

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2014-002429

Derrick Javard George, Petitioner,

v.

State of South Carolina, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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SC SUPREME COURT

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QUESTION PRESENTED

Did the post-conviction relief judge properly find Petitioner did not knowingly and voluntarily waive his right to appellate review of the denial of his first post-conviction relief action?

STATEMENT OF THE CASE

For the limited purposes determining whether Petitioner is entitled to a review of his first post-conviction relief action pursuant to Austin v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), Respondent adopts Petitioner's statement of the case.

ARGUMENT

I. Probative evidence supports the post-conviction relief judge's finding Petitioner did not knowingly and voluntarily waive his right to an appeal of his first post-conviction relief action.

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). Here, Respondent conceded prior collateral counsel failed to file a notice of appeal from Petitioner’s initial action. (App. p. 98, lines 12-16). Based upon this evidence, the record supports the post-conviction relief judge’s finding Petitioner did not knowingly and voluntarily waive his right to appellate review of his first post-conviction relief action.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits the post-conviction relief judge properly granted Petitioner a review of his first post-conviction relief action pursuant to Austin v. State.

Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

March 24, 2016

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Derrick Javard George, Petitioner,

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State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, Jessica E. Kinard, certify that I have today served the within **Return to Petition for Writ of Certiorari** upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 24th day of March, 2016.



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March 24, 2016

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
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Columbia, South Carolina 29211

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SC SUPREME COURT

Re: Derrick Javard George v. State of South Carolina
Appellate Case No. 2014-002429
Lower Court Case No. 2014-CP-16-0093

Dear Mr. Shearouse:

Enclosed for filing please find an original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-captioned case. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

Jessica E. Kinard
Assistant Attorney General
S.C. Bar # 77889

JEK/jacc
Enclosures

cc: LaNelle C. DuRant, Esquire
Trisha Allen, Victim Services (without enclosure)