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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Colleton County
Court of Common Pleas

The Honorable Edgar Dickson, PCR Judge

Appellate Case No. 2026-000508

LESLIE TWYMAN.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

**PETITION FOR
WRIT OF CERTIORARI**

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STATEMENTS OF ISSUE ON CERTIORARI

Petitioner's Statement of Issue on Certiorari

1. Whether Petitioner knowingly and intelligently waived his right to appellate review of the order of dismissal?

STATEMENT OF THE CASE

Leslie Twyman (hereafter “Petitioner”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Colleton County Grand Jury indicted Petitioner for first-degree criminal sexual conduct and third-degree criminal sexual conduct (2010-GS-15-00849, Count I and Count 2). Harris S. Beach of the Colleton County Public Defender's Office represented Petitioner. Assistant Solicitor Ben Shelton of the Fourteenth Circuit Solicitor's Office prosecuted the case. On April 18, 2011, Petitioner proceeded to a jury trial before the Honorable Perry M. Buckner, III, circuit court judge. The jury convicted Petitioner, as indicted. On April 20, 2011. Judge Buckner sentenced Petitioner to imprisonment for twenty-five years for first-degree criminal sexual conduct and for ten years’ for third-degree criminal sexual conduct, sentences running concurrently.

Petitioner pursued a direct appeal and represented by Appellate Defenders Elizabeth Frnnklin-Best and Susan B. Hackett. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. *Stale v. Leslie Twyman*, Unpub. Op. No. 2013-UP-325 (S.C. Ct. App. filed July 17, 2013). The remittitur was returned to the circuit court on August 9, 2013.

Petitioner filed his first application for post-conviction relief on February 11, 2014. In that application, Petitioner alleged his imprisonment was unlawfully based on:

1. Ineffective Assistance of Trial Counsel;
 - a. Trial Counsel only renewed motion for directed verdict on third-degree criminal sexual conduct and not first-degree criminal sexual conduct.
 - b. Trial counsel should have objected to Solicitor leading the witnesses
2. Ineffective Assistance of Appellate Counsel;
 - a. On third-degree criminal sexual conduct, more to be amended later.

Petitioner stated he was seeking to have his conviction and sentences vacated, a new trial, or resentencing. Respondent made its return on August 20, 2014, requesting an evidentiary hearing, which was convened on October 29, 2014, before the Honorable Edgar W. Dickson. Petitioner was represented by Tristan Shaffer, Esquire. Following the evidentiary hearing, Judge Dickson denied and dismissed the application with prejudice. The order was filed on December 21, 2015, and served on counsel for Petitioner on March 1, 2016. Petitioner did not file an appeal.

Petitioner's second PCR application was filed on June 24, 2019. The State filed a return and partial motion to dismiss on July 1, 2020. An evidentiary hearing was held on July 20, 2022, at the Beaufort County Courthouse. Petitioner was present at the hearing and represented by James K. Falk, Esquire and Assistant Attorney General Lauren Mims represented the State. The Court granted Petitioner an *Austin* appeal but stated that they could not address claims of insufficiency of the initial PCR order. This order was filed on July 23, 2024.

Petitioner appealed, filing a brief raising issues regarding the belated appeal and whether the case should be remanded because the order was insufficient. The State filed a return on August 6, 2025. On November 19, 2025, the South Carolina Supreme Court issued a filed order vacating the circuit court's order on December 21, 2025, remanding and ordering an order that complied with §17-27-80 of the South Carolina Code (2014) and Rule 52(a), SCRCP. The new order of dismissal with prejudice was filed February 25, 2026.

ARGUMENT

Petitioner knowingly and intelligently waived his right to appellate review of the order of dismissal.

The right to seek appellate review of the denial of PCR is expressly authorized by state law. S.C. Code Ann. §17-27-100 (1985). Additionally, the only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in *Austin v. State*, 305 S.C. 453, 454, 409 S.E. 2d 395, 396 (1991). *Austin* provides for a belated appeal where prior post-conviction relief counsel fails to timely appeal the denial of the application. *Id* at 454, 409 S.E.2d at 396; *see* S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But *Austin* "is limited to its particular factual situation." *Aice*, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to *Austin*, an evidentiary hearing may be conducted upon a successive post-conviction relief application "on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. "If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." *Id.* at 455, 409 S.E.2d at 396. *Austin*, therefore, allows an applicant to petition the Supreme Court of South Carolina for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

Here, Petitioner wanted an appeal, was denied the opportunity, and the State consented, stating that he was entitled to a belated appeal in this case. Prior PCR Counsel testified that the order was served on counsel, though Counsel never received notice. He stated that due to the time that passed, an appeal was untimely and he was barred from doing a 59(e) for the same

reason. Counsel testified he had no doubt Petitioner wanted an appeal filed. Thus, the Court correctly determined Petitioner was entitled to a belated appeal.

CONCLUSION

For the reasons stated above, Petitioner requests the Court grant the writ of certiorari and allow appellate review of the order of dismissal in this case.

Respectfully submitted,

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