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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Edgar W. Dickson, Circuit Court Judge

WILLIAM H. BLAKE

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000708

PETITION FOR WRIT OF CERTIORARI

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The PCR judge correctly found that Petitioner did not knowingly and voluntarily waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).4

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ISSUE PRESENTED

Did the PCR judge correctly find that Petitioner did not knowingly and voluntarily waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)?

STATEMENT

In October of 2011, the Aiken County Grand Jury indicted Petitioner, William Henry Blake, for armed robbery, indictment #2011-GS-02-01378. On October 24, 2011, Petitioner appeared before the Honorable George C. James, Jr., waived presentment to the Aiken County Grand Jury on an indictment for voluntary manslaughter and pled pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to both armed robbery and voluntary manslaughter. Barry L. Thompson, II, represented Petitioner at the plea. David W. Miller was present on behalf of the State. Pursuant to a negotiated sentence cap of twenty-five (25) years, Judge James sentenced Petitioner to twenty-three (23) year concurrent sentences for each charge. A timely notice of intent to appeal was filed but dismissed for failure to make a sufficient showing pursuant to Rule 203(d)(1)(B)(iv). The remittitur issued on March 2, 2012.

On February 13, 2012, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 42-53). On May 9, 2012, the State filed a return. (App. pp. 54-59). On December 17, 2012, Petitioner filed an amended PCR application. (App. pp. 60-63). On June 25, 2014, the State filed an amended return. (App. pp. 64-69). On September 8, 2015, an evidentiary hearing was held before the Honorable Edgar W. Dickson. Aimee Zmroczek represented Petitioner at the PCR hearing. Daniel Gourley represented the State. In a written order signed January 28, 2016, Judge Dickson denied relief and dismissed the application. (App. pp. 190-198). Petitioner filed a timely motion to reconsider on March 2, 2016. (App. pp. 199-201). The State filed a return on December 30, 2016. (App. pp. 202-203). On March 14, 2017, Judge Dickson denied the motion to reconsider. (App. pp. 204-206).

On June 3, 2019, Petitioner filed a second PCR application. (App. pp. 207-214). The State filed a return and partial motion to dismiss on August 16, 2019. (App. pp. 215-221). On June 4,

2021, the Honorable Jennifer B. McCoy signed an order granting relief pursuant to Austin v. State. (App. pp. 224-228). This petition for writ of certiorari and a separately filed Austin petition follow.

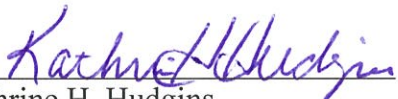
ARGUMENT

The PCR judge correctly found that Petitioner did not knowingly and voluntarily waive his right to appeal the denial of his first PCR application and is entitled to a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

In the order granting Austin relief the second PCR judge wrote that she reviewed the entire record and an affidavit from Petitioner's first PCR attorney. (App. p. 224). In the affidavit Petitioner's first PCR attorney stated that Petitioner asked her to file an appeal but because of a miscommunication in the attorney's office, the appeal was not filed. (App. p. 227). The second PCR judge noted in the order that the State did not oppose Austin relief. (App. p. 224). The second PCR judge correctly found that, pursuant to Austin, Petitioner was entitled to belated appellate review of the first denial of post-conviction relief.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari and allow the belated appeal.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of December, 2021.