

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Lexington County

Brooks P. Goldsmith, Circuit Court Judge  
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STANLEY ALI GODBOLD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001114  
\_\_\_\_\_

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

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S.C. SUPREME COURT

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**ISSUE PRESENTED**

Did the PCR court properly grant Petitioner a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), where the undisputed evidence showed Petitioner did not knowingly and intelligently waive the right to appellate review of his previous PCR application?

## STATEMENT

On August 5, 2016, Amelia Gomez worked at the Quick Mart in Batesburg-Leesville. App. 4, ll. 13-17. At 6 a.m., Gomez was on the phone with her daughter. App. 4, ll. 17-19. When Gomez's phone went dead, her daughter, worried about Gomez, called her uncle. App. 4, ll. 20-23. The uncle contacted the police. App. 4, ll. 23-24. When the police arrived at the Quick Mart, Gomez claimed "two black men had come in together." App. 5, ll. 1-4. Further, Gomez claimed one of the men was armed with a gun, threatened her, and took less than \$300 from the cash register. App. 5, ll. 4-7.

The police searched the surrounding area for suspects based on the information from Gomez. App. 5, ll. 8-10. During this search, the police found Petitioner and arrested him. App. 5, ll. 10-18. Later, the police also arrested Petitioner's brother and charged him with participating in the robbery of the Quick Mart. App. 5, l. 21 – App. 6, l. 11. Petitioner's brother confessed to the armed robbery. App. 6, ll. 21-22.

On September 1, 2016, Sarah Mauldin was appointed to represent Petitioner. App. 47, ll. 18-20. In the discovery that Mauldin received from the solicitor was a statement written by Gomez in Spanish. App. 50, ll. 3-6. Mauldin never sought a translation of Gomez's statement. App. 52, ll. 1-6. Although Mauldin provided Petitioner with a copy of Gomez's statement, the statement was of no use to Petitioner because it was written in Spanish, and Petitioner could not read Spanish. App. 41, ll. 5-6; App. 53, ll. 10-18. Based upon Mauldin's failure to obtain a translation of the statement neither Mauldin nor Petitioner knew what Gomez claimed happened. App. 54, ll. 9-23.

On November 14, 2016, a Lexington County grand jury indicted Petitioner for armed robbery. App. 100-101. When Petitioner met with Mauldin on November 29, 2016, he rejected

the state's guilty plea offer. App. 48, ll. 20-22. Petitioner and Mauldin met again on December 9. App. 49, l. 7. Mauldin conveyed the state's new plea offer, which was for Petitioner to enter a guilty plea to armed robbery in exchange for the state's recommendation of a sentencing cap of twenty years. App. 49, ll. 7-10. Petitioner accepted the offer. App. 49, ll. 11-18.

On January 10, 2017, Petitioner appeared before the Honorable Jocelyn Newman to enter a guilty plea. App. 1. Mauldin represented Petitioner, and Angela Martin represented the state. App. 1. Judge Newman accepted Petitioner's guilty plea to armed robbery and sentenced him to twenty years imprisonment. App. 10, ll. 17-21; App. 15, ll. 11-12; App. 102.

On May 22, 2017, Petitioner filed an application for post-conviction relief (PCR). App. 20-26. Through counsel, Arthur Aiken, Petitioner amended his application. App. 33-35. The matter proceeded to an evidentiary hearing on July 31, 2018, before the Honorable Perry H. Gravely. App. 36. Aiken represented Petitioner, and Kelly Oppenheimer represented the state. App. 36. At the conclusion of the hearing, Judge Gravely denied Petitioner's claim for relief. App. 58, ll. 2-16. By an order filed September 19, 2018, Judge Gravely formally denied Petitioner relief from his conviction and sentence. App. 60-72. Aiken failed to file a notice of appeal. App. 95-96.

