

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Eugene C. Griffith, Circuit Court Judge S.C. SUPREME COURT

JONTA GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000004

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
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

ORIGINAL
RECEIVED

JUL 10 2018

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT 4

CONCLUSION 5

ISSUE PRESENTED

Did the PCR judge correctly find that Petitioner did not knowingly and voluntarily waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

STATEMENT

In January of 2009, the Charleston County Grand jury indicted Petitioner, Jonta Green with murder and possession of a weapon during the commission of a violent crime, indictments #2009-GS-10-113, 116. On April 19, 2010, Petitioner proceeded to jury trial before the Honorable Deadra L. Jefferson. Demal Mattson represented Petitioner at trial. Rutledge Durant and Peter McCoy prosecuted the case. The jury found Petitioner guilty of the lesser included offense of voluntary manslaughter and the weapon charge. Judge Jefferson initially sentenced Petitioner to twenty-three (23) years for the voluntary manslaughter charge but that sentence was later amended to twenty (20) years. (App. p. 920). Judge Jefferson sentenced Petitioner to five years concurrent for the weapon charge. A timely notice of intent to appeal was filed and the direct appeal perfected. On January 30, 2013, the South Carolina Court of Appeals dismissed the appeal. State v. Green, Op. No. 2013-UP-46 (S.C. Ct.App. filed January 30, 2013).

On October 28, 2013, Petitioner filed an application for post-conviction relief [PCR], 2013-CP-10-6337. The State filed a return on December 22, 2014. On February 18, 2015, an evidentiary hearing was held before the Honorable Eugene Griffith. James K. Falk represented Petitioner at the PCR hearing. Ashleigh R. Wilson represented the State. In a written order signed July 1, 2015, Judge Griffith denied relief and dismissed the application. On July 23, 2015, Petitioner filed a timely motion to reconsider pursuant to Rule 59(e), SCRPC. On July 29, 2015, Judge Griffith denied the motion. A notice of intent to appeal was not filed.

On December 9, 2015, Petitioner filed a second PCR application, 2015-CP-10-6633. The State filed a return on August 11, 2016. On December 4, 2017, the parties entered into a consent agreement to seek a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). (App. pp. 1015-1019). Christopher L. Murphy represented Petitioner. Megan Harrigan

Jameson represented the State. The Honorable Deadra L. Jefferson signed the order. A timely notice of intent to appeal was served on December 19, 2017. This petition for writ of certiorari and the accompanying separately filed Austin petition follow.

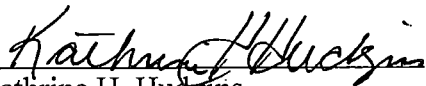
ARGUMENT

The PCR judge correctly found that Petitioner did not knowingly and voluntarily waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

In support of the grant of a belated appeal pursuant to Austin, Petitioner presented an affidavit from the first PCR attorney admitting to failing to file the notice of intent to appeal after Judge Griffith denied the Rule 59(e) motion. (App. p. 1019). The second PCR judge correctly found that Petitioner did not knowingly and intelligently waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari and allow the belated appeal.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of July, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Charleston County

Honorable Eugene C. Griffith, Circuit Court Judge

—————
JONTA GREEN,

PETITIONER

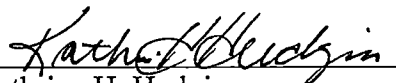
V.

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 Megan Harrigan Jameson, 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 Jonta Green, #340485, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 10th day of July, 2018.


Kathrine H. Hudgins
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 10th day of July, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027.