

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

RECEIVED

JAN 06 2020

CHRISTOPHER MANNING,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000831

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PETITION FOR WRIT OF CERTIORARI  
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Deputy Chief Appellate Defender

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

**INDEX**

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT .....2

ARGUMENT

The PCR judge erred in denying petitioner’s claim for a belated  
PCR appeal per Austin v. State, 305 S.C. 453, 409 S.E.2d 395  
(1991).....3

CONCLUSION .....5

STATEMENT OF PETITIONER’S AUSTIN QUESTIONS .....5

**ISSUE PRESENTED**

The PCR judge erred in denying petitioner's claim for a belated PCR appeal per Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

## STATEMENT

Petitioner Christopher Manning was convicted of felony DUI resulting in death during the May 2010 term of the Lexington County General Sessions Court before Judge R. Knox McMahan and sentenced to imprisonment for a period of eighteen years. App. 1-693. Petitioner was represented by Public Defender Robert M. Madsen and Bennett E. Castro at trial, and Assistant Solicitors Derrick E. Mobley, J. Angela Garrick, and Alton H. Eargle appeared on behalf of the state.

Petitioner appealed and was represented on appeal by LaNelle Durant, formerly of the South Carolina Office of Appellate Defense. Ultimately, petitioner's conviction and sentence were affirmed on appeal. See State v. Manning, 400 S.C. 257, 734 S.E.2d 314 (Ct. App. filed October 12, 2012).

On August 25, 2014, petitioner filed a PCR application with the Lexington County Office of the Clerk of Court. App 695-701. The respondent filed a Return dated September 24, 2015, requesting that a PCR hearing be held in response to petitioner's PCR action. App. 702-707.

A PCR hearing was convened on April 18, 2016, at the Lexington County Courthouse before Judge Perry H. Gravely. App. 709-827. Petitioner was present at the hearing and represented by Aimee J. Zmroczek, and Assistant Solicitor Johanna C. Valenzuela appeared on behalf of the state. App. 709-827. On August 26, 2016, Judge Gravely signed an Order of Dismissal denying petitioner's PCR application in the case. App. 829-838.

On June 27, 2018, petitioner filed a second PCR application raising an Austin claim<sup>1</sup> with the Lexington County Office of the Clerk of Court. App. 839-846. The respondent filed a Return and Partial Motion to Dismiss on January 25, 2019. App. 850-858.

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<sup>1</sup> Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

A second PCR hearing was held on April 11, 2019, before Judge Walton J. McLeod, IV, in response to petitioner's second PCR action. App. 860-877. Petitioner was present at the second PCR hearing and represented by Ashley McMahan, Esquire, and Assistant Attorney General Megan Jameson appeared on behalf of the state. On May 8, 2019, Judge McLeod signed an Order of Dismissal in the case denying petitioner's request for relief per Austin. App. 879-887. Petitioner appealed Judge McLeod's Order of Dismissal. This petition follows.

### **ARGUMENT**

The PCR judge erred in denying petitioner's claim for a belated PCR appeal per Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

During the second PCR hearing held per petitioner's second PCR action, petitioner testified that he asked his first PCR attorney to appeal his first PCR action in effect at the close of the first PCR hearing; and that counsel responded with a one step at a time answer and promised to contact him, but he never heard from his first PCR attorney again. Petitioner stated that he wrote his first PCR counsel several times asking for his transcript. Petitioner stated that he had to write the Clerk of Court requesting information about a disposition in his case, and thereafter wrote the Clerk for the South Carolina Supreme Court, who directed him to file an application for PCR raising an Austin issue in order to receive relief. App. 847; App. 865, 1.16-p.869, .1 10.

Petitioner's first PCR counsel testified at this second PCR hearing and stated that she discussed the appeal as his right after the first PCR hearing, but that "[petitioner] never specifically asked for an appeal," and that she learned via letter that petitioner wanted to "focus on the Innocence Project;" and that when petitioner requested a PCR appeal she advised that the time limit deadline to appeal had passed. However, counsel admitted that petitioner sent a letter

asking for a transcript of his first PCR hearing. App. 870, 1.18-p. 874, 1.23.

Clearly, the record supports petitioner's claim that he desired a PCR appeal. Petitioner wrote letters asking for his PCR transcript, and petitioner stated that he desired a PCR appeal and requested an appeal through his first PCR counsel. Counsel admitted that petitioner requested a PCR appeal asking her to appeal, but that the time limit to appeal had run beyond the deadline. Petitioner wrote the Lexington Clerk of Court and the South Carolina Supreme Court's Clerk of Court requesting information on his case and how to appeal. App. 846-847. Moreover, petitioner's desire for a PCR appeal was evident in his letter written to the South Carolina Supreme Court, which read as follows:

I just discovered that my PCR was finalized [but] I was never given a copy [the Order of Dismissal] ... Also, my PCR counsel never appealed the ruling as I instructed her to do...I wrote the Lexington County Clerk's Office...to find out what was going on...I am entitled to be informed of my right to appeal and I'm requesting to file a belated appeal under Austin v. State...and King v. State...for my fair bite of the apple. App. 846.

The South Carolina Supreme Court sent petitioner the following answer in the form of a letter from Clerk of Court Daniel E. Shearouse as follows:

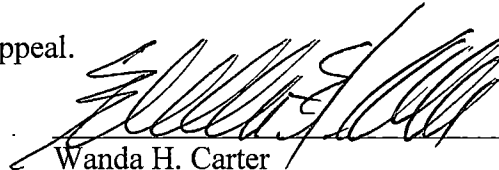
This responds to your recent letter regarding the above case. If you believe that you have been denied the right to seek appellate review in the above post-conviction relief case, then I call your attention to the case of Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Please note that relief under Austin is sought by filing a new application for post-conviction relief in the circuit court. Cf. King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) (setting forth the appellate procedures to be followed depending on the findings made by the post-conviction relief judge regarding the Austin claim).

The PCR judge ruled that petitioner did not request a PCR appeal and thus voluntarily and knowingly waived his right to a direct appeal. App. 884-886.

To the contrary, petitioner made every attempt possible (letters and calls to various parties) to secure his desired PCR appeal. The record supports this position as outlined in this petition. Petitioner has a right to appellate review of the denial of his first PCR action where his first PCR counsel failed to appeal the same. Austin v. State, supra. The PCR judge erred in denying petitioner's request for a belated PCR Austin appeal in his case.

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner would request that this Court grant this petition and allow full briefing on the above-raised issue, or in the alternate grant petitioner's request for a belated PCR Austin appeal.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of January, 2020.

**STATEMENT OF PETITIONER'S AUSTIN QUESTIONS**

- 1) Trial counsel erred in failing to conduct proper investigations (medical and DNA records) in order to establish that he was not the driver of the vehicle on the night of the accident.
- 2.) Trial counsel erred in dissuading petitioner from exercising his right to testify at trial.

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CHRISTOPHER MANNING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

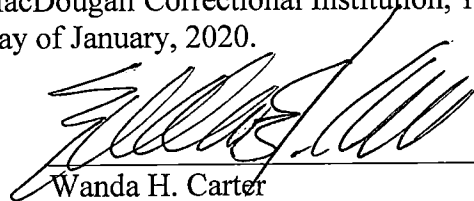
RESPONDENT

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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 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 Christopher Manning, #340790, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 6th day of January, 2020.



Wanda H. Carter  
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER  
this 6th day of January, 2020.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.