

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Horry County

Larry B. Hyman, Jr., Circuit Court Judge

S.C. Supreme Court

MELEIK LAMONT ROACH,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001527

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether there was any evidence to support the PCR judge's findings that petitioner did not knowingly and voluntarily waive his right to appeal from his first PCR action?

STATEMENT

On September 8, 2009, petitioner appeared before the Honorable Steven H. John in Horry County and pled guilty to two (2) counts of armed robbery and one (1) count of assault and battery of a high and aggravated nature (ABHAN). A sentence of fifteen (15) years was imposed on the armed robbery charges and ten (10) years on the ABHAN charge. James C. Galmore, Esquire, was plea counsel. George DeBusk was the assistant solicitor. (App. p. 1 – p. 18).

Petitioner filed an application for post-conviction relief on August 26, 2010. (App. p. 19 – p. 25). Respondent filed a return on October 25, 2010. (App. p. 26 – p. 28). An evidentiary hearing was held on January 31, 2011, before the Honorable Benjamin H. Culbertson. Petitioner was present and was represented by Marshall Biddle, Esquire. Respondent was represented by Christina J. Catoe, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 29 – p. 75). On February 23, 2011, Judge Culbertson issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 84 – p. 95). There was no appeal.

On December 12, 2011, petitioner filed a second application for post-conviction relief requesting a belated appeal of the denial of his first application for post-conviction relief. (App. p. 106 – p. 114). Respondent filed a return dated January 5, 2012. (App. p. 115 – p. 118). An evidentiary hearing was held on April 24, 2012, before the Honorable Larry B. Hyman, Sr. Petitioner was present and was represented by Branna J. Williams, Esquire. Respondent was represented by Tyson Andrew Johnson, Sr., Assistant Attorney General. Both petitioner and the former PCR counsel testified. (App. p. 119 – p. 144). On December 2, 2013, Judge Hyman issued an amended order granting a belated appeal. (App. p. 152 – p. 155).

Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991); King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), and Rule 243(i), SCACR, this petition follows dealing with the grant of the belated appeal. A separate Austin petition will also be filed.

ARGUMENT

There was evidence to support the PCR judge's findings that petitioner did not knowingly and voluntarily waive his right to appeal from the denial of his first PCR action.

This Court has repeatedly held that it must uphold the findings of the PCR judge if there is any evidence of probative value to support them. Roberts v. State, 361 S.C. 1, 602 S.E.2d 768 (2004); Caprood v. State, 335 S.C. 103, 525 S.E.2d 514 (2000); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624; Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Pringle v. State, 287 S.C. 409, 339 S.C.2d 127 (1986); Knight v. State, 284 S.C. 138, 315 S.E.2d 535 (1985); Daniel v. State, 282 S.C. 155, 317 S.E.2d 746 (1984); Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984).

Petitioner testified at the evidentiary hearing that his PCR attorney never contacted him to see if he wanted to appeal. Petitioner had to write the clerk of court to see if there was an order of dismissal. They sent him a copy of the order on May 3 and the order was decided in February, so the 30-day time limit to appeal was well overwith. PCR counsel never sent him a copy of the order. Petitioner wrote him about an appeal, but he never got a response. (App. p. 127, line 11 – p. 128, line 21). Petitioner also testified that counsel already knew if relief was not granted that he wanted to appeal. (App. p. 131, line 25 – p. 132, line 4).

PCR counsel testified that he was aware that petitioner wanted to appeal if he was not successful. (App. p. 133, lines 4 – 7). He said he never got a copy of the order of dismissal. He had taken the case over from another attorney, Michael Eisenrauch. Eisenrauch's name was still listed as the attorney at the Attorney General's office. (App. p. 133, line 21 – p. 134, line 7).

On reply, petitioner introduced the following exhibits:

Exhibit #4. August 9, 2011, letter from the Supreme Court to PCR counsel notifying him that petitioner had filed a pro se appeal.

Exhibit #1. April 28, 2011, letter from staff attorney at the Attorney General's Office forwarding a copy of the original order to PCR counsel.

Exhibit #2. February 28, 2011, letter from the Attorney General's Office to the Clerk where the initial order was mailed.

Exhibit #3. A July 25, 2011, notice of appeal filed by petitioner.

Finally, respondent agreed that petitioner should have a belated appeal. (App. p. 143, lines 2
– 3).

CONCLUSION

The above testimony and exhibits more than satisfy the standard to support the PCR judge's findings that petitioner did not knowingly and voluntarily waive his right to appeal and that he should be entitled to a belated appeal.

Respectfully submitted,

Robert M. Pachak

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Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Larry B. Hyman, Jr., Circuit Court Judge

MELEIK LAMONT ROACH,

PETITIONER,

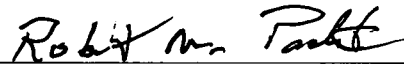
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

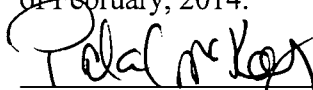
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of February, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 26th day
of February, 2014.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.