

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2012-213604

Heyward Davis, Petitioner,

v.

State of South Carolina, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
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S.C. Supreme Court

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QUESTION PRESENTED

Did the PCR judge properly find Petitioner did not knowingly and voluntarily waive his right to appellate review of the denial of his first post-conviction relief action?

STATEMENT OF THE CASE

For the limited purposes determining whether Petitioner is entitled to a review of his first PCR action pursuant to Austin v. State,¹ Respondent adopts Petitioner's statement of the case.

¹ 288 S.C. 290, 342 S.E.2d 60 (1986).

ARGUMENT

I. Probative evidence supports the PCR judge's finding Petitioner did not knowingly and voluntarily waive his right to an appeal of his first post-conviction relief action.

The proper standard for reviewing a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Here, Petitioner testified he asked his PCR counsel to file an appeal. (App. p. 382-83, 388). He further testified PCR counsel sent him a letter requesting \$500 to file an appeal. (App. p. 383). PCR counsel testified he did send Petitioner a letter requesting \$500 to file an appeal. PCR counsel also admitted on cross-examination that Petitioner may have asked him to file a notice of appeal and he simply forgot to mark his file. (App. p. 378). Based upon this testimony, evidence exists to support the PCR judge's finding Petitioner did not knowingly and voluntarily waive his right to appellate review of his first PCR action.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits the post-conviction relief judge properly granted Petitioner a review of his first post-conviction relief action pursuant to Austin v. State.

Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

3/3, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County

The Honorable Steven H. John, Circuit Court Judge

HEYWARD DAVIS, JR.,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Appellate Defender Carmen Ganjehsani
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 3rd day of March, 2014


NORMA BIGBEE
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

March 3, 2014

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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MAR 03 2014

S.C. Supreme Court

RE: Heyward Davis, Jr. v. State of South Carolina
Appellate Case No: 2012-212936

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Joshua L. Thomas
Assistant Attorney General
Bar No: 100777

JLT/nb
Enclosures

cc: Appellate Defender Carmen Ganjehsani (2 copies)