

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable J. Cordell Maddox, Circuit Court Judge  
\_\_\_\_\_

DESHAUN A. DRAFTS,

PETITIONER S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000055  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

LANELLE CANTEY DURANT  
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ATTORNEY FOR PETITIONER

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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 PCR attorney failed to file an appeal after Petitioner requested one?

## STATEMENT

On September 13, 2011 in the Batesburg-Leesville area of Lexington County around 9:45 in the evening, three young men knocked down the front door of the home where two young mothers, Ms. Morales and Ms. Dreher, and their five children lived. The men were armed with a handgun, a shotgun, and a baseball bat. The state reported that the shotgun was taken from another home in an earlier home invasion. App. 20, ll. 8 – 20.

The men took items from the women's purses which included money, cell phone, jewelry and keys. The men initially asked for drugs and money. Both of the women were sexually assaulted by all three men while the children were held in the living room. The women and children were told they would not be killed if they cooperated. App. 20, ll. 21 – App. 21, ll. 8.

When the men left, they took two vehicles: a gray Crown Victoria which was Ms. Morales' car, and a gold Expedition. App. 21, ll. 9 – 14.

The women reported to the police as soon as the men left. The women knew Petitioner Drafts and identified him to the police. The women were shown photo lineups that night which contained photos of the three men. All three suspects were identified that same night. App. 21, ll. 15 – 23.

Officer Crow, with the Batesburg-Leesville police, tried to initiate a traffic stop on the gold Expedition. As he pursued the car, one of the men fired shots at the police car. The officer lost contact with the suspects. The following day, officers observed the three men walking into town. When ordered to stop, Petitioner Drafts stopped but the other two ran into the woods. The two were later apprehended. App. 22, ll. 1 – 25.

Petitioner Drafts gave a statement to police confessing to the home invasion involving the two women and admitted that he had sex with one of the women. App. 70, ll. 14 – 21.

In March 2012, the Lexington County Grand Jury indicted Petitioner Drafts on the charges of kidnapping, burglary first degree, and armed robbery. App. 231 – App. 244. On December 17, 2013, Petitioner Drafts appeared before the Honorable Robert E. Hood along with his two co-defendants, Deondre Leaphart and Laquarius Brannon. All three entered guilty pleas to the three charges of burglary first degree, armed robbery and kidnapping. Petitioner Drafts was represented by Sarah Hahn, and the state was represented by Shawn Graham. Petitioner Drafts also pled guilty to a Saluda County charge of burglary second degree. App. 1 – App. 5, ll. 5; App. 86, Footnote 2.

The state informed the court that the three defendants, including Petitioner Drafts, were pleading to negotiated thirty year sentences. App. 6, ll. 1 – 10. The state also reported that numerous charges were being dismissed. App. 19, ll. 1 – 13. The judge accepted the negotiated sentence and sentenced Drafts and his co-defendants to thirty years on each charge concurrent. He sentenced Drafts to fifteen years on the burglary second to run concurrent. The judge ordered the sex offender registry also. App. 32, ll. 1 – 25; App. 16, ll. 8-12.

Petitioner Drafts' plea counsel filed a notice of appeal which the Court of Appeals dismissed pursuant to Rule 203(d)(1)(B)(iv), SCACR for failure to provide a sufficient explanation to "merit the appeal." State v. Drafts, Appellate C.A. No. 2013-002747 (filed March 12, 2014). App. 87.

On April 15, 2014, Petitioner Drafts filed an application for post-conviction relief (PCR). The state filed a return on September 17, 2014. An evidentiary hearing was held on April 22, 2015 before the Honorable Brooks Goldsmith. Petitioner Drafts was represented by Anna R. Good, and the state was represented by Walt Whitmire. App. 48.

Petitioner Drafts testified at the PCR hearing that he told his attorney that he wanted a trial and did not want a plea. He wanted to fight for his life—not give it away. he wanted to fire his attorney because she was not working on his case. Drafts said it took his attorney two years to begin any investigation. His attorney told him that he could not fire her. App. 52, ll. 14 – App. 54, ll. 5. Drafts then testified that he felt he had no options than but to listen to his attorney. He never wanted to “take a plea.” App. 54, ll. 7 – 25. His attorney did not tell him anything about the sexually violent predator program. The first he heard about it was when the plea judge told him. App. 54, ll. 23 – App. 55, ll. 12.

Drafts said on cross-examination that he felt he had no choice but to plead guilty because his lawyer was not fighting for him. He went along with the plea because he had no way out. App. 58, ll. 1 – App. 59, ll. 24.

