

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Allendale County

Honorable Diane Schafer Goodstein, Circuit Court Judge
Honorable Perry M. Buckner, Circuit Court Judge

RECEIVED

OCT 23 2019

S.C. SUPREME COURT

DEREK MANER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000230

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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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). 3

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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 August of 2008, the Allendale County Grand Jury indicted Petitioner, Derek Maner, for murder, indictment #2008-GS-03-0135. On February 9, 2009, Petitioner proceeded to jury trial before the Honorable Michael G. Nettles. Byron E. Gipson represented Petitioner at trial. T. DeWayne Pearson and Natalie R. Armstrong prosecuted the case. The jury found Petitioner guilty and Judge Nettles sentenced Petitioner to life in prison. A timely notice of intent to appeal was filed and the direct appeal perfected. The South Carolina Court of Appeals affirmed the sentence and conviction. State v. Maner, 2012-UP-550 (S.C.Ct.App. filed October 10, 2012). (App. pp. 838-839).

On September 12, 2013, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return on August 20, 2014. On June 9, 2017, an evidentiary hearing was held before the Honorable Diane Schafer Goodstein. Deborah J. Butcher represented Petitioner at the PCR hearing. Ruston W. Neely represented the State. In a written order filed October 11, 2017, Judge Goodstein denied relief and dismissed the application. The notice of intent to appeal was not filed.

On August 27, 2018, Petitioner filed a second PCR application. The State consented to the grant of a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). (App. p. 975). In an order signed by the Honorable Perry M. Buckner, III, on January 15, 2019, Judge Buckner granted the belated appeal. This petition for writ of certiorari and a separately filed petition for writ of certiorari pursuant to Austin follow.

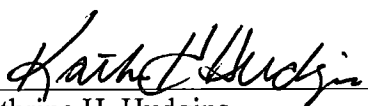
ARGUMENT

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, both the State and Petitioner consented to the grant of the belated appeal. (App. p. 975). 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 23rd day of October, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Allendale County

Honorable Diane Schafer Goodstein, Circuit Court Judge

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DEREK MANER,

PETITIONER

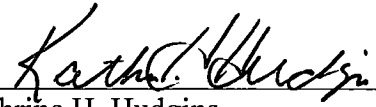
V.

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 Benjamin Limbaugh, 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 Derek Maner, #333244, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 23rd day of October, 2019.


Kathrine H. Hudgins
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 23rd day of October, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 30, 2029