsel's testimony on these points.⁴ No further testimony from trial counsel is needed. Accordingly, the state has not suffered material prejudice from Petitioner's delay in seeking *Austin* relief. Therefore, Petitioner's claim is not barred by laches.

⁴ The state did not object to the PCR court finding the record reconstructed, nor did it appeal from that decision. Accordingly, that finding is the law of the case. *See generally Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013).

CONCLUSION

For the foregoing reasons, and the reasons raised in the petition for certiorari, this Court should grant *Austin* relief to Petitioner.



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ATTORNEY FOR PETITIONER

This 4th day of June, 2026.