

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Charleston County

Honorable Roger E. Henderson, Circuit Court Judge

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TRAVIS FORD,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001299

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PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT  
PETITIONER

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**ISSUE PRESENTED**

The 2<sup>nd</sup> PCR judge ruled properly in granting petitioner's request for a belated appeal of his first PCR action per Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

## STATEMENT

Petitioner Travis Ford pled guilty to trafficking in cocaine, second offense, and possession of cocaine with intent to distribute within proximity of a school during the July 2009 term of the Charleston County General Sessions Court before Judge Roger M. Young, Sr., and was sentenced to an aggregate sixteen-year prison term. App. 1-17. Petitioner did not appeal his guilty pleas and/or sentences.

On October 29, 2009, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. The respondent filed a return dated January 25, 2010, requesting that a hearing be held in the case. In response to petitioner's PCR filing, a PCR hearing was convened on July 20, 2010, at the Charleston County Courthouse before Judge Deadra L. Jefferson. On August 6, 2010, Judge Jefferson filed an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 26-34. However, because PCR counsel failed to file a PCR appeal of Judge Jefferson's PCR Order of Dismissal, petitioner did not enjoy the benefit of an appeal of his first PCR action.

On May 1, 2012, petitioner filed a second PCR application requesting a belated PCR appeal of his first PCR action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 19-25. A second PCR hearing was held in the matter on July 22, 2015, at the Charleston County Courthouse before Judge Roger E. Henderson. App. 35-44. On May 16, 2017, Judge Henderson issued an "Order Granting Austin Review." App. App. 46.

Unfortunately, a record of petitioner's first PCR hearing was unavailable. As a result, a petition to reconstruct the record of petitioner's first PCR hearing was filed on September 13, 2017. Per an Order from this Court granting the petition to reconstruct the record of petitioner's first PCR hearing, a reconstruction PCR hearing was convened before Judge Jefferson on March

21, 2018, at the Charleston County Courthouse during which time all parties were present, and the record of petitioner's first PCR hearing was successfully reconstructed.

Petitioner's petition for writ of certiorari follows.

### ARGUMENT

The 2<sup>nd</sup> PCR judge ruled properly in granting petitioner's request for a belated appeal of his first PCR action per *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

During the 2nd PCR hearing held in the case, petitioner testified that he filed this successive PCR action because he received no appeal from this first PCR action and therefore, he requested a belated PCR appeal from his first PCR action. Petitioner testified also that he "told (PCR counsel) that he wanted to appeal "[the first PCR] decision." App. 39, l. 5-14; App. 39, l. 18-25, App. 38, l. 15-p. 39, l. 4.

PCR counsel testified at the hearing and explained she did not recall petitioner requested an appeal of his (first) PCR action. App. 40, l. 16- p.43, l. 4.

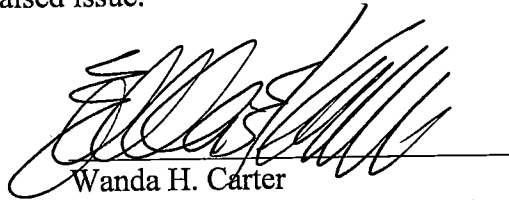
The 2nd PCR judge ruled from the bench immediately at the close of the hearing and went on to "grant [petitioner's] request to file the Austin appeal." App. 43, l. 11-13. On May 16, 2017, the 2nd PCR judge issued a written Order, stating that:

"all sides agreed that there was no appeal from this [petitioner's] petition" and "finds as a matter of fact and law that there was no (PCR) appeal in the said case and that an appeal review is warranted and the same is so ordered pursuant to Austin v. State, 409 S.E.2d 395 (1991)."

Petitioner has a right to appellate review of the denial of his PCR action where PCR counsel failed to appeal the same. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1998). The 2<sup>nd</sup> PCR judge ruled properly in granting petitioner's request for a belated PCR appeal in the case.

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow full briefing on the above-raised issue.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of October, 2018.

STATE OF SOUTH CAROLINA

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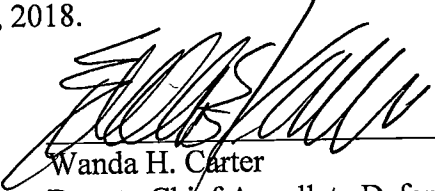
RESPONDENT

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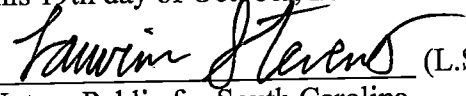
CERTIFICATE OF SERVICE

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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 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 Travis Ford, #285740, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 19th day of October, 2018.

  
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Wanda H. Carter  
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER  
this 19th day of October, 2018.

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