

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

ADRIAN KEITH NEAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000149

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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The second PCR judge ruled properly in granting petitioner’s
request for a belated PCR appeal of petitioner’s first PCR action
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ISSUE PRESENTED

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

STATEMENT

Petitioner Adrian Keith Neal pled guilty to murder during the July 2012 term of the Greenwood County General Sessions Court before Judge D. Garrison Hill and was sentenced to imprisonment for a period of thirty years. App.1-16. Janna Nelson represented petitioner at the plea proceeding, and Deputy Solicitor Andrew Hodges appeared on behalf of the state. Petitioner did not appeal his conviction or sentence.

On June 21, 2013, petitioner filed a PCR application with the Greenwood County Office of the Clerk of Court. App. 18-25. The respondent filed a return dated March 27, 2014, requesting that a hearing be held in response to petitioner's PCR action. App. 26-30. A PCR hearing was convened on October 17, 2016, at the Greenwood County Courthouse before Judge R. Ferrell Cothran, Junior. App. 31-65. Petitioner was present at the hearing and represented by Laura Saunders, and Assistant Attorney General Justin Hunter appeared on behalf of the state.

On November 1, 2017, Judge Cothran issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App.67-75. Thereafter, petitioner did not enjoy the benefit of an appeal of this first PCR action.

On March 27, 2018, petitioner filed a second PCR action with the Greenwood County Office of the Clerk of Court. App. 76-82. A return and an amended return and motion to dismiss were filed on June 12, 2018, and November 1, 2018, respectively. A second PCR hearing was not held, but rather petitioner's first PCR counsel submitted an affidavit admitting that she did not appeal petitioner's first PCR case. App.97-99. On November 5, 2018, Judge Donald B. Hocker issued an Order that granted petitioner's right to a belated PCR appeal, but denied petitioner's allegations raised in his second PCR application as successive. App. 100-105.

Petitioner appealed Judge Hocker's Order. This petition follows.

ARGUMENT

The second PCR judge ruled properly in granting petitioner’s request for a belated PCR appeal of petitioner’s first PCR action per Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner did not receive his first PCR appeal. Petitioner’s first PCR counsel admitted per an affidavit that she did not appeal petitioner’s first PCR case. The second PCR judge ruled as follows:

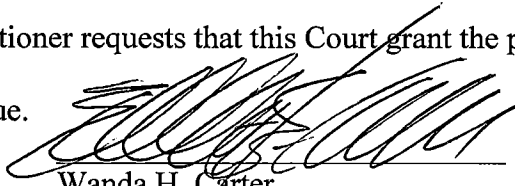
Belated Appeal

This Court finds Applicant’s allegation that he is entitled to a belated appellate review of the initial post-conviction relief action due to his prior post-conviction relief attorney’s failure to perfect an appeal on his behalf is meritorious. Where a post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). This Court finds Applicant did not knowingly and voluntarily waive his right to appellate review and is therefore entitled to a belated review of the denial of his initial post-conviction relief application.

Petitioner has a right to appellate review of his PCR action where PCR counsel failed to appeal the same, which is what occurred in this case. See Austin v. State, 305 S.C. 453, 409 S.E.2d 345 (1998). The second PCR judge ruled properly in granting petitioner’s request for a belated appeal of his first PCR action.

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 6th day of August, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

ADRIAN KEITH NEAL,

PETITIONER

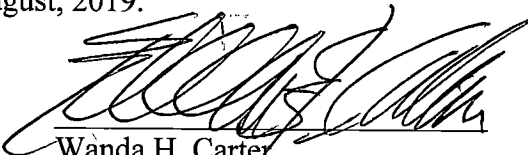
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

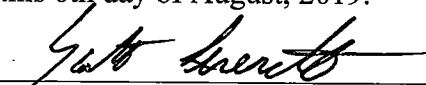
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Janell Gregory, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Adrian K. Neal, #351553, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 6th day of August, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 6th day of August, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.