

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

NOV 12 2015

S.C. Supreme Court

\_\_\_\_\_  
Certiorari to Georgetown County  
G. Thomas Cooper, Jr., Circuit Court Judge  
\_\_\_\_\_

RONNIE W. WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000521  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

TIFFANY L. BUTLER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

INDEX ..... 1

ISSUE PRESENTED ..... 2

STATEMENT OF FACTS ..... 3

ARGUMENT ..... 5

CONCLUSION ..... 7

ISSUE PRESENTED

Did the PCR judge properly grant Petitioner a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) where Petitioner did not knowingly and intelligently waive his right to appellate review of the PCR judge's order of dismissal denying relief?

## STATEMENT OF FACTS

On July 18, 2007, the Georgetown County Grand Jury indicted Petitioner for kidnapping, first-degree burglary, criminal domestic violence of a high and aggravated nature (CDVHAN), and possession of a weapon during commission of a violent crime. App. 556 – 557; App. 571. Petitioner's case proceeded to a jury trial before the Honorable Paul M. Burch. App. 1. C. Reuben Goude represented Petitioner. Robert H. Bryan represented the State. App. 1.

The jury found Petitioner guilty of kidnapping and CDVHAN. App. 396. Petitioner was found not guilty of first-degree burglary and possession of a weapon during commission of a violent crime. App. 395. The judge sentenced Petitioner to twenty-two years' imprisonment for the kidnapping charge and ten years' imprisonment for the CDVHAN, to run concurrently. App. 406. Petitioner appealed his convictions and sentences.

The S.C. Court of Appeals affirmed Petitioner's convictions and sentences in a published opinion. See State v. Wilson, 389 S.C. 579, 698 S.E.2d 862 (2010). Kathrine H. Hudgins represented Petitioner. App. 434. The remittitur was issued on September 2, 2010. App. 438.

Petitioner filed a PCR application on May 4, 2011. App. 439. On June 3, 2011, Respondent filed its return requesting an evidentiary hearing. App. 445. On August 27, 2012, a PCR hearing was held before the Honorable Thomas A. Russo. App. 450. T. Andrew Johnson, Sr. represented the State. Lewis H. Hutto, III. represented Petitioner. App. 450. The PCR judge issued an order of dismissal September 10, 2012. PCR counsel did not file a notice of appeal.

On February 19, 2014, Petitioner filed a PCR application in which he contended that he did not voluntarily waive his right to appeal the PCR judge's order of dismissal. On May 29, 2014, Respondent filed its return and motion to dismiss. On February 5, 2015, the matter proceeded to a

hearing before the Honorable G. Thomas Cooper, Jr. App. 579. Joshua Thomas represented the State. Stephen Fowler represented Petitioner. App. 579.

During the hearing on February 5, 2015, PCR counsel Fowler explained to Judge Cooper that Petitioner's PCR counsel did not appeal the original PCR judge's order of dismissal. Citing Bray v. State, 366 S.C. 137, 620 S.E.2d 743 (2005), Fowler explained that "the PCR attorney should inform the Applicant they have a right to appeal the PCR and have an attorney represent on the PCR appeal." App. 585, ll. 3 – 7.

Petitioner had no knowledge that an order of dismissal had been issued in his case until after the time to file an appeal had lapsed. App. 585, ll. 10 – 11. Petitioner was also unaware that he could appeal an order dismissing his PCR application. App. 585, ll. 13 – 15. Petitioner did not receive a copy of the PCR judge's order denying relief until well past the deadline for filing an appeal. App. 589 – 593. The state made no argument against Petitioner's claim that PCR counsel did not file an appeal. App. 585. Judge Cooper agreed, on the record, that Petitioner had a right to appellate review of his PCR application and order of dismissal. App. 587.

