

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

May 24 2022

S.C. SUPREME COURT

Appeal from Spartanburg County
G. Thomas Cooper, Circuit Court Judge

JERRY SIMPSON,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO. 2021-001378

MOTION TO HOLD APPEAL IN ABEYANCE

Undersigned counsel respectfully moves this Court to hold the timelines for filing the petition for writ of certiorari in abeyance pending receipt of an additional transcript of the September 13, 2021 hearing granting Petitioner a belated appeal from the denial of his first PCR pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). This is necessary so that Petitioner's appendix complies with Rule 243(f) of the South Carolina Appellate Court Rules.

1. The petition for writ of certiorari and accompanying appendix in this case are due for filing on May 26, 2022. This Court has granted one previous extension.

2. Petitioner pled guilty to conspiracy to traffic cocaine, second offense, and possession with intent to distribute cocaine, second offense. Petitioner was represented by Joseph Watson at his guilty plea and the state was represented by James Farr. Petitioner was sentenced

to twelve-years imprisonment for the conspiracy which was to be served concurrently with a federal sentence Petitioner was serving. Petitioner was further sentenced to thirty-years imprisonment for the possession with intent to distribute cocaine suspended on the service of five years of probation which was to be served consecutively to the twelve-year conspiracy sentence. Petitioner filed a notice of intent to appeal his guilty plea which was dismissed by the Court of Appeals for failure to provide a sufficient explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR.

3. Petitioner filed his first PCR application on September 11, 2017 and an evidentiary hearing was held on October 7, 2019 before the Honorable G. Thomas Cooper. Petitioner was represented by William Yarborough, III and the state was represented by Jacob Isenberg. The PCR judge denied Petitioner's PCR on January 6, 2020. However, PCR counsel did not file a notice of appeal until August 18, 2020. PCR counsel also filed a motion to allow late filing but that motion was denied and Petitioner's PCR appeal was dismissed by this Court as having been filed untimely.

4. Petitioner filed a second PCR application alleging that his PCR counsel was ineffective for failing to timely file a notice of appeal from the denial of PCR. Petitioner was then represented by Rodney Richey and the state was represented by Chelsey Marto. A hearing was held on whether Petitioner was entitled to relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), on September 13, 2021 before the Honorable William A. McKinnon. Judge McKinnon ultimately granted Petitioner an Austin appeal from the denial of his first PCR application.

5. While undersigned counsel was assembling the appendix in this case, he discovered that the second PCR transcript from the hearing where Petitioner requested an Austin appeal as relief was missing. Counsel does have the transcript from the first merit PCR hearing that took

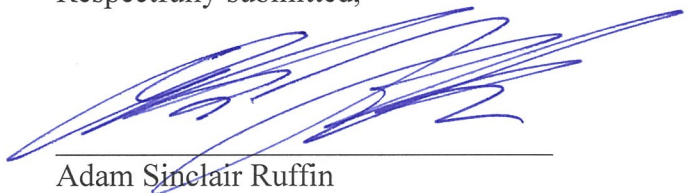
place on October 7, 2019 before the Honorable G. Thomas Cooper. Undersigned counsel requested an expedited transcript of the September 13, 2021 hearing in the hope that a second extension request or a motion to hold this case in abeyance would not be necessary. See Exhibit A (transcript request). However, the court reporter informed our office that she would not be able to produce the transcript on an expedited basis. See Exhibit B (email from court reporter). Consequently, the present motion to hold this case in abeyance is unfortunately necessary.

6. Counsel makes this request in good faith and not for the purpose of delay.

7. Counsel for the office of the Attorney General, Chelsey Marto, Esquire, has graciously consented to this motion to hold this appeal in abeyance.

WHEREFORE, undersigned counsel respectfully requests this Court grant his motion to hold this appeal in abeyance pending receipt of the transcript of the September 13, 2021 PCR hearing pertaining to his right to an Austin appeal. Undersigned counsel will inform the Court immediately upon receipt of the September 13, 2021 hearing transcript.

Respectfully submitted,



Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of May 2022