Petitioner then filed a second PCR application. App. 73-79. On June 28, 2019, a hearing was held before the Honorable Brooks P. Goldsmith, IV. App. 86. Ashley McMahon represented Petitioner, and Taylor Z. Smith represented the state. App. 86. Petitioner explained that he requested Aiken file an appeal, but Aiken failed to do so. App. 90, l. 16 – App. 91, l. 2. Aiken admitted that he never advised Petitioner of his appellate rights. App. 95-96. Further, Aiken admitted that the letter he sent to Petitioner along with the judge's order did not explain Petitioner's appellate rights, which would have been his usual practice. App. 95-96. During the

hearing, the state “consent[ed] and concede[d]” that Petitioner “did not knowingly and voluntarily waive his right to an appeal.” App. 92, ll. 4-6. By an order filed June 28, 2019, Judge Goldsmith granted Petitioner the right to file a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner served his notice of appeal on July 6, 2019. This petition for writ of certiorari follows.<sup>1</sup>

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<sup>1</sup> As required by King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), Petitioner is filing a petition for writ of certiorari pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), simultaneously with this petition.

## ARGUMENT

The PCR court properly granted Petitioner a belated PCR appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), where the undisputed evidence showed Petitioner did not knowingly and intelligently waive the right to appellate review of his previous PCR application.

The PCR court properly granted Petitioner belated appellate review of his initial PCR application because Petitioner was denied his right to appeal the dismissal of his first PCR application. See *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). In South Carolina, “[a]ll applicants are entitled to a full and fair opportunity to present claims in one PCR application.” *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). Pursuant to the rules and statutes governing PCR proceedings, an applicant is entitled to a full adjudication on the merits of the original petition. *Id.* This includes the right to seek appellate review of the denial of PCR and the right to assistance of counsel in that appeal. *Id.* at 261, 523 S.E.2d at 755-56. This Court held an individual can appeal a denial of a PCR application after the statute of limitations has expired if the individual either (1) requested and was denied an opportunity to seek appellate review or (2) did not knowingly and intelligently waive the right to appeal. *Austin*, 305 S.C. at 455, 409 S.E.2d at 396.

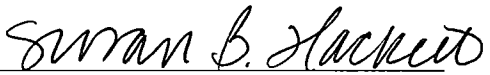
This Court held that the procedures prescribed by *Anders v. California*, 386 U.S. 738 (1967), applied in PCR matters. *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1998). Thus, appellate counsel is required to engage in a conscientious investigation of the possible grounds of appeal and brief arguable issues before appellate counsel may ask to withdraw. *Anders*, 386 U.S. at 744. The United States Supreme Court held: “The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of *amicus curiae*.” *Id.*

The undisputed evidence showed Petitioner wished to appeal the PCR judge's denial of his PCR application. PCR counsel offered no reason or explanation for his failure to file a notice of appeal for Petitioner. App. 95-96. In fact, PCR counsel indicated he could not "say with any certainty whether [Petitioner] requested that [he] appeal." App. 95. PCR counsel "never had a conversation with [Petitioner] in which [he] advised him of his appellate rights in his initial PCR." App. 96. Further, PCR counsel's letter that accompanied the order denying relief did not advise Petitioner of his appellate rights. App. 96. PCR counsel indicated that it is his practice to advise his PCR clients of their appellate rights in such a letter, but that his letter to Petitioner failed to do so. App. 96. Thus, evidence in the record amply supports Judge Goldsmith's finding that Petitioner is entitled to belated appellate review of his first PCR application. As Judge Goldsmith found, Petitioner "did not knowingly and intelligently waive his right to appeal" the prior PCR order. App. 98.

Under these circumstances, the PCR court's decision granting Petitioner belated appellate review of his first PCR application should be upheld. See Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) ("The appropriate scope of review of this Court is that 'any evidence' of probative value is sufficient to uphold the PCR judge's findings."). Simply stated, Petitioner is entitled to his one fair bite at the apple. See Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002).

**CONCLUSION**

Petitioner respectfully requests this Court affirm the PCR judge's conclusion that Petitioner is entitled to a belated appeal of the denial of post-conviction relief.

  
Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of December, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lexington County

Brooks P. Goldsmith, Circuit Court Judge

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STANLEY ALI GODBOLD,

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 Taylor Z. Smith, 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 Stanley Ali Godbold, #371009, at Lee Correctional Institution, 990 Wisacky Hwy. Bishopville, SC 29010, this 31st day of December, 2019.

*Susan B. Hackett*

Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO  
before me this 31st day of December, 2019.

*Della A. W.* (L.S)

Notary Public for South Carolina

My Commission Expires: *March 10, 2025*

