

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Richland County

Robert E. Hood, Circuit Court Judge  
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**RECEIVED**

MAR 24 2015

**S.C. Supreme Court**

YASHAWNUS L. PATTERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001906  
\_\_\_\_\_

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

LANELLE CANTEY DURANT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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### ISSUE PRESENTED

The PCR court correctly found that Petitioner Patterson was entitled to a belated appeal from the denial of his first PCR application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) when PCR counsel admitted that Patterson expressed an interest in appealing the court's denial but counsel failed to file the appeal.

## STATEMENT

In November 2008, the Richland County Grand jury indicted Yashawnus Patterson on the charges of strong arm robbery (SAR) and burglary first degree. In February 2009, the Richland County Grand Jury indicted Patterson on two counts of criminal sexual conduct (CSC) with a minor second degree. On November 2, 2010, Patterson appeared before the Honorable L. Casey Manning and entered a negotiated guilty plea to SAR and two counts of CSC with a minor second degree. As part of the negotiation, the burglary first degree was dismissed and the three sentences were to run concurrent. App. 3, ll. 1 – 25. Patterson was represented by James H. May, and the state was represented by Margaret Fent Bodman. App. 1. Judge Manning accepted the negotiated plea and sentenced Patterson to thirteen years on each charge with all to run concurrent. App. 23, ll. 15 – 20. No direct appeal was filed. App. 114.

On October 28, 2011, Patterson filed his first PCR application. The state filed a return on November 7, 2011. An evidentiary hearing was held on October 17, 2013 before the Honorable Clifton B. Newman. Patterson was represented by Cody Smith, and the state was represented by Rob A. Corney. App. 42. On December 4, 2012, Judge Newman issued an order denying Patterson's PCR application and dismissing it with prejudice. App. 73 – App. 81. An appeal was not filed. Patterson filed a *pro se* notice of appeal on January 25, 2013. This appeal was dismissed by the Supreme Court on February 25, 2013 as being filed untimely. App. 114.

On August 28, 2013, Patterson filed a second PCR application. The state filed a return and motion to dismiss all claims beyond the Austin review on December 12, 2013. Patterson filed an amended PCR application on June 24, 2014 clarifying his intention to seek relief pursuant to Austin v. State, supra, for his attorney's failure to file a notice of appeal timely. App. 89. An evidentiary hearing was held on September 3, 2014 before the Honorable Robert E. Hood. Patterson was

represented by Kristy Goldberg, and the state was represented by J. Walter Whitmire. App. 95. On September 8, 201, Judge Hood issued an order granting Patterson an appeal from the denial of his first PCR application captioned 2011-CP-40-07255. The PCR application was dismissed. Patterson's attorney filed a timely notice of appeal. This petition for a writ of certiorari is filed simultaneously with a Johnson petition for a writ of certiorari pursuant to Austin v. State addressing the issues from the first PCR order as set forth in King v. State, 308 S.C. 348, 417 S.E.2d 808 (1992).

## ARGUMENT

The PCR court correctly found that Petitioner Patterson was entitled to a belated appeal from the denial of his first PCR application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) when PCR counsel admitted that Patterson expressed an interest in appealing the court's denial but counsel failed to file the appeal.

Yashawnus Patterson pled guilty to two different incidents. The first incident involved a strong arm robbery on September 13, 2008 which occurred at the Western Inn motel. Patterson knocked on the door of a room. When the victim opened the door, Patterson pushed his way in and took ten dollars from the victim. App. 19, ll. 18 – App. 20, ll. 10.

The CSC with a minor second degree charges occurred when Patterson went to the apartment of two sisters ages twelve and fifteen when their mother was at work. He had sex with both girls and his DNA was found in a vaginal swab of the twelve year old. The girls' mother came home and found him in bed with the twelve year old. App. 20, ll. 11 – App. 21, ll. 9.

At his second PCR hearing, Patterson testified that he told his first PCR attorney that he wanted to file an appeal if his PCR was denied. App. 99, ll. 1 – App. 101, ll. 23.

His first PCR attorney testified at the second PCR hearing that this was his first PCR case. He remembered that Patterson was upset at the hearing when the judge denied his PCR from the bench. Patterson expressed an interest in appealing the decision then. App. 106, ll. 21 – App. 107, ll. 25.

A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. If the PCR court finds an applicant was denied his right to appeal, the applicant can petition for certiorari

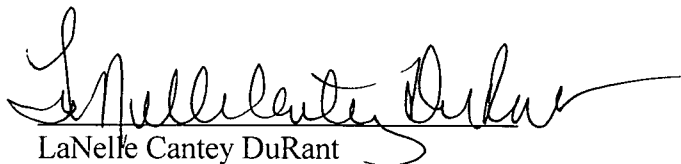
and the appellate court will review whether the petitioner was prejudiced by the failure to obtain appellate review. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999), Wicker v. State, 310 S.C. 8, 425 S.E.2d 25 (1992). An applicant has a right to counsel's assistance in seeking review of the denial of PCR. Austin, 305 S.C. at 454, 409 S.E.2d at 396; Rule 71.1(g), SCRCP.

The second PCR judge, Judge Hood, found that the first PCR counsel was ineffective for failing to file an appeal following the first PCR. Patterson had told his first PCR counsel that he wanted to pursue his PCR as far as he could go. Judge Hood correctly granted the belated appeal of his first PCR. App. 116.

CONCLUSION

Based on the above, the order of the PCR judge granting a review pursuant to Austin v. State, *supra*, should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", with a long horizontal flourish extending to the right.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of March, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

Robert E. Hood, Circuit Court Judge

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YASHAWNUS L. PATTERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

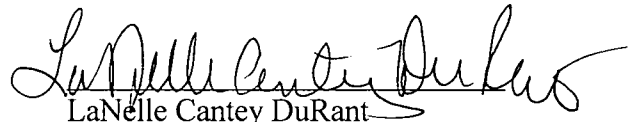
RESPONDENT

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CERTIFICATE OF SERVICE


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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Clayton Mitchell, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. YaShawnus L. Patterson, #249829, Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 24th day of March, 2015.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day  
of March, 2015.

  
\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.