

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

D. Craig Brown, Circuit Court Judge

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S.C. Supreme Court

TYRONE WADE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000260

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
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Division of Appellate Defense
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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 September of 2009, the Aiken County Grand Jury indicted Petitioner Wade for murder, burglary in the first degree and possession of a weapon during the commission of a violent crime, indictments #2009-GS-02-1582, 1584, 1589. On March 28, 2011, Wade appeared before the Honorable Edgar W. Dickson and pled guilty. Wallis A. Alves represented Wade. Elizabeth B. Young represented the State. Pursuant to negotiations between the State and Wade, Judge Dickson sentenced Wade to thirty (30) years for murder, fifteen (15) years for burglary first degree and five (5) years for the weapon charge. A timely notice of intent to appeal was filed but the appeal was dismissed pursuant to Rule 203(d)(1)(B)(iv), SCACR.

On September 19, 2011, Wade filed an application for post conviction relief. The State filed a return on December 6, 2011. On July 11, 2012, an evidentiary hearing was held before the Honorable Paul M. Burch. Courtney Pope represented Wade at the PCR hearing. Megan E. Harrigan represented the State. In a written order filed July 25, 2012, Judge Burch denied relief and dismissed the application. The notice of intent to appeal was not filed.

On July 19, 2013, Wade filed a second *pro se* application for post conviction relief seeking a belated appeal of the denial of the first application for post conviction relief. On September 5, 2013, the State filed a return and motion to dismiss all claims except for the belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). On August 18, 2014, counsel for Wade filed an amendment to the prior PCR application. On January 16, 2015, an evidentiary hearing was held before the Honorable D. Craig Brown. Lance S. Boozer represented Wade at the second hearing. Daniel F. Gourley represented the State. In a written order signed January 26, 2015, Judge Brown signed a consent order granting a belated appeal pursuant to Austin v. State. 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 second PCR hearing seeking the belated appeal Petitioner introduced a letter from a law clerk with the Division of Appellate Defense dated August 9, 2013. (App. p. 111). The letter is in response to Petitioner's letter dated July 13, 2013, and explains that the appropriate action to take when PCR counsel fails to file a notice of intent to appeal an order dismissing an application for post conviction relief is to file a second application for post conviction relief. Counsel for the State asserted that PCR counsel did not recall if Petitioner requested an appeal but based on the letter from the Division of Appellate Defense the State consented to the belated appeal. During the hearing counsel for the State told the PCR judge, "I've spoken with Ms. Pope [PCR counsel]. She's indicated to me that she's not sure one way or the other whether Mr. Wade requested one. Based off that letter, I think it's fairly clear that Mr. Wade certainly was requesting a appeal off the denial of his PCR application. And for those reasons, Your honor, we would certainly consent to the Austin appeal." (App. p. 108, lines 3-10). 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).

CONCLUSION

Based on the above argument, this Court should allow the belated 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 12th day of October, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

D. Craig Brown, Circuit Court Judge

TYRONE WADE,

PETITIONER,

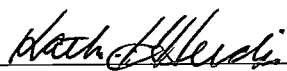
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

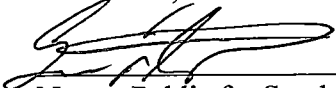
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Tyrone Wade #284384, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 12th day of October, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day
of October, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.