

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

APPEAL FROM SPARTANBURG COUNTY  
THE SUPREME COURT OF SOUTH CAROLINA

Chief Justice Donald W. Beatty  
Appellate Case No. 2021-000351

RECEIVED  
MAY 26 2021  
S.C. SUPREME COURT

Anthony B. Chapman,

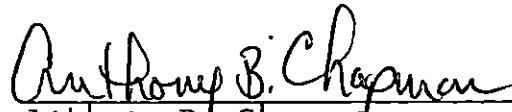
Petitioner,

vs.

State of South Carolina,

Respondent.

REQUEST FOR AN ORDER AUTHORIZING THE  
DISTRICT COURT TO CONSIDER PETITIONER'S APPLICATION

  
Anthony B. Chapman  
Department of Corrections  
430 Oaklawn Road  
Pelzer, South Carolina 29669

Other counsel of Record:

Chelsey Faith Marto,  
Assistant Attorney General  
Office of the Attorney General  
Post Office Box 29211

COMES, Anthony B. Chapman, Petitioner above pursuant to 28 U.S.A. Section 2244(a)(3)(A), with a Request For An Order Authorizing The District Court To Consider Petitioner's Application and will show:

On February 17, 2020, the Petitioner filed a second Post- Conviction Relief Application before the Spartanburg, South Carolina, Court of Common Pleas solely alleging:

That the Applicant was denied and deprived Due Process and Equal Protection of Law under the Fourteenth Amendment of The United States Constitution, as well as Article One Section Three of the South Carolina Constitution. Behind Ms. Susan B. Hackett, Appellate Defender, deficient conduct of failing and neglecting to raise at least "one" of the Petitioner's allegations presented, argued and preserved for appellate review before the PCR Court.

The Respondent filed its Return And Motion To Dismiss on October 8, 2020. Subsequently, on November 10, 2020, the Petitioner filed a timely Response To Return And Proposed Conditional Order of Dismissal. However, on March 12, 2021, the Honorable Mark Hayes, II, signed the Conditional Order of Dismissal, And denied and dismissed the PCR Application.

So, on or about March 22, 2021, the Petitioner filed its Notice Of Appeal upon the Supreme Court of South Carolina. Plus, on April 5, 2021, the Supreme Court of South Carolina sent Petitioner an Order pursuant to Rule 243(c), SCACR requesting an Explanation as to why the lower court determination was improper. Therefore, on April 23, 2021, the Petitioner filed an outstanding Explanation including sufficient facts, evidence, arguments and citations to legal authorities to show that there is an arguable basis for asserting that the determination by the lower court was improper. Nevertheless, on May 5, 2021, Chief Justice, Donald W. Beatty erroneously dismissed the legal matter.

REASONS FOR GRANTING AN ORDER AUTHORIZING  
THE DISTRICT COURT TO CONSIDER THE APPLICATION

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First, the Petitioner asserts that pursuant to Hoitt v. State, 674 S.E. 2d 491(2009)("PCR actions are the only type of case which appellate counsel "must" brief all arguable issues, despite counsel's belief the appeal is frivolous".)

Second, under Mack v. State, 2021WL1659859, (citing Austin v. State, 305S.C. 453,409 s.e.2d395 (1991) "An Austin appeal is used when an applicant is prevented from seeking appellate review of denial of his PCR application")(" The petitioner will be entitled to belated review if the circuit court judge affirmatively finds either: (1) the petitioner requested and was denied an opportunity to seek appellate review; or, (2) the right to appellate review was not knowingly and intentionally waived. Cf. Odom, 337 s.c. 262, 523 s.e. 2d 756 ( outlining the standard the PCR judge must apply in determining whether a PCR applicant is entitled to an Austin, appeal.)

In the instant case, the Petitioner (1) requested and was denied an opportunity to seek appellate review due to his appellate defender's deficient performance of failing to raise at least one of his PCR Issues on appellate review; and (2) petitioner did not knowingly or intentionally waive appellate review of the issues he raised in his PCR hearing. See Attachment #1 But, rather it was over the Petitioner's objections that his PCR Issues were not submitted for appellate review.

