

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County
Thomas A. Russo, Circuit Court Judge

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APR 26 2013

S.C. Supreme Court

MICHAEL E. MINOR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213306

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
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South Carolina Commission on Indigent Defense
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ISSUE PRESENTED

Whether there was any evidence to support the PCR judge's findings that petitioner was entitled to a belated review of the denial of his first PCR application?

STATEMENT

On February 27, 2008, petitioner appeared before the Honorable John C. Hayes, III, in Greenwood County and pled guilty to trafficking in methamphetamine, 10 to 28 grams, second offense. Janna A. Nelson, Esquire, was plea counsel. (App. p. 1 – p. 10). Petitioner filed an application for post-conviction relief on July 28, 2008. (App. p. 13 – p. 19). An evidentiary hearing was held on April 2, 2009, before the Honorable Thomas A. Russo. Petitioner was present and was represented by John D. Compton, III, Esquire. Respondent was represented by Ashley A. McMahan, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 20 – p. 72).

On April 28, 2009, Judge Russo issued an order denying and dismissing the application for post-conviction relief. Petitioner did not appeal. He filed a second application for post-conviction relief on November 29, 2010, alleging, inter alia, the PCR counsel was ineffective in failing to appeal the denial of his application for post-conviction relief. (App. p. 82 – p. 95). Respondent filed a return and partial motion to dismiss dated July 26, 2011. (App. p. 96 – p. 103). An evidentiary hearing was held on March 12, 2012, before the Honorable Frank R. Addy, Jr. Petitioner was present and was represented by David E. Belding. Respondent was represented by J. Rutledge Johnson, Assistant Attorney General. Petitioner testified in his own behalf and he called Bonnie Minor to testify. Respondent presented the testimony of prior PCR counsel, John Compton, Esquire. (App. p. 113 – p. 181).

On April 16, 2012, Judge Addy issued an order granting petitioner a belated appeal of the denial of his first application for post-conviction relief, but otherwise denied and dismissed the second application for post-conviction relief. (App. p. 185 – p. 189).

This petition follows. A separate Austin petition shall also be served addressing any issues from the first PCR hearing.

ARGUMENT

There was evidence to support the PCR judge's findings that petitioner was entitled to a belated review of the denial of his first PCR application.

In King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), the Court set forth the procedure to be used where a belated appeal of the denial of a PCR application is sought pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The Court wrote:

“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 or intelligently waived, the petitioner 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.”

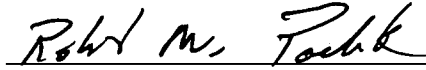
Petitioner alleged in his application for post-conviction relief that PCR counsel failed to timely appeal the denial of his first PCR. (App. p. 84). Prior PCR counsel, Mr. Compton, testified at the evidentiary hearing that when he got the 2008 order of dismissal, he did not send petitioner a copy letting him know. (App. p. 137, lines 16 – 18). The PCR judge found in his order of dismissal that Mr. Compton admitted that he did not serve petitioner with a copy of the 2008 order of dismissal. Therefore, petitioner had no notice of the dismissal so petitioner did not knowingly or voluntarily waive his right to appellate review of the denial of his first PCR application. (App. p. 187). The Court has repeatedly held that it must uphold the findings of the PCR judge if there is any evidence of probative value to support them. Roberts v. State, 361 S.C. 1, 602 S.E.2d 768 (2004); Caprood v. State, 335 S.C. 103, 525 S.E.2d 514 (2000); Cherry v. State, 300 S.C. 115, 386

S.E.2d 624; Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986); Knight v. State, 284 S.C. 138, 325 S.E.2d 535 (1985); Daniel v. State, 282 S.C. 155, 317 S.E.2d 746 (1984); Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984). The findings of the PCR judge in this case should be upheld.

CONCLUSION

Petitioner is entitled to a belated appeal of the denial of his first PCR application.

Respectfully submitted,

Handwritten signature of Robert M. Pachak in cursive script.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of April, 2013.

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APPELLATE CASE NO. 2012-213306

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of April, 2013.




Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 26th day

of April, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.