

The Supreme Court of South Carolina

Tony Lee Belton, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001875

ORDER

Petitioner's first application for post-conviction relief (PCR) was denied by Judge Goodstein. No notice of appeal was filed. Petitioner now seeks a writ of certiorari from an order issued by Judge Murphy in petitioner's second PCR action finding, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), that petitioner is entitled to a belated review of the order issued in his first PCR action.

Petitioner's counsel has filed one petition for a writ of certiorari, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), from both orders.¹ Petitioner has not filed a *pro se* petition.

We grant the petition for a writ of certiorari from Judge Murphy's order, dispense with further briefing, and proceed with an Austin review of Judge Goodstein's order. After careful consideration of the entire record of petitioner's first PCR matter, as required by Johnson v. State, *supra*, we deny the petition from Judge Goodstein's order and grant the motion to be relieved as counsel.

¹ We call counsel's attention to the procedure set forth in King v. State, 308 S.C. 348, 417 S.E.2d 868 (1991) for filing petitions for a writ of certiorari in cases involving Austin. We also point out that a Johnson petition is only appropriate in "meritless post-conviction appeals." Accordingly, a Johnson petition is not appropriate where it is argued the PCR judge *correctly concluded* the PCR applicant is entitled to a belated review of the denial of a prior PCR application. It also conflicts with the procedures typically employed in a Johnson matter, which is, upon the finding that there is an issue with potential merit, to have the petitioner file a new, merits petition and to allow the State an opportunity to file a return. However, an Austin petition pursuant to Johnson *may* be appropriate in addressing the issues from the prior PCR action.



A. R. Lewis

C.J.

FOR THE COURT

Columbia, South Carolina

August 18, 2016

cc:

James Clayton Mitchell, III, Esquire

John Harrison Strom, Esquire