

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dillon County

Honorable Brooks P. Goldsmith, Circuit Court Judge

JOHN H. BRIDGES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001791

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUES PRESENTED

QUESTION I

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

QUESTION II

The second PCR judge erred in denying petitioner's claim that his de facto life sentence which he received as a juvenile was a violation of the Eighth Amendment.

STATEMENT OF THE CASE

Petitioner John H. Bridges pled guilty to murder, conspiracy, larceny, robbery, kidnapping, first degree burglary, and possession of a weapon during the commission of a violent crime during the November 2010 term of the Dillon County General Sessions Court before Judge Thomas A. Russo. App. 1-47. Petitioner was sentenced to an aggregate 40-year prison term. Public Defenders Richard Jones and Michael Stephens represented petitioner at the plea proceeding and Solicitors Kernard E. Redmond and Shipp Daniel appeared on behalf of the state.

Petitioner did not appeal his convictions and sentences, but on June 20, 2012, petitioner filed a PCR application with the Dillon County Office of the Clerk of Court. App. 49-58. The respondent filed a return and motion to dismiss primarily due to the untimely filing of the PCR action. App. 60-64. On August 28, 2012, and October 31, 2012, Judge Paul M. Burch signed and subsequently filed a Conditional Order of Dismissal, and a Final Order, respectively, granting the respondent's motion to dismiss petitioner's PCR action as untimely filed. App. 66-70. Thus, petitioner

Petitioner did not enjoy the benefit of an appeal of his first PCR action.

On April 30, 2014, petitioner filed a second PCR action in the case requesting a belated appeal of his first PCR action and an amended PCR application on August 26, 2019. App. 107 and App. 71-79. The respondent filed a return and motion to dismiss on all counts save the belated first PCR action appeal in the case. App. 80-86.

A PCR hearing was convened on August 21, 2019, at the Dillon County Courthouse before Judge Brooks P. Goldsmith. App. 88-105. Petitioner was present at the PCR hearing and represented by Tristan M. Shaffer, and Assistant Attorney General Jacob A. Isenberg appeared on behalf of the state. On August 29, 2019, Judge Goldsmith signed an Order granting

petitioner's belated PCR appeal under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), but dismissed the remainder of petitioner's PCR allegations raised in his second PCR action. App. 109-115.

Petitioner appealed. This petition follows.

QUESTION I

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

In petitioner's second PCR action filed, the request for a belated PCR appeal of his first PCR action was plainly stated. App. 71-77; App. 107. During the PCR hearing held in response to petitioner's second PCR action, the Attorney General consented to allowing the belated PCR appeal. App. 92, lines 4-5. Thereafter, the second PCR judge granted petitioner's request for a belated PCR appeal in the consent order granting an appeal pursuant to Austin v. State, supra. App. 111-112. Petitioner has a right to appellate review of the denial of his PCR action where PCR counsel failed to appeal the same. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1998). The PCR judge ruled properly in granting petitioner's request for a belated PCR appeal in the case.

QUESTION II

The second PCR judge erred in denying petitioner's claim that his de facto life sentence which he received as a juvenile was a violation of the Eighth Amendment.

Petitioner pled guilty at age 16 and was sentenced to forty years. During the PCR hearing held in the case, petitioner's counsel argued that petitioner's aggregate forty-year prison sentence was a de facto life sentence via the equivalent of a life sentence and a life without parole sentence at a time when petitioner was a juvenile as he was sixteen years old when he entered the

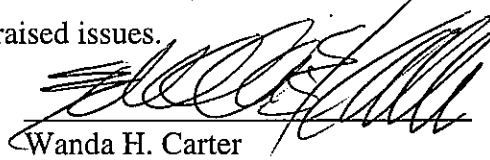
guilty pleas. App. 10, lines 1-3; App. 98, 1.8-16. At the very least, there was a right to an individualized sentencing hearing to consider the de facto to life sentence.

Petitioner faced in effect a a life sentence. In Aiken v. Byers, 410 S.C. 534, 765 S.E.2d 572 (2014), the Court held that the rule in Miller v. Alabama, 132 S.Ct. 2455 (2012) applied retroactively to the extent that the mandatory imposition of LWOP sentences for juveniles violated the Eighth Amendment, and that even if a juvenile faced a life sentence under a non-mandatory or discretionary scheme, then there were certain factors to be analyzed in a mitigation hearing before that could occur. Therefore, petitioner was protected from a mandatory LWOP sentence and by a mitigation hearing for a life sentence if convicted of burglary at trial.

The second PCR court erred in denying the argument that petitioner did not receive a life without parole sentence in the case and that no Eighth Amendment violation occurred when the argument above proved to the contrary.

CONCLUSION

Based on the foregoing arguments, counsel for petitioner requests that this Court grant the petition and allow full briefing on the above-raised issues.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of July, 2020.