

ORIGINAL

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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S.C. Supreme Court

DERRICK HOLLINGSWORTH,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI  
PURSUANT TO *AUSTIN V. STATE*  
\_\_\_\_\_

ROBERT M. PACHAK  
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

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ISSUE PRESENTED

Petitioner's case should be remanded with the appointment of counsel to see if the record can be reconstructed since no transcript is available from the first PCR hearing?

STATEMENT

Petitioner adopts the statement contained in the petition for writ of certiorari dealing with the granting of this Austin petition.

## ARGUMENT

Petitioner's case should be remanded with the appointment of counsel to see if the record can be reconstructed since no transcript is available from the first PCR hearing.

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.

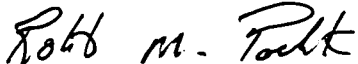
Respondent argued that petitioner's application should be barred by the doctrine of Laches, because appellant waited almost five years to file the current application. Also, because a transcript of the first PCR hearing was no longer available. The PCR judge found that the doctrine of Laches did not bar petitioner's application and he granted petitioner a belated appeal of the denial of his first application for post-conviction relief. (App. p. 629 – p. 630).

Without a transcript of the first PCR hearing, it is difficult to determine how closely or accurately the order of dismissal tracked what happened at the hearing. In China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968), the Court held that when part of a court reporter's notes are lost, the trial judge may consider affidavits from the court reporter and counsel to reconstruct the record. If a record cannot be reconstructed for a meaningful appellate review, a new PCR hearing may be necessary. State v. Ladson, 373 S.C. 320, 644 S.E.2d 271 (2007).

CONCLUSION

Petitioner's case should be remanded with the appointment of local counsel to see if the record can be reconstructed in this case.

Respectfully submitted,

  
\_\_\_\_\_  
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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V.

STATE OF SOUTH CAROLINA,

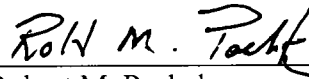
RESPONDENT

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CERTIFICATE OF SERVICE

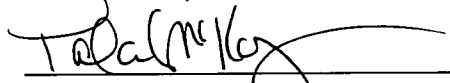
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I certify that a true copy of the petition for writ of certiorari pursuant to *Austin v. State* and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, 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.