

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Sumter County

Brooks P. Goldsmith, Circuit Court Judge  
—————

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S.C. SUPREME COURT

WILLIAM GREGG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000892  
—————

PETITION FOR WRIT OF CERTIORARI  
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LARA M. CAUDY  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR court properly grant Petitioner a belated appeal from the denial of his first application for post-conviction relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

## STATEMENT OF THE CASE

A Sumter County Grand Jury indicted Petitioner on October 25, 2007 for murder, possession of a firearm during a crime of violence, and possession with intent to distribute heroin. App. 614-615. His case was called to trial on July 28, 2008 before the Honorable R. Ferrell Cothran, Jr., and a jury.<sup>1</sup> App. 1. Assistant Solicitor Harry Conner represented the state, and Christopher Hart represented Petitioner. App. 1. Judge Cothran granted Petitioner's motion to sever the charge of possession with intent to distribute heroin after finding the offense was not sufficiently connected or closely related in kind, place, and character to the murder and weapons offense. App. 51, ll. 4-18.

On July 30, 2008, the jury found Petitioner guilty. App. 383, l. 15 – 384, l. 6. Judge Cothran sentenced him to thirty five years' imprisonment for murder and five years concurrent for the weapons offense. App. 390, l. 20 – 391, l. 3. Petitioner did not appeal his conviction or sentence.

On October 27, 2008, Petitioner filed an application for post-conviction relief (PCR). App. 492-497. The state filed a return to this application dated May 7, 2009. App. 498-502. Petitioner filed a *pro se* amended application on March 22, 2013. App. 503-507. The matter proceeded to an evidentiary hearing on December 14, 2014 before the Honorable J. Cordell Maddox, Jr. App. 508. Assistant Attorney General Daniel Gourley represented the state, and John S. Keffer represented

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<sup>1</sup> For whatever reason, the transcript of Petitioner's trial does not include the voir dire or jury selection proceedings. Court Administration informed undersigned counsel that the tapes containing these proceedings no longer exist since more than five years have passed since Petitioner's trial. Consequently, these proceedings cannot be transcribed.

Petitioner. App. 508. By order filed May 18, 2015, Judge Maddox denied Petitioner relief. App. 568-575.

For whatever reason, Petitioner's attorney failed to file a notice of appeal from the order of dismissal. However, Petitioner filed a *pro se* notice of appeal. In order to determine the timeliness of the service of Petitioner's *pro se* notice of appeal, this Court requested Counsel Keffer provide the date on which he received written notice of entry of the order of dismissal. App. 576. This Court ultimately dismissed Petitioner's appeal after Counsel Keffer failed to provide this information to the Court. App. 576.

On November 2, 2015, Petitioner filed a second application for post-conviction relief seeking the right to a belated appeal of the denial of his original application, among other relief. App. 577-586. The state filed a return to this application and motion to dismiss dated December 30, 2015. App. 587-590. The matter proceeded to an evidentiary hearing on March 18, 2016 before the Honorable Brooks P. Goldsmith. App. 591. Assistant Attorney General Daniel Gourley represented the state, and Timothy L. Griffith represented Petitioner. App. 591. By order filed April 7, 2016, Judge Goldsmith granted Petitioner a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 610-613.

Significantly, Petitioner has never had a direct appeal from his murder conviction or his thirty-five year sentence. In his first application for post-conviction relief, Petitioner stated, "My notice of appeal was inadvertently filed past 10 days." App. 493. In his second application, Petitioner stated, "Trial counsel failed to file a direct appeal as requested. Christopher Hart [trial counsel] [gave] a written statement showing that the direct appeal was filed out of time." App. 578. Petitioner also specifically alleged that trial counsel was ineffective for failing to timely file a notice of appeal as requested. App. 584. For whatever reason, both of Petitioner's PCR

attorneys inexplicably failed to request a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), and the PCR court has never ruled on whether Petitioner is entitled to a belated direct appeal. Consequently, Petitioner has never had a direct appeal from his conviction or sentence. Petitioner respectfully requests this Court remand his case to the PCR court to determine whether he is entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

This petition for writ of certiorari follows.

## ARGUMENT

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

The PCR court properly granted Petitioner a belated appeal from the denial of his first application for post-conviction relief pursuant to *Austin v. State*. The court found Petitioner did not voluntarily waive his right to appeal. App. 612. Moreover, the state consented to the belated appeal after reviewing the “various documents” filed by Petitioner and speaking with Petitioner’s first PCR attorney. App. 612.

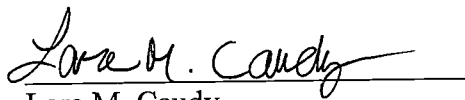
“An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal.” *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In *Austin*, this Court framed the question as whether the PCR applicant “requested and was denied an opportunity to seek appellate review.” *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. The proper scope of review of the PCR court’s ruling 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).

Here, there is ample evidence to support the PCR court’s finding that Petitioner did not voluntarily waive his right to appeal. Respectfully, under the “any evidence” standard of review, this Court should hold the PCR court’s ruling was correct, grant certiorari, and grant Petitioner a belated appeal from the denial of his original application for post-conviction relief.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and hold Petitioner is entitled to a belated appeal from the denial of his original application for post-conviction relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Moreover, Petitioner respectfully requests this Court remand his case to the circuit court to determine whether he is entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Respectfully submitted,



Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of February, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Sumter County

Brooks P. Goldsmith, Circuit Court Judge  
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WILLIAM GREGG,

PETITIONER

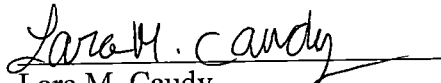
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

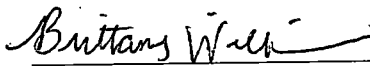
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CERTIFICATE OF SERVICE  
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The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Julie Coleman, 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 upon William Gregg, #274507, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 8th day of February, 2017.

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 8th day of February, 2017.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: November 3, 2026.