

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Post Conviction Relief

John C. Hayes, Circuit Court Judge

Appellate Case No.: 2017-00828

John Jabbar Greene #219696,..... Petitioner,

vs.

State of South Carolina,Respondent.

PETITION FOR WRIT OF CERTIORARI

Tommy A. Thomas, Esq.
SC Bar No.: 5536
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Johnny James, Jr., Esq.
Attorney for Respondent
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549

RECEIVED
JUL 06 2018
S.C. SUPREME COURT

INDEX

TABLE OF CASES1

QUESTION PRESENTED2

STATEMENT OF THE CASE2

STATEMENT OF FACTS4

ARGUMENT4

CONCLUSION5

TABLE OF CASES

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

State v. John Jabbar Greene, Unpublished Opinion No. 2011-UP-507 (S.C. Ct. App., filed November 15, 2011)

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).

Rule 71.1 (g), SCRCP.

QUESTION PRESENTED

Did the Court properly find in the Petitioner's previous Post-Conviction Relief action that he did knowingly and intelligently waive his right to appeal the Court's decision denying relief?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to Orders of Commitment of the Georgetown County Clerk of Court's. The Georgetown County Grand Jury indicted Petitioner at the May 2008 term for two counts of kidnapping (2008-GS-22-0456; -0457), two counts of armed robbery (2008-GS-22-0458; - 0459) and second-degree burglary (2008-GS-22-0460). Petitioner was represented by J. Eric Fox.

Petitioner proceeded to a jury trial and was convicted as indicted. On May 1, 2009, the Honorable W. Jeffery Young sentence Applicant to thirty (30) years' imprisonment for kidnapping, thirty (30) years' imprisonment for armed robbery, and fifteen (15) years' imprisonment for second-degree burglary, to be served concurrently.

A notice of appeal was filed with the South Carolina Court of Appeals. Kathryn Hudgins, Esq., with the Office of Appellate Defense perfected the Appeal. The Court of Appeals affirmed the Petitioner's conviction and sentence by Order dated November 15, 2011. State v. John Jabbar Greene, Unpublished Opinion No. 2011-UP-507 (S.C. Ct. App., filed November 15, 2011).

2012-CP-22-0164

Petitioner filed his first application for PCR on February 21, 2012. He alleged the following grounds for relief:

1. Ineffective assistance of trial counsel.
 - a. Trial counsel failed to file an appeal.
2. Ineffective assistance of Appellate Counsel.
 - a. Appellate counsel never tried to appeal the trial courts denial of directed verdict.
3. Conflict of Interest/Judicial Bias
 - a. Trial counsel refused to recuse trial judge because trial Judge stated that he knew one of the victims for years.
4. Defective Chain of Custody.
 - a. The gun never made it to SLED as the source of the samples.
5. Fourth and fifth Amendment Violation
 - a. The intrusions into my body without probable cause; Miranda violation, officer testified that he continued to question me when I invoked Fifth Amendment right to remain quiet.

An evidentiary hearing was convened on October 27, 2014 before the Honorable John C. Hayes. Applicant was represented by Robert Mason, Esq. Relief was denied and the matter was dismissed by an order dated November 16, 2014 and filed December 5, 2014. An Appeal was not filed.

2015-CP-22-0949

Applicant filed a second Post Conviction Relief Application alleging that he was being held in custody unlawfully for the following reason:

1. Ineffective assistance of PCR Counsel.
 - a. Prior post-conviction relief counsel failed to file an Appeal from Judge Hayes Order.

On March 24, 2017, the Honorable Benjamin H. Culbertson signed a Consent Order Granting an Appeal Pursuant to Austin v. State. A timely Notice of Appeal was filed.

STATEMENT OF FACTS

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his Post-Conviction Relief Application, the Court found that Applicant did not knowingly and voluntarily waive his right to appeal his first PCR application. The Respondent consented to allow Applicant a belated review of the denial of his PCR application (2012-CP-22-0164). Accordingly, the Lower Court granted Applicant a belated review of the denial of Post-Conviction Relief pursuant to Austin v. State.

ARGUMENT

Did the Post-Conviction Relief Judge properly find that the Petitioner did not knowingly and intelligently waive his right to Appellate review of the denial of his first Application for Post-Conviction Relief?

Applicant alleged that he was denied the right to appeal the dismissal of his previous post-conviction relief application because his prior PCR counsel, Robert C. Mason, Esquire, passed away shortly after the service of the order of dismissal in Applicant's prior PCR action. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

In this case the Petitioner did not knowingly or intelligently waive his right to Appellate review. In fact, he asserted his desire to seek an appeal.

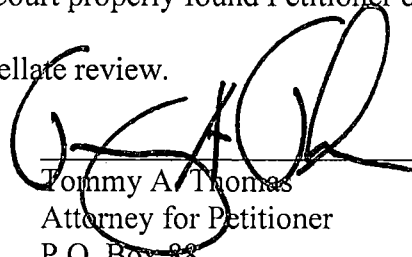
A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2)

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; Rule 71.1 (g), SCRPC.

Greene is entitled to an appeal from his first PCR.

CONCLUSION

Therefore, based upon the foregoing the Court properly found Petitioner did not knowingly or intelligently waive his right to Appellate review.



Tommy A. Thomas
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

July 3, 2018

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

FACSIMILE:
(803) 781-4226

INMATE LINE
(803) 732-6542

June 28, 2018

RECEIVED
JUL 06 2018
S.C. SUPREME COURT

The South Carolina Supreme Court
Clerk, Daniel Shearouse
P.O. Box 11330
Columbia, SC 29211

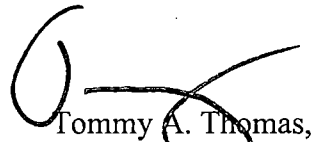
RE: John Jabbar Greene #219696 v. State of South Carolina
Appellate Case No.: 2017-000828

Dear Sir or Madam:

Enclosed please find for filing an original and six copies of a Petition for Writ of Certiorari, as well as a Certificate of Service in the above referenced matter.

Kindly return the clocked copies to me in the enclosed envelope. Please feel free to contact me should you have any questions.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem

cc: Johnny James, Jr., Esq.
John Jabbar Greene #219696

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Post Conviction Relief

JUL 06 2018

S.C. SUPREME COURT

John C. Hayes, Circuit Court Judge

Appellate Case No.: 2017-00828

John Jabbar Greene #219696,..... Appellant,

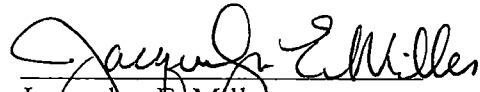
vs.

State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant hereby certify that I placed in the United States Mail, a copy of a Petition for Writ of Certiorari, with postage prepaid and the return address clearly shown on said envelope to Johnny James, Jr., Esq. of the Attorney General's Office, at:

Johnny James, Jr., Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

July 3, 2018