

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

George C. James, Jr., Circuit Court Judge

ORIGINAL

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JUN 28 2016

SC SUPREME COURT

CHARLES JUNIOUS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2015-001498

PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

JOHN H. STROM
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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR court properly granted Petitioner's request for a belated PCR appeal pursuant to *Austin v. State*¹ because Petitioner did not knowingly and intelligently waive the right to appellate review of his previous PCR application and Order of Dismissal.

¹ 305 S.C. 453, 409 S.E.2d 395 (1991)

STATEMENT

Relevant Facts

In the early morning hours of November 29, 2007, Clarendon County 911 received an emergency call from Teresa Johnson. App. 17, l. 14 - 18, l. 6. A hysterical Johnson stated that Petitioner Charles Junious, her former boyfriend who was indisputably mentally ill, was standing outside of her bedroom window. Junious refused to leave. *Id.*

Junious and Johnson had broken up a few weeks earlier. App. 13, ll. 10-25. Junious had not taken the break-up well. Co-workers later reported to law enforcement that he had repeatedly come by her place of work and that Johnson had complained about Junious "harassing" her. *Id.*

As Johnson was speaking with the 911 operator, Junious began to bang on the back door. App. 18, ll. 7 -20, l. 7. Junious eventually broke the door down. He then forced his way into Johnson's bedroom and fatally shot her seven times at close range with a pistol he had stolen from his cousin the day before. *Id.* Junious also killed Barbara Johnson, Teresa's mother, shooting her five times as she attempted to intervene. *Id.*; App. 26, l. 6-24.

The 911 call recorded the entire event. *Id.* After the shooting Junious walked into the adjoining bedroom which belonged to Franklin Johnson, Barbara's father and Teresa's grandfather. Franklin was sheltering Teresa's fourteen month old child. Junious told him that "I done something bad now." App. 19, ll. 18-22.

Junious then tried to locate Barbara's car keys, but was unsuccessful. App. 20, l. 4 - 21, l. 23. He was arrested without incident later that morning when the Johnson's neighbors called 911 after Junious showed up at their house asking to be let inside. *Id.* After being taken into custody, Junious confessed to killing Barbara and Teresa Johnson. App. 21, ll. 3-23.

Indictment

On March 6, 2008, the Clarendon County Grand Jury indicted Petitioner on two counts of murder, one count of first degree burglary, one count of possession of a firearm during the commission of a violent crime, and one count of the unlawful carry of a pistol. App. 100 - 101.

Guilty Plea

On January 26, 2009, Petitioner pled guilty to all counts at a hearing held before the Honorable R. Ferrell Cothran, Jr. App. 1 - 54. Shawn Kent represented Petitioner and Solicitor C. Kelly Jackson represented the State.

After reciting the facts of the case, the State played the tape of Johnson's 911 call, including the shootings. The State also played a recording of a return call made by the 911 operator after the first call ended. In that call, Petitioner answered the phone. App. 22, ll. 4-23. Members of the Johnson's family spoke at the hearing. The State recommended life without parole.

In mitigation, plea counsel, while conceding that Petitioner had been found competent to stand trial, detailed Petitioner's long history of mental illness. App. 35, l. 11 - 37, l. 25. He theorized that Petitioner may have had "psychotic break" on the night of the murders.

Nevertheless, counsel stated that Petitioner had appeared lucid, rational, and remorseful during their conversations. *Id.* Plea counsel posited that Petitioner's behavioral problems, which dated back to the early 1990s, had been largely ignored by his family and school officials. App. 38, l. 14 - 39, l. 23. Plea counsel requested that the court find Petitioner guilty but mentally ill and impose a sentence of less than life imprisonment. App. 41, l. 4-24.

The trial court found Petitioner guilty and sentenced him to three terms of life imprisonment for the murders and first degree burglary. Petitioner was also sentenced to a concurrent term of five

years imprisonment for possession of a weapon during the commission of a violent crime and one year of imprisonment for the unlawful carry of a pistol.

PCR Application

On October 6, 2009, Petitioner filed an application for post-conviction alleging that he was plea counsel was ineffective for failing to argue that Petitioner was incompetent to stand trial at the time of his guilty plea and for failing to file an appeal. App. 55 - 64. The State filed a Return on January 11, 2010. App. 65 - 69.

PCR Evidentiary Hearing

On March 19, 2010, an evidentiary hearing was held by the Honorable Williams Jeffery Young. App. 70 - 91. William Johnson represented Petitioner and Assistant Attorney General Mary Williams represented the State. Petitioner and plea counsel testified at the hearing.

Testimony of Petitioner

Petitioner testified that he underwent a competency evaluation at the Department of Mental Health, which found him competent to stand trial. App. 75, ll. 12-24. Petitioner stated that plea counsel never reviewed the findings of the examination with him.

Petitioner recalled that plea counsel was planning on arranging a second evaluation, but that it never took place. App. 76, ll. 3-15. Without elaboration, Petitioner testified that this second evaluation would have shown him incompetent to stand trial. *Id.* Petitioner was unable to remember specific events from his plea hearing or the night of the murders. *Id.*

Testimony of Plea Counsel

Plea counsel recollected that he was concerned about Petitioner's mental competency from the start of his representation. The Department of Mental Health Evaluation "showed that there

was a mental illness there, but not mental illness that he couldn't control his actions." App. 79, ll. 8-25.

