

STATE OF SOUTH CAROLINA  
In The Supreme Court

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**SC SUPREME COURT**

CERTIORARI TO CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr. , Circuit Court Judge

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Appellate Case No. 2014-001425

Kandy Gilliard, ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

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

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**TABLE OF CONTENTS**

TABLE OF CONTENTS.....2

QUESTION PRESENTED.....3

STATEMENT OF THE CASE.....4

STANDARD OF REVIEW .....5

ARGUMENT

The PCR court properly granted Petitioner a belated appeal of the denial of her first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) .....6

CONCLUSION.....7

## ISSUE PRESENTED

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

Petitioner alleged her first post-conviction relief (PCR) counsel failed to file an appeal from the denial of her first post-conviction relief action. Petitioner requested a belated PCR appeal in the case. On November 21, 2013, a PCR hearing was held regarding the Austin issue. During the hearing, the State consented to the grant of a belated PCR appeal for Petitioner, because PCR counsel failed to appeal the PCR judge's Order of Dismissal issued in the case. App. 1248, ll. 19-23. PCR counsel was present at the hearing and admitted that he neglected to file a notice of appeal in petitioner's PCR action. App. 1250, l. 19. Presiding Judge Stephanie P. McDonald, PCR counsel, and Assistant Attorney General Ashleigh Wilson all signed an Order dated January 9, 2014, consenting to the grant of Petitioner's right to a belated PCR appeal in the case. App. 1260 - 1263. Therefore, evidence exists for the PCR court to rule that Petitioner did not knowingly and voluntarily waive his right to appeal the dismissal of her first PCR.

**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 her first post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,  
ALAN WILSON  
Attorney General

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By:   
\_\_\_\_\_  
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**February 1**, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County  
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

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KANDY GILLIARD,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

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**CERTIFICATE OF SERVICE**

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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:

**Wanda H. Carter, Esquire  
S.C. Commission on Indigent Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201**

This 1<sup>st</sup> day of February, 2016.

  
ELIZABETH MCLELLAN  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

February 1, 2016

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

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**SC SUPREME COURT**

**Re: Kandy Gilliard v. State of South Carolina**  
**Appellate Case No. 2014-001425**  
**Lower Court Case No. 2012-CP-10-0383**

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,

Justin J. Hunter  
Assistant Attorney General  
SC Bar No. 101254

JJH/em  
Enclosures

cc: Wanda H. Carter, Esquire  
Trisha Allen, Victim Services