

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. Supreme Court

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Certiorari to Horry County

J. Cordell Maddox, Jr., Circuit Court Judge  
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DERRICK HOLLINGSWORTH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000308  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether there was any evidence to support the PCR judge's findings that petitioner was entitled to a belated review of the denial of his first PCR?

## STATEMENT

Petitioner was convicted of murder after a jury trial held before the Honorable Howard P. King on April 11 – 13, 2000. A life sentence was imposed. William H. Monckton, VI, Esquire, was trial counsel. Frances A. Humphries, Jr., Esquire, and Howell V. Belamy, III, Esquire, were the assistant solicitors. (App. p. 1 – p. 519).

Petitioner appealed his conviction and it was affirmed by the Court of Appeals on November 15, 2001. State v. Hollingsworth, Op.No. 2001-UP-504. (App. p. 520 – p. 562). Petitioner filed an application for post-conviction relief on July 16, 2002. (App. p. 563 – p. 581). Respondent filed a return dated August 26, 2004. (App. p. 582 – p. 586). An evidentiary hearing was held on March 22, 2005, before the Honorable John L. Breeden, Jr. Petitioner was present and was represented by Robert Gwin, II, Esquire. Respondent was represented by Christopher L. Newton, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing. On May 24, 2006, Judge Breeden issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 587 – p. 592). There was no appeal. Petitioner filed a second application for post-conviction relief on March 29, 2011. (App. p. 594 – p. 600). Respondent filed a return and motion to dismiss dated April 19, 2011. (App. p. 601 – p. 604). A hearing was held on August 28, 2013, before the Honorable J. Cordell Maddox, Jr. Petitioner was present and was represented by Daniel Hunnicutt, Esquire. Respondent was represented by Joshua Thomas, Assistant Attorney General. Petitioner and Robert Gwin, Esquire, testified at the hearing. (App. p. 604 – p. 626). On October 30, 2013, Judge Maddox issued an order granting petitioner a belated appeal of the denial of his first application for post-conviction relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). (App. p. 627 – p. 630). In accordance with King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), the issue of whether petitioner knowingly and intelligently waived the

right to appellate review of the previous post-conviction relief order will be discussed in this petition. A separate Austin petition will also be served addressing questions from the previous post-conviction relief order.

This petition follows.

## ARGUMENT

There was evidence to support the PCR judge's findings that petitioner was entitled to a belated review of the denial of his first PCR.

This Court has repeatedly held that it must uphold the findings of the PCR judge if there is any evidence of probative value to support them. Roberts v. State, 361 S.C. 1, 602 S.E.2d 768 (2004); Caprood v. State, 335 S.C. 103, 525 S.E.2d 514 (2000); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624; Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986); Knight v. State, 284 S.C. 138, 325 S.E.2d 535 (1985); Daniel v. State, 282 S.C. 155, 317 S.E.2d 746 (1984); Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984).

Petitioner testified at the evidentiary hearing that his first PCR counsel, Mr. Gwin, never informed him that his PCR application had been denied. (App. p. 611, lines 14 – 16). He found out in 2011 from the clerk of court that his PCR was denied in 2006. (App. p. 612, lines 8 – 14).

PCR counsel testified that he did not remember sending petitioner a copy of the order of dismissal when he received it. (App. p. 617, lines 13 – 17). On January 25, 2007, petitioner did write him requesting his case file. PCR counsel responded on February 13, 2007. There was a copy of the order of dismissal on file, but it was dated May 24, 2006, and an appeal could not have been filed at the time petitioner received it.

The PCR judge made the following findings:

Applicant testified that his initial PCR attorney, Robert Gwin, III, Esquire, never informed him that his PCR application had been denied. He further testified that he made efforts for over a year to acquire a copy of his PCR file. When he finally received it, he testified there was nothing in it indicating that his application had been denied or indicating that he had the right to appeal. He testified that he waited so long to file this second application because he didn't know that he had the right to appeal and it took him that long to figure out that his initial PCR counsel hadn't informed him of his rights.

Applicant's initial PCR attorney, Robert Gwin, III, testified that he wrote a letter to the applicant letting him know his initial PCR application had been denied and that he had the right to an appeal, but he was unable to produce said letter. He further testified that he sent the applicant his complete PCR file almost a year after the initial PCR hearing was held, well after the time allowed for filing an appeal. He further testified that he never filed a notice of appeal for Applicant after the initial hearing.

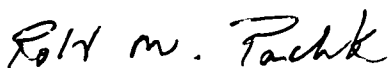
(App. p. 629).

As can be seen from the above, there is evidence to support the PCR judge's findings the petitioner was entitled to a belated appeal.

CONCLUSION

The findings of the PCR judge granting petitioner a belated appeal should be upheld.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of December, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County  
J. Cordell Maddox, Jr., Circuit Court Judge

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DERRICK HOLLINGSWORTH,

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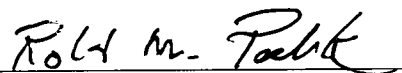
RESPONDENT

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CERTIFICATE OF SERVICE

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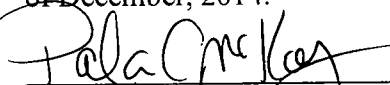
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of December, 2014.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day  
of December, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.