

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLLINGTON COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2014-002426

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AUG 17 2015

S.C. Supreme Court

Warren K. Smith, Petitioner,

v.

State of South Carolina, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the post-conviction relief judge properly find Petitioner did not knowingly and voluntarily waive his right to appellate review of the denial of his first post-conviction relief action?

STATEMENT OF THE CASE

For the limited purposes determining whether Petitioner is entitled to a review of his first post-conviction relief action pursuant to Austin v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), Respondent adopts Petitioner's statement of the case.

ARGUMENT

I. Probative evidence supports the post-conviction relief judge's finding Petitioner did not knowingly and voluntarily waive his right to an appeal of his first post-conviction relief action.

The proper standard for reviewing a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Here, Respondent conceded prior collateral counsel attempted to file a notice of appeal from Petitioner's initial action, but failed to do so in the allotted time. (App. p. 117, lines 13-19). This Court ultimately dismissed that notice of appeal as untimely. Smith v. State, S.C. Sup. Ct. Order dated October 30, 2013. Based upon this evidence, the record support the post-conviction relief judge's finding Petitioner did not knowingly and voluntarily waive his right to appellate review of his first post-conviction relief action.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits the post-conviction relief judge properly granted Petitioner a review of his first post-conviction relief action pursuant to Austin v. State.

Respectfully submitted,

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By: 
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August 17, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Darlington County
Court of Common Pleas
The Honorable Thomas A. Russo, Circuit Court Judge

WARREN K. SMITH,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Robert M. Dudek, Esquire
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This 17th day of August, 2015


CAROLINE COLLINS
LEGAL ASSISTANT