

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Perry H. Gravely, Circuit Court Judge

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JUL 03 2018

S.C. SUPREME COURT

RANDALL EARL SIGHTLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002415

PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

DAVID ALEXANDER
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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court correctly granted petitioner a belated appeal of the denial of his first PCR application?

STATEMENT

On June 7, 2001, petitioner pled guilty to two counts of trafficking in methamphetamine, second offense, before the Honorable Edward B. Cottingham. App. 1 -3, l. 9. Jonathan D. Waller of the Attorney General's Office represented the State. App. 1. Sarah A. Hahn represented petitioner. App. 1. Judge Cottingham sentenced petitioner to concurrent fifteen-year terms of imprisonment. App. 19, ll. 12 – 19.

On September 23, 2011, petitioner filed a PCR application. App. 21. The transcript of the original PCR hearing was lost; therefore, on September 8, 2017, a reconstruction hearing was held before the Honorable R. Lawton McIntosh. App. 34. John Harrison Strom represented petitioner at the hearing. App. 34. William Joseph Maye represented the State. App. 34. At the end of the hearing, the parties and Judge McIntosh agreed the record of the original PCR hearing had been adequately reconstructed. App. 106, ll. 19 – 23. Andrew Farley represented petitioner at the original hearing and Walt Whitmire represented the State. App. 117. Judge McIntosh's original denial of petitioner's application was dated October 6, 2014. App. 117. Petitioner did not appeal.

On October 15, 2014, petitioner filed another PCR application seeking a belated appeal of his first PCR. App. 129-31. On April 16, 2016, a hearing was held before the Honorable Perry H. Gravely. App. 141. Aimee Zmroczek represented petitioner and Johnny James and Johanna C. Valenzuela represented the State. App. 141. App. 145, ll. 9 – 23. On August 2, 2016, Judge Gravely issued an order granting petitioner a belated appeal of his first PCR and this order was amended to correct a citation on October 18, 2016. App. 165. App. 174. This petition follows.

ARGUMENT

The PCR court correctly granted petitioner a belated appeal of the denial of his first PCR application.

Ample evidence supports the PCR court's conclusion that petitioner desired an appeal, told his attorney he wanted an appeal, and no appeal was filed. "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); Austin v. State, 305 S.C. 453, 409 S.E.2d 395, 396 (1991). In Austin, this Court framed the question as whether the PCR applicant "requested and was denied an opportunity to seek appellate review." Austin at 454, 409 S.E.2d at 396. The appropriate scope of review of the PCR court's holding 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).


Petitioner asked his PCR lawyer to file an appeal. App. 148, l. 20 – 149, l. 25. PCR counsel told petitioner's mother he would file an appeal. App. 148, l. 20 – 149, l. 25. Petitioner asked PCR counsel to appeal on the day of the hearing. App. 151, ll. 3 – 6. Plea counsel testified, "And just to be honest, I don't really recall if Mr. Sightler said he wanted an appeal or not. I don't recall." App. 156, ll. 23 – 25.

Under Austin, the PCR court correctly ruled that petitioner's desire for an appeal was communicated to PCR counsel and no appeal was filed. Under the "any evidence" standard of review of Webb, this Court should conclude that the PCR court's ruling was correct because it was based on the above-stated testimony. The PCR court found that PCR counsel could not recall why he did not file an appeal and that petitioner asked for an appeal at the PCR hearing. App. 175-76. Furthermore, petitioner did not sleep on his rights and filed his PCR application seeking a belated

appeal shortly after the denial of the 2011 PCR in October 2014. App. 128-29. Therefore, this Court should grant certiorari and grant petitioner a belated appeal from the 2011 PCR.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and grant petitioner a belated appeal pursuant to Austin v. State.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of July, 2018.

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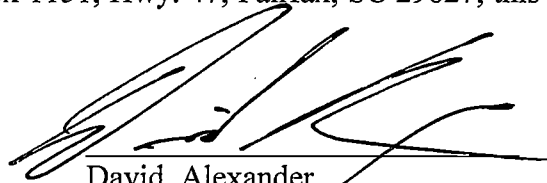
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari Pursuant to Austin v. State and a copy of the Appendix in the above referenced case has been served upon W. Joseph Maye, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari Pursuant to Austin v. State and a copy of the Appendix have been served on Randall Earl Sightler, #311918, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 3rd day of July, 2018.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of July, 2018.

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