

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable R. Kirk Griffin, Circuit Court Judge

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Dec 07 2020

S.C. SUPREME COURT

ARTHUR L. SINGLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000861

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court properly granted petitioner relief pursuant to *Austin v. State*, 305 S.C. 453, 246 S.E.2d 395 (1991), where petitioner's PCR counsel failed to respond to the South Carolina Supreme Court's request that counsel provide proof of service upon respondent's counsel along with a written statement as to the date on which counsel received a copy of the order on appeal and where the state consented to petitioner's pursuit of a belated review?

STATEMENT

On May 27, 2004, a Sumter County grand jury indicted petitioner for armed robbery, conspiracy, and possession of crack cocaine. App. 387-88. Petitioner's case was called to trial on June 5, 2006, before the Honorable Howard P. King and a jury. App. 1. Melissa Biggers Manning represented petitioner, and Jason Corbett, assistant solicitor, represented the state. App. 1.

On June 6, 2006 the jury found petitioner guilty of armed robbery and conspiracy. App. 230. Judge King sentenced petitioner to concurrent terms of life without the possibility of parole for armed robbery and five years' imprisonment for conspiracy. App. 242-43.

Petitioner's conviction and sentence were affirmed. *State v. Singleton*, 2008-UP-650 (S.C. Ct. App. filed December 1, 2008). Thereafter, petitioner filed an application for PCR on October 12, 2009. An evidentiary hearing was held on September 10, 2014, before the Honorable Clifton Newman. App. 245. Kenneth Young, Jr. represented petitioner, and Daniel Gourley, assistant attorney general, represented the state. App. 245.

On November 30, 2017, Judge Newman signed an order denying PCR. App. 307-19. The judge found petitioner's allegation that trial counsel was ineffective for failing to have petitioner evaluated prior to trial was without merit. The court found credible counsel's testimony that she had no concerns about petitioner's mental capacity and that petitioner was cooperative and active in their preparation for trial. The court further found petitioner failed to show any evidence to support his claim that he was incompetent. App. 313.

Petitioner filed a second PCR application October 21, 2019, alleging, among other things, that he was entitled to a belated PCR appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 336-43. An evidentiary hearing was held on February 25, 2020, before the

Honorable R. Kirk Griffin. App. 356. James Faulk represented petitioner and Brianna Schill, assistant attorney general, represented the state. App. 356. At the hearing petitioner agreed to only go forward on his *Austin* claim. App. 360.

By email dated April 21, 2020 the state advised the PCR court that it would not oppose petitioner's *Austin* claim. App. 385. On May 26, 2020, Judge Griffin signed an order granting petitioner's belated *Austin* appeal. App. 382-86.

This petition for writ of certiorari pursuant to *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) follows.

ARGUMENT

The PCR court properly granted petitioner relief pursuant to *Austin v. State*, 305 S.C. 453, 246 S.E.2d 395 (1991), where petitioner’s PCR counsel failed to respond to the South Carolina Supreme Court’s request that counsel provide proof of service upon respondent’s counsel along with a written statement as to the date on which counsel received a copy of the order on appeal and where the state consented to petitioner’s pursuit of a belated review.

In *King v. State*, this Court set forth the procedure for cases where review is sought pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991):

(1) When the post-conviction relief judge has affirmatively found that the right to appellate review of a previous post-conviction relief order was not knowingly and intelligently waived, the petition shall raise this question along with all other questions petitioner seeks to have reviewed from that order. At the same time this petition is served, petitioner shall serve and file an *Austin* petition addressing the questions from the previous post-conviction relief order. The *Austin* petition shall comply with the requirements of Rule 227(d). The Appendix shall contain the entire records from both post-conviction relief proceedings. Respondent’s return to the petition shall address the questions from the latest post-conviction relief order, including whether the right to appellate review of the previous post-conviction relief order was knowingly and intelligently waived. At the same time this return is served, respondent shall serve and file an *Austin* return addressing the questions from the previous post-conviction relief order.

(2) When the post-conviction relief judge has found that the applicant is **not** entitled to an *Austin v. State* review, the petition shall raise the question of waiver of the right to appellate review of the previous post-conviction relief order along with all other questions petitioner seeks to have reviewed from that order. The petition shall also contain a “Statement of *Austin* Questions” listing the questions to be raised if an *Austin v. State* review is granted. An *Austin* petition addressing the questions will not be allowed unless certiorari is granted on the *Austin v. State* question.

King v. State, 308 S.C. 348, 349, 417 S.E.2d 868, 868–69 (1992).

In petitioner’s case, the state consented to a belated *Austin* review. Counsel failed to file the Notice of Appeal; there was no waiver by petitioner of his right to appeal. The PCR court properly granted relief.

Judge Griffin's order granting relief, from 2020, outlined the circumstances giving rise to relief in petitioner's matter:

On August 17, 2018, Applicant filed a pro se Notice of Appeal. Thereafter on August 17, 2018 the South Carolina Supreme Court sent Mr. Young a letter notifying him of Applicant's pro se filing and reminding Mr. Young that pursuant to Rule 71.1(g) SCRPC and Rule 264 SCACR he remained as Applicant's counsel of record. The letter advised Mr. Young that he had ten days to provide proof of service upon respondent's counsel along with a written statement as to the date on which he received a copy of the order on appeal. On September 5, 2018 the South Carolina Supreme Court dismissed the Applicant's appeal citing the following procedural defaults: Petitioner failed to provide the Court with proof of service as required by Rules 243(b) and 203(d)(1)(B)(i) SCACR; and, Counsel for petitioner failed to provide the information requested in the Court's August 17, 2018 letter. All parties agree the Applicant is entitled to an appeal from the denial of his PCR application (2010-CP-02-1873).


App. 385.

"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).

Under *Austin*, the PCR court correctly ruled that petitioner was entitled to appeal the denial of his PCR application because he did not voluntarily waive his right to appeal. Petitioner did not sleep on his rights and filed a *pro se* Notice of Appeal as well as a subsequent PCR application seeking a belated appeal after the time elapsed for the Notice of Appeal to be filed. Therefore, this Court should grant certiorari and grant Petitioner a belated appeal from the 2010 PCR application.

CONCLUSION

For the reasons set forth herein, petitioner respectfully requests this Court grant certiorari, affirm Judge Griffin's determination that petitioner is entitled to belated review, and review the petition for writ of certiorari filed pursuant to *Austin*.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of December, 2020.