

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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**ORIGINAL  
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**NOV 26 2019**

**S.C. SUPREME COURT**

MARION BONDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-000447

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PETITION FOR WRIT OF CERTIORARI

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Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

STANDARD OF REVIEW ..... 3

ARGUMENT

The PCR court properly granted petitioner a belated appeal of the  
denial of his first PCR application. .... 4

CONCLUSION ..... 5

**ISSUE PRESENTED**

Did the PCR court properly grant petitioner a belated appeal of the denial of his first PCR application?

## STATEMENT OF THE CASE

A Beaufort County grand jury indicted petitioner for assault and battery with the intent to kill, attempted armed robbery, a weapons charge, trafficking crack cocaine between 28-100 grams, trafficking crack cocaine between 10-28 grams, and a school proximity charge and on December 13, 2010, his case was tried before the Honorable Carmen T. Mullen and a jury. App. 1. App. 138. Angie Tanner represented the State and Ian Deysach represented petitioner. App. 2. Petitioner was convicted of the lesser-included offense of assault and battery of a high and aggravated nature, the weapons charge, the more severe trafficking charge, and the proximity charge. App. 558, 1. 9 – 559, 1. 15. He was acquitted of ABIK, attempted armed robbery, and the less severe trafficking charge. App. 558, 1. 9 – 559, 1. 15. On appeal, petitioner was represented by Elizabeth A. Franklin-Best. App. 577. The Court of Appeals affirmed and this Court denied certiorari. App. 652, 679.

On August 8, 2014, petitioner filed a PCR application and on May 18, 2016, the Honorable Brooks P. Goldsmith held a hearing. App.680, 693. Jim Brown represented petitioner and J. Rutledge Johnson represented the State. App. 694. Judge Goldsmith denied the application. App. 756. No appeal was filed and on November 16, 2017, petitioner filed a second PCR application seeking review pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 777. The State consented to Austin review and Judge Perry M. Buckner, III, granted petitioner's application. App. 790. This petition follows.

### **STANDARD OF REVIEW**

The standard of review in PCR cases depends on the specific issue before the Court. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). The Court defers to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Id. The Court reviews questions of law without deference to trial courts. Id. See also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018).

## ARGUMENT


The PCR court properly granted petitioner a belated appeal of the denial of his first PCR application.

Ample evidence supports the PCR court's conclusion that petitioner was entitled to a belated appeal. "An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal." Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989); Austin v. State, 305 S.C. 453, 409 S.E.2d 395, 396 (1991). In Austin, this Court framed the question as whether the PCR applicant "requested and was denied an opportunity to seek appellate review." Austin at 454, 409 S.E.2d at 396. The appropriate scope of review of the PCR court's holding is whether there is any evidence of probative value to uphold the PCR court's findings. Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984).

The PCR court properly relied on the State's consent and investigation of petitioner's right to a belated appeal. App. 792. Former PCR counsel provided an affidavit corroborating petitioner's claim that he was denied the right to appeal his PCR. App. 792. The State and the court were entitled to rely on PCR counsel and petitioner's averments in granting the belated appeal. Therefore, this Court should grant certiorari and grant petitioner a belated appeal from his 2014 PCR.

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari and allow petitioner a belated appeal from the denial of his first PCR.



David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of November, 2019.

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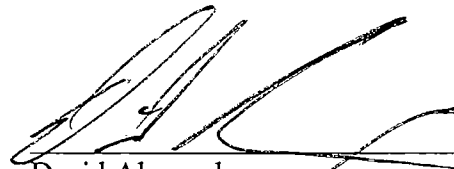
RESPONDENT.

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CERTIFICATE OF SERVICE

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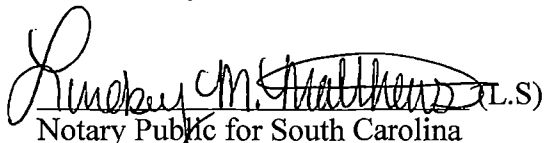
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Sara Gunton, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Marion Bonds, #293431, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 25th day of November, 2019.



David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 25th day of November, 2019.



(L.S.)  
Notary Public for South Carolina

My Commission Expires: October 22, 2024.