

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

WAYNE WELLS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000887

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Did the PCR judge correctly grant a belated appeal pursuant to Austin v. State, 305 S.C. 45, 409 S.E.2d 395 (1991)?

STATEMENT

In October of 2010, the Sumter County Grand Jury indicted Petitioner Wells for criminal sexual conduct with a minor second degree, indictment #2010-GS-43-0337. On November 8, 2010, Petitioner proceeded to jury trial before the Honorable William J. Young. Calvin Hastie represented Petitioner at trial. Marvin Spratlin prosecuted the case. The jury returned a verdict of guilty and Judge Young sentenced petitioner to twenty (20) years in prison. A timely notice of intent to appeal was filed and the direct appeal perfected. The South Carolina Court of Appeals dismissed the direct appeal after review pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). State v. Wells, Op. No. 2012-UP-621 (Ct. App. filed November 21, 2012).

On April 18, 2013, petitioner filed an application for post-conviction relief [PCR]. 2013-CP-43-675. The State filed a return on June 13, 2013. On May 29, 2014, an evidentiary hearing was held before the Honorable R. Ferrell Cothran, Jr. Casey Cornwell represented Petitioner at the hearing. Daniel F. Gourley represented the State. In a written order signed July 7, 2014, Judge Cothran denied relief and dismissed the application. Petitioner filed a timely *pro se* notice of intent to appeal. This Court dismissed the appeal on October 29, 2014, for failure to order the transcript of the evidentiary hearing.

On April 21, 2015, Petitioner filed a second application for post-conviction relief. 2015-CP-43-1008. The State filed a return and motion to dismiss on February 2, 2016. On March 18, 2016, an evidentiary hearing was held before the Honorable Brooks P. Goldsmith. Timothy L. Griffith represented Petitioner at the hearing. Daniel F. Gourley represented the State. In an order signed March 30, 2016, Judge Goldsmith granted a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 91991). On April 26, 2016, petitioner served a timely notice

of intent to appeal. This petition for writ of certiorari and a separately filed petition for writ of certiorari pursuant to Austin follow.

ARGUMENT

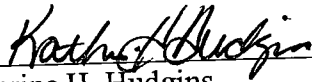
The PCR judge correctly granted a belated appeal pursuant to Austin v. State, 305 S.C. 45, 409 S.E.2d 395 (1991).

After Judge Cothran denied Petitioner's first application for post-conviction relief on July 7, 2014, Petitioner filed a *pro se* notice of intent to appeal. (App. p. 286). On October 29, 2014, the Court dismissed the appeal for failure to timely order the transcript. (App. p. 290). During the second evidentiary hearing the State consented to a belated appeal pursuant to Austin. (App. p. 331, lines 22-24). The State told the judge, "And, Your Honor, just for the record, I have been in discussion with Mr. Cornwell [first PCR counsel] about this situation. And he – he is in agreement that he did not timely order the transcript to perfect Mr. Wells's [sic] appeal." (App. p. 331, lines 19-22).

In the order granting the belated appeal the second PCR judge wrote, "This Court finds that applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action." (App. p. 336). The PCR judge correctly granted a belated appeal pursuant to Austin v. State, 305 S.C. 45, 409 S.E.2d 395 (1991).

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari and allow the belated appeal.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of February, 2017.

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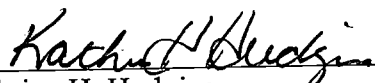
V.

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 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 on Wayne Wells, Jr., #314139, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 13th day of February, 2017.


Kathrine H. Hudgins
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 13th day of February, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: March 1, 2026