Plea counsel testified that Drafts had never told her that he wanted to have her relieved from his case. App. 66, ll. 8 – App. 67, ll. 14. Plea counsel testified that Petitioner Drafts wanted a plea offer from the beginning. She did not remember any talk of his wanting a trial. If he had, she would have gone to trial. Her goal was to minimize his exposure in sentencing because he had confessed. He was also facing potential life in prison with the burglary first. App. 70, ll. 11 - App. 72, ll. 25.

On cross-examination, counsel admitted that she began the investigation late in the case because she believed he wanted a plea. She hired an investigator but the investigator did not find any information that was “usable.” Drafts had some witnesses he wanted counsel to talk to but counsel did not remember the details. Drafts was disputing some of the facts and he wanted counsel to find out if there was any positive information that would help. App. 78, ll. 4 – App. 79, ll. 3.

The PCR judge denied Petitioner Drafts' PCR application on the record. The judge agreed with the position of the attorney general which was that Drafts did not show that plea counsel was ineffective and failed to show that he was prejudiced. App. 82, ll. 13 – App. 84, ll. 9.

On June 3, 2015, the PCR judge issued an order denying Drafts' PCR application and dismissing it with prejudice. App. 86 – App. 95. The judge found as a matter of general impression that “Applicant’s allegations were solely supported by his speculative and dubious testimony.” Then the judge found that “counsel’s testimony exhibited her diligence, competency, and effectiveness.” App. 90.

The judge also found that Drafts' allegation that counsel was ineffective for failing to investigate his case was without merit. The judge found that Drafts failed to “even make a prima facie case of what counsel should have investigated.” Then the judge cited Franklin v. Catoe, 346 S.C. 570, 552 S.E.2d 718 (2001), that overwhelming evidence of guilt negated any claim that counsel’s deficient performance could have treasonably affected the result of the defendant’s trial. App. 91- App. 92.

PCR counsel failed to file a notice of appeal following Petitioner Drafts' PCR. App. 226 – App. 227.

On February 18, 2016, Petitioner Drafts filed a second PCR application with the allegation that PCR counsel failed to file an appeal following his first PCR. App. 98. The state filed a return on August 28, 2017. An evidentiary hearing was held on December 13, 2017 before the Honorable J. Cordell Maddox, Jr. Petitioner Drafts was represented by Arthur K. Aiken, and the state was represented by Sherrie Butterbaugh and Melody Jane Brown. App. 219.

At the hearing, the state's attorney told the court that Drafts' PCR attorney at the first PCR wrote an affidavit admitting that she failed to file an appeal for Drafts even after he told her that he wanted an appeal. The state agreed that Drafts was entitled to an appeal from his first PCR. App. 222, ll. 1 – 25.

Drafts' PCR counsel at this second hearing agreed that Drafts was entitled to an appeal. App. 222, ll. 25 – App. 223, ll. 25.

On December 13, 2017, the PCR judge issued an order granting an appeal of his first PCR to Petitioner Drafts pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). This petition follows accompanied by a Johnson Petition for a Writ of Certiorari Pursuant to Austin v. State.

## ARGUMENT

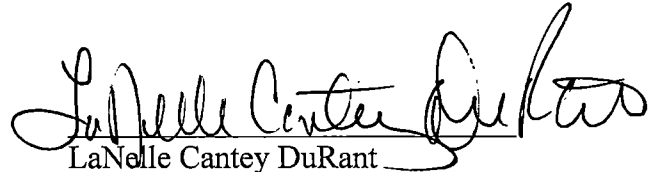
The PCR court was correct in ruling that Petitioner was entitled to a belated appeal from the denial of his first PCR as his first PCR attorney failed to file an appeal after Petitioner requested one.

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.

Drafts was entitled to an appeal from his first PCR.

**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.

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of August, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable J. Cordell Maddox, Circuit Court Judge

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DESHAUN A. DRAFTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

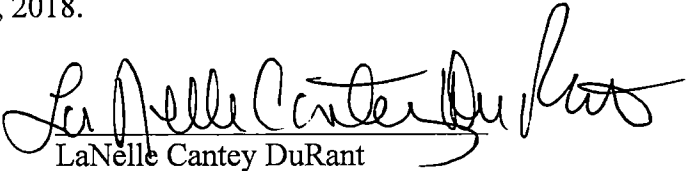
RESPONDENT

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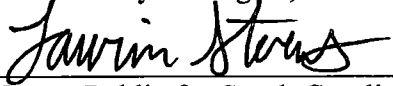
CERTIFICATE OF SERVICE

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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 Kelly Oppenheimer, 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 Deshaun A. Drafts, #358211, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 24th day of August, 2018.

  
LaNelle Cantey DuRant  
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER  
this 24th day of August, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 5, 2027.