

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

MAY - 7 2014

**S.C. Supreme Court**

---

Certiorari to Richland County  
Clifton Newman, Circuit Court Judge

---

BRUCE WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001275

---

PETITION FOR WRIT OF CERTIORARI PURSUANT TO  
AUSTIN v. STATE

---

LANELLE CANTEY DURANT  
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

INDEX

INDEX ..... 1

ISSUE PRESENTED ..... 2

STATEMENT ..... 3

ARGUMENT ..... 5

CONCLUSION ..... 9

ISSUE PRESENTED

Did the PCR court err in denying Petitioner Wilson a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) of his first PCR?

## STATEMENT

In April 2005 and July 2005, the Richland County Grand Jury indicted Bruce Wilson on four counts of armed robbery (AR). On January 4-5, 2006, Wilson proceeded to trial before the Honorable James W. Johnson and a jury. Wilson was represented by Katherine Hudgins, and the state was represented by Kathryn Luck Campbell and Margaret Fent. On January 5, 2006, after the trial had proceeded, Wilson entered a guilty plea before Judge Johnson to three counts of AR. App. 227, ll. 1 – 17. The fourth AR was *nolle prossed* by the state. Judge Johnson sentenced Wilson to three concurrent terms of twenty-three years on the three AR. App. 242, ll. 8 – 25. Wilson did not appeal his convictions nor sentences.

Wilson filed an application for post-conviction relief (PCR) on May 23, 2006. (2006-CP-40-2981). An evidentiary hearing was held on August 1, 2007 before the Honorable James C. Williams. Wilson was represented by Charlie J. Johnson, and the state was represented by Robert L. Brown. On September 18, 2007, Judge Williams filed an order denying Wilson's PCR and dismissing it with prejudice. Supp App. 77-84. Wilson did not file an appeal. App. 345.

On September 21, 2010, Wilson filed a second PCR (2010-CP-40-6562) based on newly discovered evidence. App. 245 – 249. The state filed a return and motion to dismiss on October 4, 2011. On April 16, 2012, Judge James R. Barber, III, issued a Conditional Order of Dismissal allowing Wilson thirty days to submit his objections. App. 263-268. On August 31, 2012, Wilson filed an amendment to his PCR application based on his newly discovered evidence and also claiming his PCR attorney failed to file an appeal of the first PCR judge's order denying his PCR. App. 270-271. Based on Wilson's response, Judge Barber requested a hearing be set on Wilson's second PCR application. App. 343.

On October 18, 2012, an evidentiary hearing was held before the Honorable Clifton B. Newman. Wilson was represented by C. Clifford Rollins, and the state was represented by Robert D. Corney. App. 272. On February 19, 2013, Judge Newman filed an order denying Wilson's PCR application and dismissing it with prejudice. Judge Newman denied Wilson's request for a belated appeal of his first PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

On January 16, 2013, Wilson filed a motion to reconsider under Rule 59(e), SCRCP. The state filed a return to the motion on February 27, 2013. An evidentiary hearing was held on April 2, 2013 before the Honorable Clifton B. Newman. Wilson was represented by Cliff Rollins, and the state was represented by Megan Harrigan. App. 355 – 364. On May 20, 2013, Judge Newman issued an order denying Wilson's motion to reconsider under rule 59(e), SCRCP. Wilson filed a notice of appeal. A Johnson petition based on the newly discovered evidence claim is being filed concurrently with this Austin petition.

## ARGUMENT

The PCR court erred in denying Petitioner Wilson a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) of his first PCR.

Petitioner Wilson proceeded to trial on an armed robbery of the Pantry Express located at a Shell station in Columbia. App. 160, ll. 16 – App. 164, ll. 10. After pretrial motions and following the testimony of three witnesses, Wilson entered a guilty plea before the conclusion of the trial. He pled guilty to three armed robberies. A fourth armed robbery charge was *nolle prossed*. App. 227, ll. 1 – App. 242, ll. 25. Wilson did not appeal his convictions nor sentences. App. 344.

At his PCR hearing on October 18, 2012, the state's attorney explained to the court that Wilson was bringing this second PCR based on newly-discovered evidence and his request for a belated appeal of his first PCR which was never filed. App. 272 – App. 275, ll. 14.

Wilson testified at his PCR hearing that although his first PCR hearing was in August 2007, he did not file this second PCR until September 21, 2010 because he did not know that his first PCR had been decided. His first PCR attorney left the law firm he was working with and did not notify Wilson how to get in touch with him. App. 284, ll. 1 – 21. He learned of the status of his first PCR in 2009 when he wrote the court, and they finally sent him paperwork with the disposition of his first PCR application. App. 288, ll. 1 – App. 289, ll. 25. He filed this second PCR September 21, 2010. App. 294, ll. 1 – 24.

