

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County
Honorable D. Craig Brown, Circuit Court Judge

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S.C. SUPREME COURT

DENNIS WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001243

PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
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ISSUE PRESENTED

Whether the PCR court was correct in ruling that Petitioner was entitled to a belated appeal from the denial of his first PCR as his first PCR attorney failed to file an appeal and the motion for reconsideration after Petitioner requested one?

STATEMENT

In July 2009, the Williamsburg County Grand Jury indicted Dennis Wright for criminal sexual conduct (CSC) first degree, and abuse of a vulnerable adult. App. 561 – App. 566. Wright was living with an elderly woman for whom he was serving as her caretaker. He allegedly sexually assaulted her one night when they were alone. He was also charged with abuse of a vulnerable adult from this same incident. App. 34, ll. 12 – App. 35, ll. 6.

On October 14, 2010, Petitioner Wright proceeded to trial before the Honorable Clifton Newman and a jury. Wright was represented by Charles David Barr, and the state was represented by Kimberly Barr. App. 1. The jury returned verdicts of guilty as indicted on both charges. Judge Newman sentenced Petitioner Wright to twenty years for the CSC charge and five years for the abuse of a vulnerable adult with both to run concurrent. App. 387, ll. 2-14.

Petitioner Wright filed a notice of appeal. The South Carolina Court of Appeals affirmed Wright's convictions and sentences on July 11, 2010. State v. Wright, Op. No. 2012-UP-408 (Ct. App. filed July 11, 2012). App. 477.

On July 27, 2012, Petitioner Wright filed a post-conviction relief (PCR) application. App. 389 – App. 394. The state filed a return on January 15, 2013. App. 401. An evidentiary hearing was held April 13, 2015 before the Honorable George C. James, Jr. Wright was represented by Fulton Casey Dale Cornwell, and the state was represented by Daniel F. Gourley. App. 404.

At this first PCR hearing, Petitioner Wright testified that his trial counsel was ineffective for failing to investigate his case. Wright stated that counsel did not interview several witnesses that Wright provided to him. App.430, ll. 1 – App. 431, ll. 25. Trial counsel did not investigate

the possible DNA issue, and did not investigate the victim's mental health history of possible dementia. App. 412, ll. 1 – App. 414, ll. 19; App. 415, ll. 10 – App. 416, ll. 25; App. 478.

Petitioner also claimed that trial counsel did not cross examine the victim during the trial, and did not object to the state's closing argument when the solicitor argued religious comments. App. 427, ll. 2 – App. 428, ll. 3; App. 478.

Trial counsel testified at the PCR hearing that Petitioner Wright gave a statement to police where Petitioner said that he “may have penetrated the victim.” Trial counsel admitted that Wright had given him the names of several witnesses but none of them would have been helpful at trial. Trial counsel then explained that DNA was critical because there was no DNA evidence found in the case. The doctor who saw the victim said no rape kit was conducted because there was a time lapse between the incident and the report. Trial counsel felt that the absence of DNA was helpful to Petitioner Wright. App. 439, l. 11-25; App. 441, ll. 1-25.

Trial counsel admitted that he did not cross examine the victim because he believed that her direct testimony was very powerful and persuasive with no inconsistencies with her written statement. App. 480; App. 440, ll. 1-25.

On June 26, 2015, Judge James, the PCR judge filed an order denying Petitioner Wright's PCR application and dismissing it with prejudice. App. 476 – App. 488. The PCR judge found trial counsel's testimony credible and Petitioner Wright's testimony not credible. App. 480. The judge also found Petitioner's claim that trial counsel was ineffective for not calling the witnesses that Petitioner provided meritless as none of the witnesses were called to testify at the PCR hearing. Therefore it was “mere speculation” as to what the witnesses would have said. The judge ruled that Petitioner failed to show any prejudice from trial counsel's performance. App. 483.

The judge wrote that Petitioner did not prove that trial counsel was ineffective for not investigating the DNA issue since no DNA was recovered from the incident. The judge found trial counsel's reason, that he did not want to find any DNA since Petitioner said he might have penetrated the victim, to be valid. App. 485. The judge also found that Petitioner did not prove that trial counsel was ineffective for not investigating the possibility that the victim might have been suffering from dementia. The judge wrote that trial counsel called a witness, Gloria Hannah who knew the victim well, to testify about the victim's mental health. App. 487.

