

 ORIGINAL

RECEIVED

MAY 28 2014

S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

G. Edward Welmaker, Circuit Court Judge

DONNIE MACK HAGINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002151

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief 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 PRESENTED2

STATEMENT3

ARGUMENT4

CONCLUSION5

ISSUE PRESENTED

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

STATEMENT

Petitioner Donnie Mack Hagins pled guilty to distribution of crack cocaine and distribution of crack cocaine within proximity of a public park during the April 2007 term of the York County General Sessions Court before Judge John C. Hayes, III. Petitioner was sentenced to imprisonment for a period of fifteen years on the distribution conviction and ten years (concurrent) on the distribution within proximity of a park conviction. App. 1 – 15. Melissa Inzerillo represented petitioner at the plea proceeding and Assistant Solicitor E. B. Springs, III, appeared on behalf of the state. Petitioner did not appeal his trial court convictions and sentences in his case.

On January 30, 2008, petitioner filed a PCR application with the York County Office of the Clerk of Court. App. 17 – 25. The respondent filed a return dated May 22, 2008, requesting that a hearing be held in response to petitioner's PCR application. App. 26 – 29.

A PCR hearing was convened on February 4, 2009, at the York County Courthouse before Judge Lee S. Alford. Petitioner was present at the hearing and represented by Matthew R. Niemiec, and Assistant Attorney General Ashley A. McMahan appeared on behalf of the state. App. 33 – 59. On February 13, 2009, Judge Alford signed an Order of Dismissal in the case.¹ App. 61 – 67.

Petitioner did not enjoy the benefit of an appeal of Judge Alford's PCR Order of Dismissal issued in his case. As a result, petitioner filed a second PCR application on December 3, 2012, with the York County Clerk's Office requesting a belated PCR appeal. App. 69 – 75.

On February 21, 2013, the respondent filed a return and motion to dismiss all PCR claims raised in the second PCR application (fraudulent indictment and belated direct appeal) save the Austin² review claim, and requested that a hearing be held on the belated PCR appeal issue. App.

¹ The Order of Dismissal was filed on February 16, 2009.

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

76-81. A second PCR hearing was held on August 16, 2013, at the York County Courthouse before Judge G. Edward Welmaker. App. 85 – 89. Petitioner was present at the hearing and represented by Leah B. Moody, and Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state. Petitioner’s first PCR attorney was not present at the second PCR hearing.

On August 25, 2013, Judge Welmaker issued an Order granting petitioner an Austin appeal, but denied the two other PCR claims (fraudulent indictments and belated direct appeal) raised in his second PCR application. App. 91 – 93. The belated direct appeal issue was addressed at the first PCR action. Petitioner appealed Judge Welmaker’s Austin order. This petition follows.

ARGUMENT

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

Petitioner’s first PCR counsel was not present during the second PCR hearing. Also, petitioner was present at the second PCR hearing, but did not testify. Instead, the Assistant Attorney General consented to petitioner’s request for a belated appeal of his first PCR action after acknowledging that PCR counsel in effect admitted that he failed to file a notice of appeal after the first PCR order was issued in the case. App. 88, l. 2 – 10. The second PCR judge issued a verbal order at the hearing granting the Austin appeal in the case. App. 89, l. 11 – 24. Subsequently, the second PCR judge filed a written order reflecting the same PCR ruling granting petitioner’s request for a belated PCR appeal in the case. App. 91 – 93.

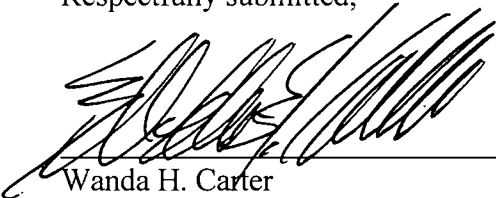
Clearly, the second PCR judge correctly granted an Austin appeal to petitioner because his first PCR counsel failed to appeal the first PCR action. One has right to appellate review of the denial of his PCR action where PCR counsel fails to appeal the same. Austin v. State, 305 S.C. 453,

409 S.E.2d 395 (1991). As a result, the PCR judge ruled properly in finding that petitioner did not knowingly and voluntarily waive his right to appellate review of his first PCR action and in granting petitioner's request for an Austin appeal in his case.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of May, 2014.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

G. Edward Welmaker, Circuit Court Judge

DONNIE MACK HAGINS,

PETITIONER,

V.

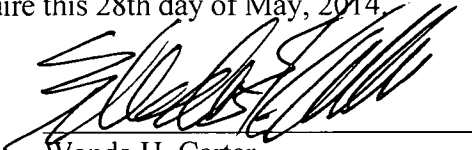
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002151

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 Karen Ratigan, Esquire this 28th day of May, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 28th day
of May, 2014.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.