

STATE OF SOUTH CAROLINA  
In the South Carolina Supreme Court

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**Apr 15 2022**

S.C. SUPREME COURT

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Appeal from Lexington County  
The Honorable William P. Keesley, Circuit Court Judge

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Appellate Case No. 2022-000254

The State of South Carolina, .....Respondent,

v.

Michael Young, ..... Petitioner.

**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

- I. Did Petitioner voluntarily waive his right to appeal the denial of his order of dismissal from his PCR action?

## STATEMENT OF THE CASE

Michael James Young, Jr. (SCDC #345614) was indicted by the Lexington County Grand jury during its October 2007 term for murder (2007-GS-32-2948), assault and battery with intent to kill (2007-GS-32-2949), and possession of a firearm during the commission of a violent crime (2007-GS-32-2950). Petitioner was represented by John D. Delgado on all charges. On April 11, 2011, Petitioner pleaded guilty before the Honorable Thomas A. Russo to murder and assault and battery with intent to kill. Judge Russo sentenced Petitioner to prison for 50 years for murder and 20 years for assault and battery with intent to kill. The sentences were ordered to be run concurrently.

Petitioner then timely filed a notice of appeal. By written order dated February 10, 2012, the South Carolina Court of Appeals dismissed the appeal for failing to show cause why his appeal should have been allowed to proceed as required by Rule 203(d)(1)(B)(iv), SCACR.

Petitioner then timely filed an application for post-conviction relief on November 21, 2012. The state filed its return on March 3, 2014. Petitioner filed an amendment to his application for post-conviction relief on November 1, 2018. An evidentiary hearing was held on November 9, 2018 at the Lexington County courthouse before the Honorable Walton J. McLeod, IV. Petitioner was represented by Robert W. Mills. The state was represented by Kelly Oppenheimer of the South Carolina Attorney General's Office. An order of dismissal was filed December 5, 2018.

Counsel for Petitioner then filed a Motion to Alter Judgment Pursuant to SCRCP 59(e) on December 20, 2018. No appeal was filed.

Petitioner filed a subsequent application for post-conviction relief on June 15, 2020.<sup>1</sup> On February 4, 2022, a Consent Order Granting *Austin* Appeal was filed in the Lexington County Court of Common Pleas, signed by the Honorable William P. Keesely, Circuit Judge.

This petition for a writ of certiorari timely follows.

**I. Did Petitioner voluntarily waive his right to appeal the denial of the order of dismissal?**

Petitioner did not voluntarily waive his right to appeal the denial of his PCR case. His attorney, Robert Mills, passed away during the pendency of the proceedings as acknowledged by the parties. Undersigned counsel and the South Carolina Attorney General's Office entered a consent order to allow Petitioner's appeal to go forward, and that order was signed by the Honorable William P. Keesley on February 4, 2022. Respectfully, counsel requests the Court address the merits of Petitioner's claim.

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<sup>1</sup> Undersigned counsel had initially filed a Motion to Allow Appeal of Denial of Post-Conviction Order of Dismissal Pursuant to *Austin v. State*, 505 S.C. 453, 409 S.E.2d 395 (1991) on January 27, 2020. The Supreme Court, on January 29, 2020, issued an order dismissing the appeal without prejudice to allow Petitioner to seek *Austin* relief by filing a PCR application in the circuit court.

## CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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