

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable D. Craig Brown, Circuit Court Judge  
Honorable Kristi L. Harrington, Circuit Court Judge

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S.C. SUPREME COURT

ROSHOD M. BAKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000657

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PETITION FOR WRIT OF CERTIORARI  
PURSUANT TO AUSTIN V. STATE

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### **ISSUE PRESENTED**

Whether the PCR court properly granted Petitioner relief pursuant to Austin v. State, 305 S.C. 453, 246 S.E.2d 395 (1991), where Petitioner's first PCR counsel failed to file a Notice of Appeal from the first PCR court's Order of Dismissal and the State consented to Petitioner's pursuit of a belated review of the denial of his first PCR application?

## STATEMENT OF THE CASE

On May 28, 2002, the Horry County Grand Jury indicted Petitioner Roshod M. Baker<sup>1</sup> for murder, along with co-defendant's Dormaine Baker, Derrick L. Bowens, Ernest Q. Smith, and Telly Manning. App. 34. The co-defendants were accused of killing Troy Riggins in the midst of a drug deal.

On November 13 through 16, 2006, Baker and one of his co-defendants, Telly Manning, appeared for trial before the Honorable Steven H. John. Baker was represented by Johnny Gardner, Manning was represented by Randall Mullins, and the state was represented by assistant solicitor George Debusk, Jr. App. 1.

The jury returned a verdict of guilty on the charge of murder as to both defendants. App. 377. Judge John sentenced both Baker and Manning to the mandatory minimum term of thirty years. App. 390.

On direct appeal, Baker was represented by appellate defender Katherine Hudgins. App. 392. Hudgins filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), in which she raised the issue of whether the trial judge erred by denying Baker's motion for directed verdict where the State's evidence did not rise above a mere suspicion that he had killed Riggins. App. 395. Upon consideration of the record and the brief prepared by counsel, the Court of Appeals dismissed the appeal pursuant to Anders on September 8, 2009. App. 402.

### **First PCR Application and Hearing (2010-CP-26-7814)**

On August 24, 2010, Baker filed an application for post-conviction relief. App. 404. On October 25, 2010, the State filed its Return. App. 411. Baker filed an Amendment to his PCR

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<sup>1</sup> Petitioner's first name is spelled Roshod and Rashad on various documents throughout the Appendix.

application on December 29, 2011, through counsel. App. 416. An evidentiary hearing was held before the Honorable Kristi L. Harrington on August 28, 2014. Baker was represented by Tristan Shaffer, and the State was represented by assistant attorney general Joshua Thomas. App. 417. Baker and his trial attorney, Johnny Gardner, testified at the PCR hearing.

**Order of Dismissal (2010-CP-26-7814)**

On November 19, 2014, Judge Harrington filed an Order of Dismissal denying Baker's PCR application. App. 488.

**Second PCR Application and Hearing (2015-CP-26-0475)**

On January 21, 2015, Baker filed a second PCR application requesting a belated appeal of his PCR claims. App. 498. On May 29, 2015, the State filed its Return. App. 513.

On February 11, 2016, a hearing was held before the Honorable D. Craig Brown. Baker was represented by James Falk, and the state was represented by assistant attorney general Jessica Kinard. App. 518. Based on PCR counsel Shaffer's stipulation that he was ineffective in failing to file an appeal from the first PCR court's order, the state consented to an Austin<sup>2</sup> appeal. App. 519 – 520.

**Order Granting Belated PCR Appeal Pursuant to Austin (2015-CP-26-0475)**

On March 14, 2016, Judge Brown issued an Order granting Baker an appeal pursuant to Austin. App. 573 – 577. Baker filed a timely Notice of Appeal.

This petition follows pursuant to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) (establishing the procedure when seeking belated appellate review of an Austin PCR application). Additionally, Baker is simultaneously filing his petition for writ of certiorari.

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<sup>2</sup> Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

## ARGUMENT

The PCR court properly granted Baker belated appellate review of his initial PCR application because Baker was denied his right to appeal the dismissal of his first PCR application. App. 519 – 520; App. 523 – 525; see Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The State consented to Baker’s request for a belated appeal of the Order of Dismissal from his first PCR hearing, indicating that first PCR counsel, Tristan Shaffer, would stipulate that he was ineffective in failing to file for an appeal. App. 519, ll. 10-25.

The South Carolina Supreme Court has held that “[a]ll 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). “Under the PCR rules, an appellant is entitled to a full adjudication on the merits of the original petition, or ‘one bite of the apple.’ This ‘bite’ includes an applicant’s right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal.” Id. at 261, 523 S.E.2d at 755-56 (internal citations omitted).

Furthermore, a petitioner is denied his right to appellate review when either: (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. (citing King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992)). Accordingly, when a petitioner is denied his right to appeal under either of the two circumstances, then he is entitled to belated appellate review of his initial PCR application. See, e.g., Austin, 305 S.C. at 454, 246 S.E.2d at 396.


In this case, the AAG Kinard stated that she spoke with first PCR counsel Shaffer, who was willing to stipulate that he was ineffective in failing to file an appeal for Baker. App. 519, ll. 14-16. Thus, AAG Kinard said that the state was willing to consent to the belated appeal. App. 519, l. 12 – 520, l. 2. She thus prepared an order for the PCR court, which indicated that the

parties agreed that Backer did not voluntarily waive his right to appeal the PCR court's denial and dismissal of his PCR application. Thus, the second PCR court properly found that Baker was entitled to file a belated Notice of Appeal from the Order of Dismissal in the first PCR action. App. 523 – 525.

Under these circumstances, the second PCR court's decision granting Baker belated appellate review of his first PCR application should be upheld. See Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (“The appropriate scope of review of this Court is that ‘any evidence’ of probative value is sufficient to uphold the PCR judge’s findings.”). Simply stated, Baker is entitled to his one fair bite at the apple. See Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002).

**CONCLUSION**

Based on the foregoing, Petitioner Roshod M. Baker respectfully requests this Court grant his petition for certiorari and affirm the PCR court's grant of belated review of Petitioner's original PCR application.

  
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Laura R. Baer  
Appellate Defender

ATTORNEY FOR PETITIONER

This 23<sup>rd</sup> day of November, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable D. Craig Brown, Circuit Court Judge  
Honorable Kristi L. Harrington, Circuit Court Judge

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ROSHOD M. BAKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT


APPELLATE CASE NO 2016-000657

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CERTIFICATE OF SERVICE

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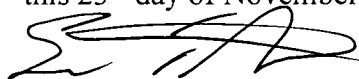
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari Pursuant to Austin v. State in the above referenced case has been served upon Caitlin Hastings, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and upon Roshod Montrell Baker, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 23<sup>rd</sup> day of November, 2016.



Laura R. Baer  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 23<sup>rd</sup> day of November, 2016.



(L.S)

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