

# The Supreme Court of South Carolina

Ernest Battle, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-001776

Lower Court Case No. 2010-CP-10-8516

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## ORDER

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This Court issued an opinion on March 13, 2013, remanding petitioner's post-conviction relief (PCR) action to the circuit court for an evidentiary hearing to determine whether petitioner is entitled to a belated review, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), of the grounds appellate counsel failed to cross-appeal in petitioner's first PCR matter. Battle v. State, Op. No. 13-MO-010 (S.C. Sup. Ct. filed March 13, 2013). On remand, the circuit court issued a consent order finding petitioner is entitled to Austin review.

Counsel for petitioner has filed a petition for a writ of certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), raising issues from petitioner's first PCR matter. However, counsel failed to file a petition for a writ of certiorari arguing that petitioner is entitled to review pursuant to Austin, supra. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) (providing the appropriate procedure petitioner must follow where review is sought pursuant to Austin v. State). We instruct counsel to serve and file a petition for a writ of certiorari addressing that issue within thirty (30) days from the date of this order. Thereafter, respondent shall have thirty (30) days to serve and file its return.

  
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FOR THE COURT C.J.

Columbia, South Carolina

August 25, 2014

cc:

Ashleigh Rayanna Wilson, Esquire

Robert M. Pachak, Esquire

Ernest Battle, #165247