

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County
The Honorable Alison R. Lee, Circuit Court Judge

Appellate Case No. 2011-192810

MAURICE A. KELLEY,

PETITIONER.

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MEGAN E. HARRIGAN
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ATTORNEYS FOR RESPONDENT

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JUN 23 2014

S.C. Supreme Court

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ISSUES PRESENTED

- I. Whether the post-conviction relief court correctly ruled that Petitioner was entitled to an appellate review of the denial of his initial post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?
- II. Whether the post-conviction relief court correctly denied Petitioner's allegation that he was entitled to appellate review of his guilty plea pursuant to White v. State, 263, S.C. 110, 208 S.E.2d 35 (1974), where Petitioner did not raise this claim until his second post-conviction relief action?

STATEMENT OF THE CASE

Respondent adopts the statement of the case put forth by Petitioner in his Petition for Writ of Certiorari. PWC p. 3.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether “‘*any* evidence’ of probative value” exists to sustain the post-conviction relief court’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (emphasis added). This Court will affirm if there is any evidence to support the post-conviction relief court’s ruling. Moore v. State, 399 S.C. 641, 646, 732 S.E.2d 871, 873 (2012). This Court will reverse the post-conviction relief court’s decision when it is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007) (citing Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004)).

ARGUMENTS

I. The post-conviction relief court correctly ruled that Petitioner was entitled to an appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

In the filing of his second post-conviction relief action (C.A. No. 2009-CP-40-05753), Petitioner asserted that he was denied appellate review of his initial post-conviction relief action (C.A. No. 2004-CP-40-04980) because his attorney did not file an appeal on his behalf. Respondent consented to the granting of appellate review of the denial of his initial post-conviction relief action pursuant to Austin. App. p. 90. Furthermore, Respondent agrees that Petitioner should be allowed to petition this Court for review of his initial post-conviction relief application pursuant to Austin since he did not knowingly and voluntarily waive his right to an appeal. Therefore, the post-conviction relief court properly concluded that Petitioner was entitled to an appellate review of the denial of his initial post-conviction relief action pursuant to Austin.¹

II. The post-conviction relief court properly denied Petitioner's allegation that he was entitled to appellate review of his guilty plea pursuant to White, where Petitioner raised this issue for the first time in his second post-conviction relief action.

In the filing of his second post-conviction relief action (C.A. No. 2009-CP-40-05753), Petitioner asserted for the first time that he was denied the right to direct appellate review of his guilty plea proceeding. Such a claim must be raised in an initial post-conviction relief application or is deemed barred. Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (2008). The post-conviction relief court properly determined that this claim was barred as Petitioner could have and should have raised it in his initial post-conviction

¹ Petitioner's counsel has filed a Johnson Petition for Writ of Certiorari Pursuant to Austin v. State. As this is a Johnson petition, Respondent does not intend to file a Return unless requested to do so by the Court.

relief action (C.A. No. 2004-CP-40-04980). This Court should uphold the post-conviction relief court's denial of this allegation.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN E. HARRIGAN
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SC Bar No. 100108

By: Megan E. Harrigan
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June 23, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
The Honorable Alison R. Lee, Circuit Court Judge
Case No. 2009-CP-40-5753
Appellate Case No. 2011-192810

MAURICE A. KELLEY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.


PROOF OF SERVICE

I, Megan E. Harrigan, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 23rd day of June, 2014.


MEGAN E. HARRIGAN
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S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

June 23, 2014

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

**Re: Maurice A. Kelley v. The State of South Carolina
Appellate Case No. 2011-192810**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of Respondent's Return to Petition for Writ of Certiorari.

Sincerely,

Megan E. Harrigan
Assistant Attorney General
S.C. Bar No. 100108

MEH/ko
Enclosures

cc: Wanda H. Carter, Esquire, Appellate Defense
Trisha Allen, Victim's Services