Plea counsel stated that he had wanted to move for a second mental illness examination, but that Petitioner's family could not afford it. *Id.* Counsel claimed that he used the evidence of Petitioner's mental illness to negotiate with the solicitor and was able to convince the State not to seek the death penalty App. 80, ll. 3-22.

During the evidentiary hearing, plea counsel stated multiple times that, based on his experience, a second competency evaluation was unnecessary. App. 80, l. 4 - 81, l. 20. Plea counsel conceded that he may not have informed Petitioner of his right to appeal his guilty plea, but he believed the trial court had. *Id.*

On cross-examination, counsel recalled that Petitioner did not remember the night of the murder. App. 82, ll. 5-25. Counsel posited that Petitioner would have very likely been convicted of the murders because both killings were recorded by Clarendon County 911. *Id.* Counsel then reiterated that Petitioner's complete lack of emotion regarding the murders is what led him to push for a guilty but mentally ill plea. App. 83, ll. 10-16.

Order of Dismissal

On May 11, 2012, Judge Young denied Petitioner's application by a written order of dismissal. App. 92 - 98. The court ruled that plea counsel was not ineffective in failing to secure a second mental competency evaluation. App. 96. The court specifically noted that plea counsel had used the first evaluation to convince the State not to seek the death penalty. *Id.*

Judge Young also concluded that Petitioner had failed to prove how a second evaluation would have changed the outcome of his case. "One evaluation had already been done and did not

support an insanity defense or incompetence. The evaluation was supported by Counsel's own observations that Applicant was not impaired to the level of incompetence." App. 97.

April 13, 2015 Hearing

On April 13, 2015, a hearing was held before the Honorable George C. James, Jr. App. 86 - 91. During the hearing, the parties agreed that Petitioner had not knowingly waived his right to an appeal of the denial of his PCR Application. *Id.* The State consented to a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

ARGUMENT

The PCR court properly granted Petitioner’s request for a belated PCR appeal pursuant to *Austin v. State* because Petitioner did not knowingly and intelligently waive the right to appellate review of his previous PCR application and Order of Dismissal.

The State consented to a belated *Austin* appeal. App. 86 - 91. “All applicants are entitled to a full and fair opportunity to present claims in one PCR application.” *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). A PCR appellant is entitled to a full adjudication on the merits of the original petition. This “one bite of the apple” includes an applicant’s right to appeal the denial of a PCR application. *Id.* at 261, 523 S.E.2d at 755-56 (internal quotations and citation omitted)).

Successive PCR applications and appeals are disfavored. Nevertheless, this Court has allowed successive PCR applications where an applicant has been denied complete access to the appellate process. *See Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). “An *Austin* appeal is used when an applicant is prevented from seeking appellate review of a denial of his or her PCR application, such as when an attorney fails to seek timely review.” *Odom*, 337 S.C. at 262, 523 S.E.2d at 756 (citing *Aice*, 305 S.C. at 448, 409 S.E.2d at 392);

Accordingly, a petitioner is entitled to belated appellate review of his prior PCR application and Order of Dismissal when: (1) he requested, yet was denied an opportunity to seek appellate review; or (2) his right to appellate review was not knowingly and intelligently waived. *Id.*, 337 S.C. at 262, 523 S.E.2d at 756 (citing *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992)).

In this case, Petitioner never received his full “bite at the apple” as he was prevented from seeking a review of the denial of his PCR application.” *Id.*, 337 S.C. at 262, 523 S.E.2d at 756 (citing *Aice*, 305 S.C. at 452, 409 S.E.2d at 395). PCR counsel conceded that he never filed a notice of appeal and had no recollection of advising Petitioner of his right to appeal the Order of


Dismissal. App. 86 - 91. Moreover, the State consented to the belated appeal. *Id.*

Therefore, the PCR court properly granted Petitioner's request for a belated PCR appeal pursuant to *Austin v. State* because Petitioner did not knowingly and intelligently waive the right to appellate review of his previous PCR application and Order of Dismissal. *See Odom*, 337 S.C. at 262, 523 S.E.2d at 756 (citing *King*, 308 S.C. 348, 417 S.E.2d 868); *see also Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (holding that a finding of any evidence of probative value is sufficient to uphold the PCR judge's findings).

CONCLUSION

Based on the foregoing reason, Petitioner Charles Junious' respectfully requests that this Court grant his petition for writ of certiorari, and affirm the PCR court's ruling to grant Petitioner a belated PCR appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of June, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

George C. James Jr., Circuit Court Judge

CHARLES JUNIOUS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

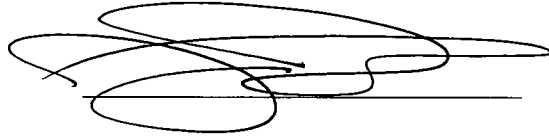
Appellate Case No. 2015-001498

CERTIFICATE OF SERVICE

I certify that a true copy of : (1) the motion to amend Johnson petition for writ of certiorari and to submit a petition for writ of certiorari so as to comply with Rule 234, SCACR, and Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991); (2) the amended Johnson petition for writ of certiorari, and (3) the petition for writ of certiorari pursuant to Austin v. State in this case have been served on Daniel Gourley, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Charles Junious, #332847, at Lee Correctional Institution, this 28th day of June, 2016.

[Signature Page Follows]

Respectfully Submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom, positioned above a solid horizontal line.

John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 28th day
of June, 2016.

 Al Yi (L.S.)

Notary Public for South Carolina

My Commission Expires: May 12, 2025.