At his first PCR hearing, Wilson's issue was ineffective assistance of trial/plea counsel. The primary claim was counsel's failure to have evidence suppressed. App. 281, ll. 7 – App. 282, ll. 2. He did not ask his PCR attorney to file an appeal because he could not get in touch with him since the attorney changed firms. App. 284, ll. 1 – 21.

Wilson's first PCR attorney testified. He admitted that he changed law firms by starting his own firm and probably did not notify Wilson of the change. It was his normal standard to file an appeal, but in this case, if an appeal was not filed, he admitted that it was his fault. He thought the paperwork must have been "mixed up" in his changing firms. Nevertheless, he said that Wilson did have a right to an appeal. App. 296, ll. 12 – App. 297, ll. 23.

The PCR judge ruled that Wilson was not entitled to a belated appeal of his first PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) because he waited too long after he learned that his PCR was denied. Although the judge wrote that Odom v. State, 337 S.C.256, 523 S.E.2d 753 (1999), held that the one year statute of limitations for the filing of PCR's did not apply to a claim for a belated appeal, Wilson failed to take "reasonable and diligent steps to secure such an appeal within the following one year time frame from his receipt of such information." Granting such a belated appeal would "contradict the very purpose of these statutory limitations." The judge denied the belated Austin appeal. App. 351 – App. 352.

Wilson's PCR attorney then filed a motion to reconsider under Rule 59(e), SCRPC on January 16, 2013 arguing primarily. The state filed a return on February 27, 2013. An evidentiary hearing was held on April 2, 2013 before the Honorable Clifton Newman. . App. 364 – 402.

Wilson's attorney argued that Odom provided that under the PCR rules, a PCR applicant was entitled to one "full and final bite at the apple." He argued that Wilson has never had an appellate review of his charges of ineffective assistance of counsel as stated in his first PCR hearing. App. 373, ll. 15 – App. 374, ll. 19. Counsel said the ineffective assistance of counsel claims were trial counsel's failure to challenge the photographic lineup and a failure to file a suppression motion to suppress statements made by Wilson. App.374, ll. 20 – App. 376, ll. 4.

Wilson told the court at the 59(e) hearing that he wants an appeal of his first PCR App. 390, ll. 20 – 391, ll. 10. He continued to pursue this appeal because the first thing his trial attorney said to him was to ask if he wanted to plead guilty. He told her no. App. 381, ll. 1 – 25. The attorney told him it was in his best interest to plead guilty to avoid a life sentence. Wilson said he was not guilty. App. 385, ll. 20 -23.

The PCR judge issued an order denying Wilson's motion to reconsider on May 20, 2013. App. 405- App. 408. The judge again denied Wilson a belated appeal of his first PCR due to Wilson's failure to exercise reasonable diligence. App. 407.

The Supreme Court ruled in Odom v. State, 337 S.C.256, 523 S.E.2d 753 (1999), that the one year statute of limitations for the filing of PCR's did not apply to a claim for a belated appeal. Austin appeals are considered belated appeals and are used to rectify unjust procedural defects such as when an attorney does not file a timely appeal. Odom v. State, *id.*

In Aice v. State, 305 S.C. 448, 409 S. E. 2d 392 (1991), the Supreme Court wrote that under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." This "bite" includes an applicant's right to appeal the denial of a PCR application, and the right to the assistance of counsel in that appeal.

The PCR judge erred in not granting Wilson a belated appeal of his first PCR pursuant to Austin v. State, *supra*.

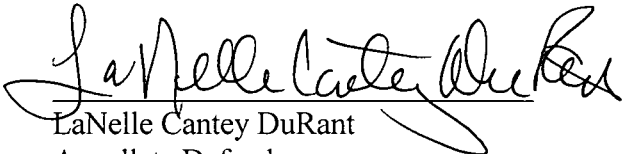
ISSUES TO BE CONSIDERED IN AUSTIN APPEAL

1. Trial counsel's failure to file a motion to challenge the adequacy of the photographic lineup that identified Wilson as the guilty robber.
  
2. Trial counsel's failure to file a suppression motion on Wilson's statement given to police after arrest.

CONCLUSION

Based on the above, the order of the PCR judge denying Wilson a belated appeal should be vacated and Wilson should be allowed to present a certiorari petition raising the issues from his first PCR just as if an appeal had been taken.

Respectfully submitted,

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of May, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Richland County  
Clifton Newman, Circuit Court Judge

---

BRUCE WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

CERTIFICATE OF SERVICE

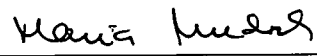
---

I certify that a true copy of the petition for writ of certiorari pursuant to Austin v. State 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 Mr. Bruce Wilson, Wilson #192733, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 7th day of May, 2014.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day  
of May, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.