The PCR judge found Petitioner Wright's claim that trial counsel was ineffective for not cross examining the victim, as meritless because this was trial strategy on the part of trial counsel. The judge found trial counsel's reasons for not cross examining the victim as valid since trial counsel found her testimony to be very powerful. App. 483 – App. 484.

The judge also held that Petitioner did not prove that trial counsel was ineffective for failing to object to the solicitor's closing argument regarding comments concerning religion. The PCR judge found the solicitor's comments to not be objectionable as it was a valid argument regarding the credibility of the victim. App. 486.

The judge denied Petitioner Wright's PCR application and dismissed it with prejudice. App. 488.

On November 23, 2015, Petitioner Wright filed a *pro se* notice of appeal of the PCR judge, Judge James, order of dismissal. Because PCR counsel failed to prove that the notice of appeal was timely served, the Supreme Court dismissed the appeal on March 1, 2016. App. 489 – App. 490.

On July 1, 2016, Petitioner Wright filed a second PCR application. App. 491 – App. 540. The state filed a return and partial motion to dismiss on March 3, 2017. App. 542 – App. 547.

An evidentiary hearing was held on March 27, 2017, before the Honorable D. Craig Brown, for the sole issue of whether Petitioner Wright was entitled to an appellate review of his first PCR action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Petitioner Wright was represented by Lance S. Boozer, and the state was represented by Julie A. Coleman. App. 549.

At the PCR hearing, the state explained that Petitioner Wright tried to appeal the denial of his first PCR but it was filed *pro se*, and the Supreme Court dismissed it. In his second PCR application, Wright was asking for a belated appeal pursuant to Austin v. State. Then the state moved to dismiss all allegations “beyond the scope of an Austin Review.” App. 551, ll. 1 – App. 552, ll. 4. The state was willing to consent to the belated review of his first PCR. App. 552.

The PCR judge issued an order on April 7, 2017 granting Petitioner Wright an appeal of his first PCR pursuant to Austin. The judge denied the second PCR and dismissed it with prejudice. App. 555 – App. 558.

This petition follows accompanied by a petition for a writ of certiorari pursuant to Austin v. State.

ARGUMENT

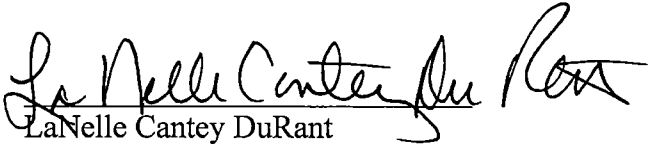
The PCR court was correct in ruling that Petitioner was entitled to a belated appeal from the denial of his first PCR as his first PCR attorney failed to file an appeal and a motion to reconsider after Petitioner requested one.

A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. If the PCR court finds an applicant was denied his right to appeal, the applicant can petition for certiorari and the appellate court will review whether the petitioner was prejudiced by the failure to obtain appellate review. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999); Wicker v. State, 310 S.C. 8, 425 S.E.2d 25 (1992). An applicant has a right to counsel's assistance in seeking review of the denial of PCR. Austin, 305 S.C. at 454, 409 S.E.2d at 396; Rule 71.1(g), SCRPC.

Petitioner Wright was entitled to an appeal from his first PCR, and the state consented.

CONCLUSION

For the above reasons, the order of the PCR court granting a belated appeal from the denial of the first PCR should be affirmed.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of October, 2017.

STATE OF SOUTH CAROLINA
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Certiorari to Williamsburg County

Honorable D. Craig Brown, Circuit Court Judge

DENNIS WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

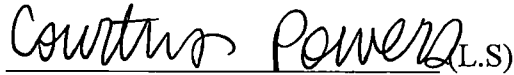
CERTIFICATE OF SERVICE

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 Dennis Wright, #343201, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 24th day of October, 2017.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 24th day of October, 2017.


Courtney Powers (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.