

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2015-000362
Lower Court Case No. 2012-CP-10-2655

RECEIVED

JUL 17 2015

S.C. Supreme Court

DARRYL LOUIS, #279494,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
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ATTORNEY FOR PETITIONER.

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QUESTION PRESENTED

I.

Whether there is any probative evidence to support the PCR court's conclusion that the Petitioner should receive a belated appeal from the denial of his first PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

STATEMENT OF THE CASE

The Petitioner, Darryl Louis, was charged in Charleston County, Berkeley County, and Dorchester County for sixteen separate offenses, including armed-robbery, carjacking, kidnapping, and firearm offenses. On May 28, 2008, the Petitioner pleaded guilty as charged to two counts of armed robbery. The remaining charges were dismissed in exchange for the plea. The Petitioner was represented at this proceeding by F. Renee Gaters, Esquire. The Honorable James C. Williams, Jr., presiding circuit judge, sentenced the Petitioner to concurrent thirty-year prison terms. The Petitioner did not appeal his convictions or sentences.

On October 21, 2008, the Petitioner filed his first Application for Post-Conviction Relief with the Charleston County Clerk of Court. An evidentiary hearing into the matter was convened on January 15, 2010, before the Honorable Deadra L. Jefferson, presiding circuit judge. The Petitioner was represented at this proceeding by Charles T. Brooks, III, Esquire. On February 9, 2010, the PCR court filed an Order of Dismissal which denied relief on all of the Petitioner's claims. The Petitioner did not appeal the denial of his first PCR.

On April 20, 2012, the Petitioner filed his second PCR application with the Charleston County Clerk of Court, which was subsequently amended on May 19, 2014. The State served its Return and Motion to Dismiss on March 31, 2014. A Conditional Order of Dismissal was filed by the Honorable Stephanie P. McDonald on April 23, 2014. The Petitioner filed his Response to Conditional Order of Dismissal on May 19, 2014, and on June 23, 2014, Judge McDonald filed an Order permitting the case to proceed to a hearing. An evidentiary hearing was convened on December 10, 2014, before the Honorable J.C. Nicholson, Jr., presiding circuit judge. The Petitioner was represented at this proceeding by Jeremy A. Thompson, Esquire. On January 20, 2015, the PCR court filed an Order Granting an Appeal Pursuant to Austin v. State. The Petitioner

served its Notice of Appeal from this order on February 23, 2015, and this Court received the appeal on February 24, 2015.

Notice of appeal was timely served and filed. The Petitioner now seeks a writ of certiorari.

ARGUMENT

I. The second PCR court properly granted belated review of the Petitioner's first PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

In Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), this Court permitted PCR applicants to file a successive PCR application where “PCR counsel was ineffective in failing to seek appellate review of the denial of PCR.” 305 S.C. at 454, 409 S.E.2d at 396. “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.” Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999).

The Petitioner did not appeal the denial of his first PCR, and filed for Austin review based on PCR counsel's failure to file the appeal. See App. p. 199 (paragraph 19 of second PCR application); p. 211 (amended PCR application). At the proceeding below, the State consented to the grant of Austin review because “the State has spoken to Mr. Brooks and he's indicated that he did not file an appeal on behalf of Mr. Louis.” App. p. 227, lines 9-11. The PCR court granted Austin review based on PCR counsel's representation to the State and “accept[ed] the consent of the parties” to granting relief. App. p. 237.

The PCR court's ruling is supported by probative evidence, given PCR counsel's representation to the State that he failed to file the appeal on the Petitioner's behalf. Accordingly, this Court should grant Austin review and should review the merits of the appeal from the Petitioner's first PCR.

CONCLUSION

For the reasons stated, the Petitioner asks this Court to grant the petition and to allow full briefing on this issue.

Respectfully submitted,



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This 17th day of July, 2015.

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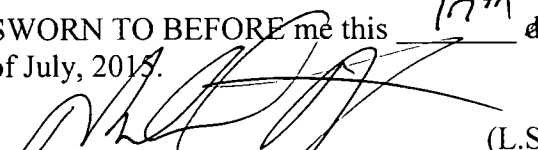
RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies each of the Petition for Writ of Certiorari and the Petition for Writ of Certiorari Pursuant to Austin v. State, and one copy of the Appendix in the above-entitled case have been served upon opposing counsel, J. Rutledge Johnson, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, via hand-delivery, this 17th day of July, 2015.


JEREMY A. THOMPSON
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 17th day
of July, 2015.


(L.S.)
Notary Public for South Carolina

My Commission Expires: 7/10/2022



LAW OFFICE OF
JEREMY A. THOMPSON
LLC

July 17, 2015

VIA HAND-DELIVERY

RECEIVED

JUL 17 2015

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: Darryl Louis, #279494 v. State of South Carolina; 2015-000362

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the Petition for Writ of Certiorari, the original and seven copies of the Petition for Writ of Certiorari Pursuant to Austin v. State, and the three copies of the Appendix, one of which is unbound. I would appreciate your filing the originals and six copies of the certiorari petitions, one unbound copy and one bound copy of the Appendix, clocking the extra copies, and returning the clocked copies to me. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,


Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures

cc: J. Rutledge Johnson, Assistant Attorney General (via hand-delivery) (w/ enclosures)
Darryl Louis, #279494 (via U.S. mail) (w/ enclosures)
Robin Sanders (via U.S. mail) (w/ enclosures)