

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

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Appellate Case No. 2015-002181

**RECEIVED**  
JUN 28 2016  
**SC SUPREME COURT**

Quentin Jenkins,.....Petitioner,

v.

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

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ALAN WILSON  
Attorney General

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ATTORNEYS FOR RESPONDENT

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    The PCR court properly granted a belated appeal of the denial of  
    Petitioner’s prior PCR application because his prior counsel failed  
    to file his appeal, pursuant to Austin v. State, 305 S.C. 453, 409  
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## QUESTION PRESENTED

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

Petitioner alleged his first post-conviction relief (PCR) counsel failed to file an appeal from the denial of his first post-conviction relief action until ten (10) months after the first PCR judge signed the order of dismissal. At the second PCR hearing, the State did not contest that Petitioner was entitled to an appeal pursuant to Austin v. State, *supra*. Therefore, evidence exists for the PCR court to rule that Petitioner did not knowingly and voluntarily waive his right to appeal the first PCR Order.

## 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 his 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

J. RUTLEDGE JOHNSON  
Assistant Deputy Attorney General  
S.C. Bar # 78871

By:

  
\_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

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June 28, 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County  
Court of Common Pleas  
The Honorable Roger E. Henderson, Circuit Court Judge

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JUN 28 2016

SC SUPREME COURT

QUENTIN JENKINS,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

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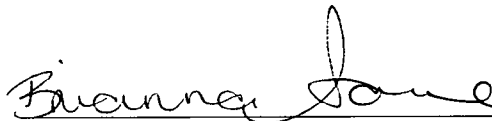
**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Kathrine H. Hudgins, Esquire**  
**SC Commission of Indigent Defense**  
**Post Office Box 11589**  
**Columbia, SC 29201**

This 28<sup>th</sup> day of June, 2016



BRIANNA ARNONE  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

June 28, 2016

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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JUN 28 2016

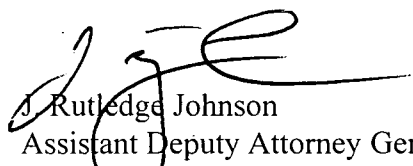
SC SUPREME COURT

**Re: Quentin Jenkins v. State of South Carolina**  
**Appellate Case No. 2015-002181**  
**Lower Court Case No. 2012-CP-10-7980**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

  
J. Rutledge Johnson  
Assistant Deputy Attorney General  
SC Bar No. 78871

JRJ/bea  
Enclosures

cc: Katherine H. Hudgins, Esquire (2 copies)