

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Lexington County

Honorable J. Mark Hayes, Circuit Court Judge

---

**ORIGINAL**

**RECEIVED**

**OCT 19 2016**

ALEXANDER LYNCH,

**S.C. SUPREME COURT**

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000516

---

PETITION FOR WRIT OF CERTIORARI

---

DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT .....2

ARGUMENT

The PCR court correctly granted petitioner a belated appeal of the denial of his prior post-conviction relief application because of his attorney’s failure to file an appeal, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). .....3

CONCLUSION .....4

ISSUE PRESENTED

Whether the PCR court correctly granted petitioner a belated appeal of the denial of his prior post-conviction relief application because of his attorney's failure to file an appeal, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

## STATEMENT

On June 10, 2010, a Lexington County grand jury indicted petitioner for homicide by child abuse. App. 92. On June 7, 2010, petitioner pled guilty before the Honorable R. Knox McMahon. App. 1. Debra B. Moore represented the State. App. 1. Elizabeth C. Fullwood represented petitioner. App. 1. Judge McMahon sentenced petitioner to life imprisonment. App. 25, l. 21 – 26, l. 4.

On February 4, 2011, petitioner filed a PCR application. App. 28. On August 14, 2012, a hearing was held before the Honorable W. Jeffrey Young. App. 39. Daniel D. Kienker represented petitioner. App. 39. Kaelon E. May represented the State. App. 39. On June 9, 2013, Judge Young denied petitioner's application. App. 61-67. No appeal was filed.

On October 3, 2012, petitioner filed another PCR application. App. 68. On January 14, 2016, a hearing was held before the Honorable J. Mark Hayes. App. 82. Patrick Schmeckpeper represented the State. App. 82. Anna R. Good represented petitioner. App. 82. The State consented to relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 85, ll. 14 – 17. On February 16, 2016, Judge Hayes granted petitioner a belated appeal from his first PCR. App. 88-90. This petition follows.

## ARGUMENT

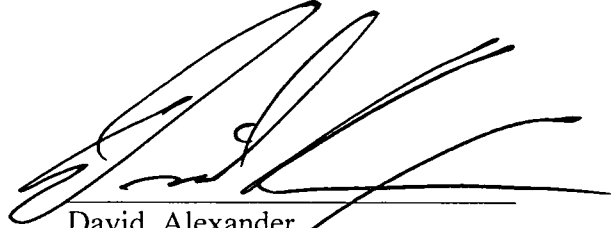
The PCR court correctly granted petitioner a belated appeal of the denial of his prior post-conviction relief application because of his attorney's failure to file an appeal, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

“An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal.” *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). The appropriate scope of review of the PCR court's holding is whether there is any evidence of probative value to uphold the PCR court's findings. *Webb v. State*, 281 S.C. 237, 314 S.E.2d 839 (1984).

The only evidence before the PCR court was that no appeal was filed. App. 85, ll. 9 – 13. The State candidly admitted that it had discussed the lack of an appeal with PCR counsel and that it believed relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), was warranted. App. 85, ll. 14 – 17. Petitioner's attorney indicated her agreement with the State. App. 85, ll. 18 – 19. This evidence supports the PCR judge's grant of relief to petitioner pursuant to *Austin*. Because substantial evidence supports the PCR judge's finding, this court should grant certiorari and allow petitioner a belated appeal from his prior PCR application.

**CONCLUSION**

For the above-stated reasons, the Court should grant certiorari and allow petitioner a belated appeal from his first PCR application.

A handwritten signature in black ink, appearing to read 'D. Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of October, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Lexington County

Honorable J. Mark Hayes, Circuit Court Judge

\_\_\_\_\_

ALEXANDER LYNCH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_

CERTIFICATE OF SERVICE

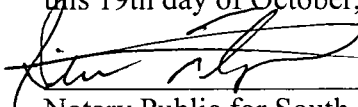
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Patrick Schmeckpeper, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Alexander Lynch, #341145, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 19th day of October, 2016.

  
\_\_\_\_\_  
David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me  
this 19th day of October, 2016.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires:

(L.S)