

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

R. Knox McMahon, Circuit Court Judge

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APR 15 2013

S.C. Supreme Court

RODDREGUS WELLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No 2012-212848

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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ISSUE PRESENTED

The PCR judge ruled properly in granting petitioner's request for a belated PCR appeal in the case because petitioner did not voluntarily and intelligently waive his right to appeal his first PCR action.

STATEMENT

Rodregus Wells pled guilty to armed robbery, second degree burglary, assault and battery with intent to kill, and two counts of kidnapping during the November 2006 term of the Richland County General Sessions Court before Judge L. Casey Manning. Petitioner was sentenced to imprisonment for an aggregate period of eighteen years. App. 1-33. Kana R. Johnson represented petitioner at the plea proceeding. Petitioner did not enjoy the benefit of a direct appeal in the case.

On June 20, 2007, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 35-39. The respondent filed a return dated August 24, 2007, requesting that a hearing be held in response to petitioner's PCR action. App. 40-49.

A PCR hearing was held on August 5, 2008, at the Richland County Courthouse before Judge J. Michelle Childs. App. 50-65. Petitioner was present at the hearing and represented by Russell Brown. On September 28, 2008, Judge Childs issued an order of dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 67-76. Petitioner did not enjoy the benefit of an appeal of Judge Child's order of dismissal in the case.

On August 11, 2009, petitioner filed a second PCR action requesting an Austin¹ appeal of his first PCR case. App. 77-81. The respondent filed a return and motion to dismiss contending that the instant PCR action was successive and untimely filed. App. 82-90. On August 15, 2012, Judge R. Knox McMahan issued an order granting petitioner an Austin appeal. Petitioner appealed Judge McMahan's order. This petition follows.

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

ARGUMENT

The PCR judge ruled properly in granting petitioner's request for a belated PCR appeal in the case because petitioner did not voluntarily and intelligently waive his right to appeal his first PCR action.

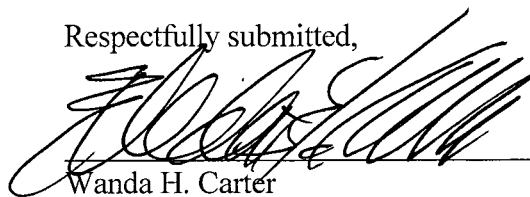
In the instant PCR case, all parties consented to petitioner's request for a belated PCR appeal of his first PCR action in the case; and as a result, a consent order granting a belated PCR appeal was subsequently filed. App 91-94 The PCR judge's rationale for signing the consent order granting the belated PCR appeal was based on the fact that PCR counsel "conceded that he did in fact overlook a timely letter received from [petitioner] requesting [an] appeal [of] the [first] PCR court's decision." App. 93.

Petitioner has a right to appellate review of the denial of his PCR action where PCR counsel failed to appeal the same. Austin v. State, 305 S.C 453, 409 S.E.2d 395; and S C Code Ann § 17-27-100. Therefore, since petitioner's first PCR counsel failed to appeal his first PCR action, then petitioner did not voluntarily waive his right to appellate review of his first PCR case. Thus, the instant PCR judge did not err in granting petitioner's request for an Austin appeal in the case

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of April, 2013.

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CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Roddregus Wells, # 319086, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 15th day of April, 2013.

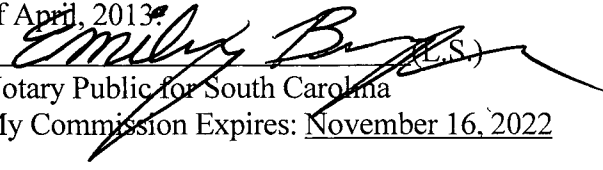


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day
of April, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022