Further, the Petitioner submits that pursuant to Roe v. Flores Ortega, 528 U.S. 470,486, 120 S.Ct. 1029, 145 L.Ed 2d 985 (2002)

" It is unfair to require an indigent, perhaps pro se defendant

to demonstrate that his hypothetical appeal might have had merit before any advocate has ever reviewed the record in his case in search of potential meritorious grounds for appeal".) See Roe, 528 U.S. at 483, 120 S.Ct. 1029( holding prejudice will be presumed where " counsel's deficient performance deprived him of an appeal altogether".)

Significant, under Fraisier v. State, 306 S.C. 158,161,410 S.E. 2d 572,574(1991)( reviewing the denial of PCR and holding " counsel was ineffective in failing to perfect petitioner's appeal, and that the petitioner was prejudiced thereby because but for counsel's deficient performance, petitioner would have taken a direct review".)

In conclusion, the Petitioner's original PCR application was denied, and appellate counsel failed to raise any one of the PCR issues in the writ of certiorary to the Supreme Court of South Carolina. Subsequently, the Petitioner filed a second PCR application alleging appellate counsel was ineffective for failing to seek appellate review of the PCR Court's Order denying the grounds raised. Under the PCR Act, " the right to seek appellate review of the denial of PCR is expressly authorized by State law". Id. ( citing S.C. Code Ann. Section 17-27-100(2014) Based on S.C. extention of Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 18 L.Ed. 2d 493 (1967) to PCR matters in Johnson v. State, 294 S.C. 310,364 S.E. 2d 201(1988), which acts "as a safeguard of the right to appeal", we recognize the petitioner was entitled to the effective assistance of appellate counsel in seeking review of the denial of PCR.

As such, this Honorable Court can and should find that the

petitioner's allegation that appellate counsel failed to perfect i.e., include and argue a single ground raised during the original PCR Hearing in the writ of certiorary and, thus, procedurally barred him from seeking 28 U.S.C. Section 2254 review on those issues for certain show and establish an arguable basis for asserting that the determination by the lower court was erroneous and improper.

In fact, South Carolina very recently crafted a remedy (which the Petitioner is entitled to) to correct the unfairness that occurred by providing relief through a belated appeal. *Id*; see Ferguson v. State, 382 S.C. 615, 619, 677 S.E. 2d 600, 602 (2009) (noting Austin, appeals are "belated appeals intended to correct unjust procedural defects".)

Wherefore, it is prayed that this High Court Grant the Request For An Order Authorizing The District Court To Consider The Petitioner's Application. And grant any other relief it deem just and proper.

Dated 5-24-21.

Respectfully submitted,  
Anthony Chapman

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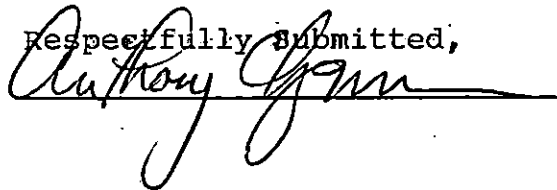
State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Anthony B. Chapman, certify this 24<sup>th</sup> day of May, 2021, that I sent the Request For An Order Authorizing The District Court To Consider Petitioner's Application United States Postal Services, prepaid, to Chelsey F. Marto, Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211. And copies of the same upon Chief Justice, Donald W. Beatty, The Supreme Court of South Carolina, Post Office Box 11330, Columbia, South Carolina 29211.

Respectfully Submitted,



Sworn and Subscribed  
this 24 day of May, 2021

Tamara Conwell  
Notary Public For South Carolina  
My Commission Expires

~~My Commission Expires~~  
September 25, 2023



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

*Exhibit #1*

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1387

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

December 12, 2016

Mr. Anthony B. Chapman, #251075  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669

Dear Mr. Chapman:

I am in receipt of your letter dated December 8, 2016. I understand your concerns with having all of your issues raised in your certiorari petition following your PCR hearing. However, it is my obligation to raise only non-frivolous issues to the Court. I will review the materials and determine which issues, if any, have merit and raise only those issues to the Court.

Sincerely,

Susan B. Hackett  
Appellate Defender

SBH/

FILED  
2020 FEB 17 AM 8:56  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

Anthony B. Chapman, #251075  
Department of Corrections  
430 Oakland Road  
Pelzer, South Carolina 29669

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Chief Justice Donald W. Beatty  
The Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

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**MAY 24 2021**

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