On February 13, 2015, Judge Cooper issued an order granting Petitioner's belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 600. The judge found that Petitioner's claim that he was denied his right to appeal the order dismissing his prior PCR application "meritorious." App. 602. The judge found that Petitioner "did not knowingly and voluntarily waive his right to seek appellate review of Judge Russo's order" of dismissal and granted Petitioner's request pursuant to Austin, supra. App. 603.

## ARGUMENT

The PCR judge properly granted Petitioner a belated PCR appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), where Petitioner did not knowingly and intelligently waive his right to appellate review of the PCR judge's order of dismissal denying relief.

A PCR applicant is "entitled to a full and fair opportunity to present claims in one PCR application." *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999). An applicant also has "[t]he right to seek appellate review of the denial of PCR." *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991); see S.C. Code Ann. §17-27-100 ("A final judgment under this chapter may be reviewed by a writ of certiorari as provided by the South Carolina Appellate Court Rules.").

This Court has held that a PCR applicant is entitled to an appeal, pursuant to *Austin*, 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*, 337 S.C. at 262, 523 S.E.2d at 756 (1999).

Here, Judge Cooper correctly found that Petitioner did not knowingly and intelligently waive his right to appellate review of the previous PCR order denying relief. Petitioner explained that he did not know an order of dismissal had been issued in his first PCR case. When Petitioner finally received a copy of the order, the deadline to file an appeal had lapsed. Prior PCR counsel did not inform Petitioner that an order of dismissal had been filed or that Petitioner had a right to appeal the order. In fact, prior PCR counsel was present at Petitioner's second hearing on February 5, 2015, but neither testified nor denied Petitioner's claim. See App. 602 – 603.

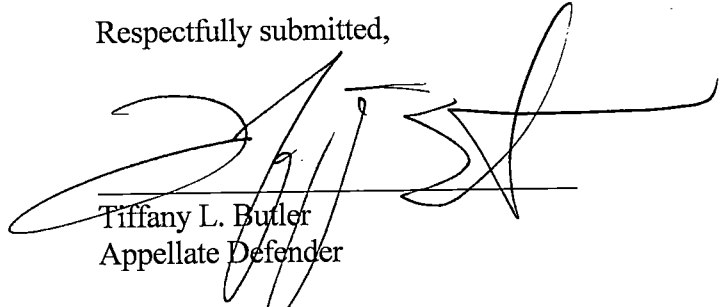
Further, the State made no argument against Petitioner's request for belated appellate review. Because ample evidence supported Judge Cooper's findings that Petitioner was denied his right to appeal, the decision granting Petitioner's belated appeal pursuant to *Austin* should be

upheld. See Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (“The appropriate scope of review of this Court is that ‘any evidence’ of probative value is sufficient to uphold the PCR judge’s findings.”).

CONCLUSION

For the reasons argued above, Petitioner Ronnie W. Wilson respectfully requests this Court to affirm Judge Cooper's grant of Petitioner's request for a belated appellate review of Judge Russo's order of dismissal denying relief.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'T. Butler', is written over a horizontal line.

Tiffany L. Butler  
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of November, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Georgetown County  
Thomas A. Russo, Circuit Court Judge

---

RONNIE W. WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

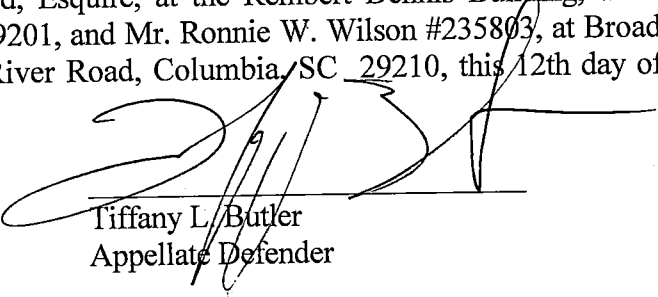
RESPONDENT

---

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 Jessica Kinard, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Ronnie W. Wilson #235803, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 12th day of November, 2015.



---

Tiffany L. Butler  
Appellate Defender

ATTORNEY FOR PETITIONER

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



---

(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022.