

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chester County

William Jeffrey Young, Circuit Court Judge

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APR 24 2015

S.C. Supreme Court

TRAVIS LAMAR BOWSER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002073

PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
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Division of Appellate Defense
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INDEX

INDEX..... 1

ISSUE PRESENTED2

STATEMENT3

ARGUMENT4

CONCLUSION5

ISSUE PRESENTED

The PCR court correctly found that Petitioner Bowser 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) because all parties agreed that the failure to appeal was through inadvertence.

STATEMENT

In June 2003, the Chester County Grand Jury indicted Travis L. Bowser on three counts of armed robbery (AR). On October 30, 2002, Bowser appeared before the Honorable Paul E. Short, Jr., and entered a guilty plea to the three charges of AR as indicted. Bowser was represented by Brian Gibbons. Judge Short sentenced Bowser to the negotiated cap of twenty years on each charge with all to run concurrent. App. 32, ll. 4 – 22; App. 73. On January 3, 2003, Bowser filed an application for post-conviction relief (PCR). The state filed a return July 14, 2009. An evidentiary hearing was held February 3, 2010 before the Honorable Brooks P. Goldsmith. Bowser was represented by Ross Burton, and the state was represented by Susanne White. App. 13. On March 9, 2010, Judge Goldsmith issued an order denying Bowser's PCR application, and dismissing it with prejudice. App. 45 – App. 54. Bowser did not file an appeal.

On April 12, 2013, Bowser filed a second PCR application. App. 55. The state filed a return and motion to dismiss all claims except the Austin review on December 18, 2013. An evidentiary hearing was held on July 28, 2014 before the Honorable W. Jeffrey Young. Bowser was represented by Nathan J. Sheldon, and the state was represented by Croom Hunter. App. 67. On August 16, 2014, Judge Young issued an order granting Bowser a belated appeal of his first PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and denying all other issues and dismissing them with prejudice. App. 73- App. 75. Bowser's attorney filed a notice of appeal. This petition for a writ of certiorari is filed simultaneously with a petition for a writ of certiorari pursuant to Austin v. State, *id.* 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 Bowser 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) because all parties agreed that the failure to appeal was through inadvertence.

Travis Bowser was charged with three counts of armed robbery that occurred in three different incidents on September 14, 2001; December 11, 2001; and December 14, 2001. App. 77 – App. 87. He pled guilty to all three incidents on October 30, 2002. App. 45 – App. 46.

He filed his first PCR timely on January 29, 2003. His first PCR hearing was held on February 8, 2010. App. 13. No appeal was filed. App. 70, ll. 4 – 9.

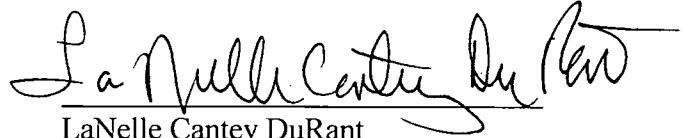
He filed a second PCR on April 12, 2013 alleging that his first PCR attorney was ineffective for not filing a notice of appeal. App. 57. At his second PCR hearing on July 28, 2014, all parties consented to a belated appeal of Bowser’s first PCR. The PCR judge granted the belated appeal. App. 70, ll. 11 – App. 71, ll. 13.

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), SCRPC.

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 cursive script that reads "LaNelle Cantey DuRant". The signature is written in black ink and is positioned above the printed name.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of April, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chester County

William Jeffrey Young, Circuit Court Judge

TRAVIS LAMAR BOWSER,

PETITIONER,

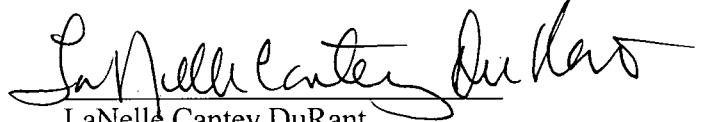
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE


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. Croom Hunter, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Travis Lamar Bowser #288475, Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 24th day of April, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

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

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.