

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Richland County

J. Ernest Kinard, Jr., Deceased Circuit Court Judge

STACARDO GRISSETT

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002016

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

The second 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 Stacardo Grissett pled guilty to second degree lynching, robbery, and kidnapping during the August 2010 term of the Richland County General Sessions Court before Judge L. Casey Manning. App. 1-33. Petitioner was sentenced during the September 2010 term of the Richland County General Sessions Court before Judge Manning. App. 35 – 52. Tynika Claxton represented petitioner at the guilty plea and sentencing proceedings, and Assistant Solicitors Eden Hendrick and Kathryn Luck Campbell appeared on behalf of the state. Judge Manning sentenced petitioner to imprisonment for an aggregate period of ten years on the convictions. Petitioner did not enjoy the benefit of a direct appeal in the case.

On July 8, 2011, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 54 – 61. The respondent filed a return requesting that a PCR hearing be held in the case. App. 62 – 68.

A PCR hearing was convened on September 10, 2012, at the Richland County Courthouse before Judge J. Ernest Kinard. Petitioner was present at the PCR hearing and represented by David E. Belding and Assistant Attorney General Robert D. Corney appeared on behalf of the state. App. 71 – 120. On February 1, 2012, Judge Kinard issued an Order of Dismissal denying petitioner's claims of ineffective assistance of counsel in the case. App. 122- 133.

On October 7, 2014, petitioner filed a second PCR application requesting an Austin¹ appeal in the case. App. 134 – 138. The respondent filed a return on the Austin request and a motion to dismiss on additional PCR issues raised. App. 139 – 144.

A second PCR hearing was convened on August 25, 2015, at the Richland County Courthouse before Judge Tanya A. Gee. App. 146 – 152. Petitioner was present at the hearing and

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 375 (1991).

represented by Jonathan D. Waller, and Assistant Attorney General J. Clayton Mitchell appeared on behalf of the state. On August 18, 2015, Judge Gee issued an Order granting petitioner's request for a belated PCR appeal per Austin. App. 154 – 157.

Petitioner appealed. This petition follows.

ARGUMENT

The second 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 in the case regarding the Austin issue, a letter written by petitioner's first PCR counsel regarding this matter was read into the record wherein he revealed that he admitted he failed to appeal the Order of Dismissal issued by the first PCR judge and that as a result, petitioner did not voluntarily waive his right to appeal his first PCR action. App. 149, l. 4 – 9. Thereafter, the state consented to the grant of his Austin appeal request. App. 149, l. 10 – 12. Then, the second PCR judge issued an order granting the Austin appeal. App. 154 – 157.

A 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 second PCR judge ruled properly in granting petitioner's request for a belated PCR appeal in the case.

CONCLUSION

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

Respectfully Submitted,


Wanda H. Carter, Deputy Appellate Defender

This 16th day of May 2016

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

J. Ernest Kinard, Jr., Deceased Circuit Court Judge

STACARDO GRISSETT

PETITIONER,

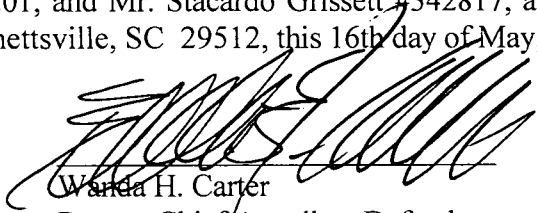
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

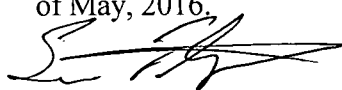
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Clay Mitchell, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Stacardo Grissett #342817, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 16th day of May, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of May, 2016.



(L.S.)

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