

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

Honorable Tanya A. Gee, Circuit Court Judge

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S.C. SUPREME COURT

ERIC Q. TINDAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001692

PETITION FOR WRIT OF CERTIORARI

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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 Clarendon County Grand Jury indicted Petitioner on January 26, 2011 for first degree burglary and attempted murder. App. 155-156. Petitioner pled guilty on July 12, 2011 before the Honorable Howard P. King. App. 1. Assistant Solicitor Amy Land represented the state, and Scott L. Robinson represented Petitioner. App. 1. Judge King sentenced Petitioner to twenty-two years' imprisonment. App. 28, l. 17 – 29, l. 7.

On November 23, 2011, Petitioner filed an application for post-conviction relief (PCR). App. 41-62. The state filed a return to this application dated February 14, 2012. App. 63-68. The matter proceeded to an evidentiary hearing on December 14, 2012 before the Honorable R. Ferrell Cothran. App. 69. Assistant Attorney General Walt Whitmire represented the state, and James Brian O'Connor represented Petitioner. App. 69. By order dated January 23, 2013, Judge Cothran denied Petitioner relief. App. 94-100. PCR Counsel O'Connor did not file a Notice of Appeal.

On October 14, 2015, Petitioner filed a second application for post-conviction relief seeking the right to a belated appeal of the denial of his original application. App. 122-127. The state filed a return to this application and motion to dismiss dated September 23, 2015. App. 128-132. The matter proceeded to an evidentiary hearing on November 18, 2015 before the Honorable Tanya A. Gee. App. 133. Assistant Attorney General Daniel Gourley represented the state, and Lance S. Boozer represented Petitioner. App. 133. By order dated December 29, 2015, Judge Gee granted Petitioner a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 151-154.

This petition for writ of certiorari asking the Court to grant a belated appeal 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*, 305 S.C. 453, 409 S.E.2d 395 (1991). Based on testimony from Petitioner and prior PCR counsel that Petitioner requested an appeal, but a notice of appeal was never filed, the court found Petitioner did not voluntarily waive his right to appeal. App. 153.

“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. Petitioner testified that after he received the order of dismissal he wrote to counsel and requested counsel file a Rule 59(e) motion to alter or amend the judgment and a notice of appeal, but that he never heard back from counsel. App. 140, ll. 2-17; *See* App. 104. Counsel acknowledged that he received Petitioner’s letter, but never filed a notice of appeal. App. 144, l. 20 – 147, l. 6. 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).

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of March, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

Honorable Tanya A. Gee, Circuit Court Judge

ERIC Q. TINDAL,

PETITIONER

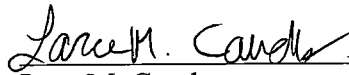
V.

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 have 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 Eric Q. Tindal, #243834, at Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472, this 10th day of March, 2017..



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 10th day of March, 2017.

 (L.S)

Notary Public for South Carolina
My Commission Expires: November 3, 2026.