

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge **S.C. Supreme Court**

Appellate Case No. 2015-000362

Darryl Louis, Petitioner,

v.

State of South Carolina, Respondent.

**RETURN TO PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE**

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
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ATTORNEYS FOR RESPONDENT

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 The PCR court properly granted Petitioner a belated appeal of the denial of his first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)5

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QUESTION PRESENTED

Whether the post-conviction relief court properly granted Petitioner a belated appeal of the denial of his first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

STATEMENT OF THE CASE

The Respondent adopts the statement of the case put forth by the Petitioner.

STANDARD OF REVIEW

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).

ARGUMENT

Evidence exists to show the post-conviction relief court properly granted Petitioner a belated appeal of the denial of his first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner alleged his first post-conviction relief (PCR) counsel failed to file an appeal from the denial of his first post-conviction relief action. Respondent, after speaking with Petitioner's prior PCR counsel, consented to an Austin review. (App. p. 227). Therefore, evidence exists for the PCR court to rule that Petitioner did not knowingly and voluntarily waive his right to appeal the first PCR Order.

CONCLUSION

For all the foregoing reasons, Respondent respectfully submits to this Court the post-conviction relief court properly granted the Petitioner a belated review of his first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,
ALAN WILSON
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By:



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November 12, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
The Honorable J.C. Nicholson, Jr., Circuit Court Judge

DARRYL K. LOUIS,

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 Pursuant to Austin v. State** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
PO Box 12891
Columbia, SC 29211

This 12th day of November, 2015.


ELIZABETH MCLELLAN
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

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S.C. Supreme Court

November 12, 2015

The Honorable Daniel E. Shearouse
Clerk of Court, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

Re: Darryl K. Louis v. State of South Carolina
Appellate Case No. 2015-000362
Lower Court Case No. 2012-CP-10-2655

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari Pursuant to Austin v. State** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

J. Rutledge Johnson
Assistant Deputy Attorney General
SC Bar No. 78871

JRJ/em
Enclosures

cc: Jeremy A. Thompson, Esquire
Trisha Allen, Victim Services