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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County
Clifton Newman, Circuit Court Judge

TROY PEARSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000026

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
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Division of Appellate Defense
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INDEX

INDEX.....1

ISSUE PRESENTED2

STATEMENT3

ARGUMENT

The PCR judge correctly found that Petitioner did not knowingly and voluntarily waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).....4

CONCLUSION5

ISSUE PRESENTED

Did the PCR judge correctly find that petitioner did not knowingly and voluntarily waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

STATEMENT

In October of 2007, the Sumter County Grand Jury indicted Petitioner Pearson for murder and possession of a weapon during the commission of a violent crime, indictment #2007-GS-43-849. On May 29, 2008, Petitioner appeared before the Honorable R. Ferrell Cothran, Jr. and pled guilty to voluntary manslaughter. Jack Howle represented Petitioner at the plea. Harry Conner represented the State. Judge Cothran sentenced Petitioner to thirty (30) years. A timely notice of intent to appeal was filed and the direct appeal perfected. On January 26, 2010, the South Carolina Court of Appeals dismissed the appeal after review pursuant to Anders v. California, 388 U.S. 924, 87 S. Ct. 2094, 18 L. Ed. 2d 1377 (1967). State v. Pearson, Op. No. 2010-UP-042 (S.C.Ct.App. filed January 26, 2010).

On July 9, 2010, Petitioner filed an application for post conviction relief. The State filed a return on February 17, 2011. On September 17, 2012, an evidentiary hearing was held before the Honorable W. Jeffrey Young. J. David Weeks represented Petitioner at the evidentiary hearing. Megan E. Harrigan represented the State. In an order filed October 23, 2012, Judge Young denied relief and dismissed the application. A notice of intent to appeal was not filed.

On February 3, 2014, Petitioner filed a second PCR application alleging ineffective assistance of PCR counsel in failing to file a notice of intent to appeal. The State filed a return on May 13, 2014. On October 2, 2014, an evidentiary hearing was held before the Honorable Clifton B. Newman. Lance S. Boozer represented Petitioner at the evidentiary hearing. Daniel Gourley represented the State. In December of 2014, Judge Newman signed a consent order granting a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). A timely notice of intent to appeal was served on January 8, 2015. This petition for writ of certiorari and a separately filed Austin petition follow.

ARGUMENT

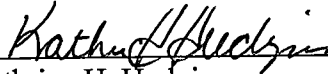
The PCR judge correctly found that Petitioner did not knowingly and voluntarily waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

During the PCR hearing Petitioner testified that he wrote PCR counsel a letter and asked him to file a Rule 59(e) motion after Judge Young denied relief. (App. p. 101, line 7 – p. 102, lines 1-3). A copy of the letter sent to PCR counsel from Petitioner was admitted in evidence without objection. (App. p. 103, lines 5-11). The letter is dated September 23, 2012. In the letter Petitioner asks PCR counsel to file a Rule 59(e) motion and states, "...[P]leas understand quitting or giving up on my case for me is not a option." (App. p. 109). PCR counsel did not testify at the hearing. Neither a Rule 59(e) motion nor a notice of intent to appeal were filed. The State consented to the belated appeal. (App. p. 113). The PCR judge correctly found that Gist did not knowingly and intelligently waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

CONCLUSION

Based on the above argument, this court should allow the bleated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of September, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Clifton Newman, Circuit Court Judge

TROY PEARSON,

PETITIONER,

V.


STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000026

CERTIFICATE OF SERVICE

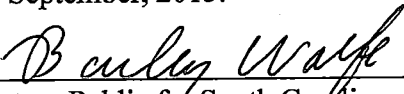
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Troy Pearson # 328627, at Lee Correctional Institution, this 8th day of September, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of September, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.