

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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DEC 30 2015

S.C. Supreme Court

Certiorari to Clarendon County
William Jeffrey Young, Circuit Court Judge

WILLIE E. DOW,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000933

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR judge ruled properly in granting petitioner's request for a belated PCR appeal per Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

STATEMENT

Petitioner Willie E. Dow pled guilty to second degree criminal sexual conduct with a minor during the January 2008 term of the Clarendon County General Sessions Court before Judge R. Ferrell Cothran, Junior. Petitioner was sentenced to imprisonment for a period of eighteen years. App. 1 – 15. Deborah Butcher represented petitioner at the plea proceeding and Assistant Solicitor Amy Land appeared on behalf of the state. Petitioner did not appeal his trial court conviction and sentence.

On December 29, 2008, petitioner filed a PCR application with the Clarendon County Office of the Clerk of Court. App. 17 – 23. The respondent filed a return dated April 13, 2009, requesting that a hearing be held in response to petitioner’s PCR action. App. 24 – 28.

A PCR hearing was convened on September 21, 2012, at the Clarendon County Courthouse before Judge W. Jeffrey Young. App. 30 – 62. Petitioner was present at the PCR hearing and represented by James O’Connor, and Assistant Attorney General Megan Harrigan Jameson appeared on behalf of the state. On January 16, 2013, Judge Young filed an Order of Dismissal therein denying petitioner’s allegations of ineffective assistance of counsel and in effect his allegation that his plea was not given voluntarily. App. 64 – 69. Unfortunately, petitioner did not enjoy the benefit of a PCR appeal of Judge Young’s Order of Dismissal handed down in his case.

On July 3, 2013, petitioner filed a second PCR application in the case requesting a belated PCR appeal. App. 70 – 75. The respondent filed a return dated September 10, 2013, requesting that a hearing be held on the question of “whether PCR counsel failed to file a notice of appeal” in the case. App. 79 – 82. A second PCR hearing was convened on December 16, 2014, at the Clarendon County Courthouse before Judge J. Cordell Maddox. App. 84-88. Petitioner was present at the hearing and represented by William H. Johnson, and Assistant Attorney General Daniel Gourley

appeared on behalf of the State. On March 12, 2015, Judge Maddox signed an Order granting petitioner's request for an Austin¹ appeal, which was also signed by petitioner, PCR counsel, and Assistant Attorney General Gourley indicating unanimous consent to the belated PCR appeal request. Petitioner appealed. This appeal follows.

ARGUMENT

The PCR judge ruled properly in granting petitioner's request for a belated PCR appeal per Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner requested a belated PCR appeal in the case. During the PCR hearing held on the Austin issue, the state consented to the grant of a belated PCR appeal for petitioner after conceding that petitioner wrote letters requesting a PCR appeal and that PCR counsel "claime[d] he did not receive the letters...[but] would not dispute the fact that [petitioner] wrote him the letters." App. 87-88. See letters in Supplemental Appendix." Thereafter, the PCR judge signed an Order granting petitioner's request for an Austin appeal, which was also signed by petitioner, PCR counsel, and Assistant Attorney General Gourley consenting to the same. Note that no testimony was taken at this hearing.

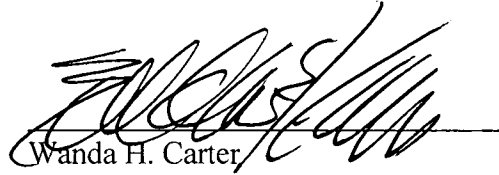
Petitioner has a right to appellate review of the denial of his PCR action where PCR counsel failed to appeal the same. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1998). The PCR judge ruled properly in granting petitioner's request for a belated PCR appeal in the case.

¹ 305 S.C. 453, 409 S.E.2d 395 (1991).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above raised issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

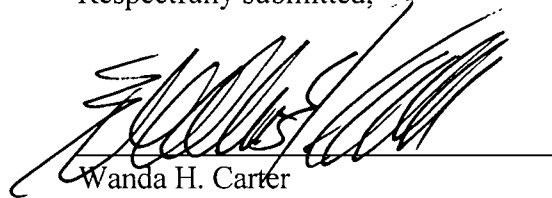
ATTORNEY FOR PETITIONER

This 30th day of December, 2015.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above raised issue.

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Wanda H. Carter
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This 30th day of December, 2015.

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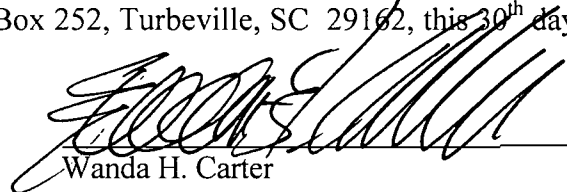
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STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

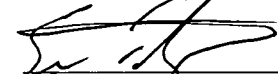
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Willie E. Dow #326446, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 30th day of December, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of December, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.