

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Sumter County

Honorable George C. James, Jr., Circuit Court Judge
Honorable Jocelyn Newman, Circuit Court Judge

THOMAS LEE GEDDIE,

PETITIONER

RECEIVED

JUN 08 2017

S.C. SUPREME COURT

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002155

PETITION FOR WRIT OF CERTIORARI

LAURA R. BAER
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 OF THE CASE 2

ARGUMENT 4

CONCLUSION 6

ISSUE PRESENTED

Did the PCR court properly grant 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 the 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 July 21, 2011, the Sumter County Grand Jury indicted Petitioner Thomas Geddie and co-defendant Kelvin Charles Green for murder. App. 438.

On June 4-7, 2012, Geddie appeared for trial before the Honorable W. Jeffrey Young and a jury. App. 1. Geddie was represented by Timothy Murphy, and the state was represented by assistant solicitor John Meadors. App. 1. Following two hours of deliberation, the jury sent a note saying that it was unable to agree upon a verdict. App. 288, l. 11 – 291, l. 1. Less than twenty minutes after the Allen¹ charge, the jury returned a verdict of guilty. App. 291, l. 1 – 297. Judge Young imposed a life sentence. App. 304.

Geddie was represented on direct appeal by chief appellate defender Robert M. Dudek, who perfected Geddie's appeal with the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), on October 25, 2013. App. 306. On June 11, 2014, the Court of Appeals dismissed Geddie's appeal following its Anders review. App. 321. The remittitur was sent on June 27, 2014. App. 323.

On October 6, 2014, Geddie filed his first application for post-conviction relief ("PCR"). App. 324. The state filed its return on January 7, 2015, and an amended return on February 23, 2015, correcting the omission of the direct appeal history in the original return. App. 340. On April 14, 2015, Geddie appeared before the Honorable George C. James, Jr. for an evidentiary hearing. App. 355. Geddie was represented by Fulton Casey Dale Cornwell,² and the state was represented by assistant attorney general Daniel Gourley. App. 355. On July 24, 2015, Judge James filed an Order of Dismissal denying Geddie post-conviction relief. App. 390.

¹ Allen v. United States, 164 U.S. 492, 17 S.Ct. 154 (1896).

² PCR counsel Cornwell's license to practice law was suspended by this Court on February 17, 2017. Matter of Cornwell, 419 S.C. 238, 797 S.E.2d 395 (2017).

On August 7, 2015, Geddie filed a *pro se* notice of appeal with this Court. App. 400. On August 13, 2015, the Clerk of Court sent a letter to PCR counsel advising him that he remained counsel of record unless relieved. App. 406. On September 21, 2015, Geddie wrote to the Clerk inquiring regarding the status of his appeal. App. 408. On October 1, 2015, this Court dismissed the notice of appeal for failure to order the transcript. App. 410. The remittitur was sent on October 19, 2015. App. 411.

On January 11, 2016, Geddie filed his second PCR application, alleging ineffective assistance of PCR counsel for failing to file a notice of appeal. App. 412. On April 13, 2016, the state filed its return and motion to dismiss all claims beyond Austin³ review. App. 422. On July 25, 2016, a hearing was held before the Honorable Jocelyn Newman. Geddie was represented by Timothy L. Griffith, and the state was represented by assistant attorney general Julie Coleman. App. 428. On October 11, 2016, Judge Newman filed a Consent Order Granting an Appeal pursuant to Austin. App. 434.

This petition follows pursuant to King v. State, 308 S.C. 348, 349, 417 S.E.2d 868, 868 (1992) (“When the post-conviction relief judge has affirmatively found that the right to appellate review of a previous post-conviction relief order was not knowingly and intelligently waived, the petition shall raise this question along with all other questions petitioner seeks to have reviewed from that order.”). Geddie is simultaneously filing his Johnson petition for writ of certiorari pursuant to Austin. King, 308 S.C. at 349, 417 S.E.2d at 868 (1992) (“At the same time this petition is served, petitioner shall serve and file an Austin petition addressing the questions from the previous post-conviction relief order.”).

³ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

ARGUMENT

The PCR court properly grant 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 the 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.

The PCR court properly granted Geddie belated appellate review of his initial PCR application because Geddie was denied his right to appeal the dismissal of his first PCR application. App. 430 – 432; see Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The State consented to Geddie's request for a belated appeal from the first PCR court's Order of Dismissal. App. 431, ll. 15-21.

This 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, Geddie's desire to appeal was evidenced by the pro se notice of appeal that he filed from the first PCR court's Order of Dismissal. App. 400 – 405. The appeal was dismissed because first PCR counsel failed to order the transcript or assist Geddie in obtaining representation

from the Division of Appellate Defense, despite having been advised to do so by this Court. App. 406 – 407; App. 410 – 411. AAG Coleman acknowledged those facts in her recitation of the procedural history of the case at the second PCR hearing. App. 431, ll. 6-9. It was on that basis that the State consented to Austin review. App. 431, ll. 19-21. The State further prepared a Consent Order granting an appeal pursuant to Austin. App. 434. Judge Newman found 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. 436. Thus, she properly found that Geddie was entitled to file a belated Notice of Appeal from the Order of Dismissal in the first PCR action. App. 436.

Under these circumstances, the second PCR court’s decision granting Geddie 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, Geddie 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

For the reasons set forth herein, Petitioner Thomas Lee Geddie respectfully requests this Court grant certiorari, affirm Judge Newman's determination that petitioner is entitled to belated review of Judge James' order, and review the Johnson petition for writ of certiorari filed pursuant to Austin.



Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of June, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable George C. James, Jr., Circuit Court Judge
Honorable Jocelyn Newman, Circuit Court Judge

THOMAS LEE GEDDIE,

PETITIONER


V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

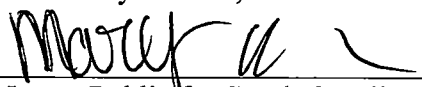
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Julie Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Thomas Lee Geddie, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 8th day of June, 2017.



Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

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

 (L.S)
Notary Public for South Carolina

My Commission Expires: May 12, 2027.