

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable L. Casey Manning, Circuit Court Judge

JAELOON JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000542

JOHNSON PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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Nov 10 2022

S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred in denying petitioner a belated appeal of his guilty plea?

STATEMENT

On May 2, 2019, a Sumter County grand jury indicted petitioner for murder, attempted armed robbery, criminal conspiracy, and a weapons charge. App. 111. On February 25, 2021, before the Honorable Kristi Curtis, petitioner pled guilty to voluntary manslaughter with a negotiated sentence of twenty-five years. App. 1. App. 5, l. 15 – 24. The other charges were dismissed. App. 6, l. 6 – 7. John Meadors represented the State. App. 1. Shaun Kent and Jack Furse represented petitioner. App. 1. Judge Curtis accepted the plea and sentenced petitioner to twenty-five years' imprisonment pursuant to the negotiations. App. 24, l. 7 – 11. Petitioner did not file an appeal. App. 56, l. 7 – 25.

On July 19, 2021, petitioner filed a PCR application. App. 28. On February 16, 2022, the Honorable L. Casey Manning held a hearing on petitioner's PCR application. App. 42. Timothy L. Griffith represented petitioner. App. 42. Megan H. Jameson represented the State. App. 42. On April 21, 2022, Judge Manning denied petitioner's PCR. App. 93. This petition follows.

STANDARD OF REVIEW

The appellate court defers to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)).

ARGUMENT

The PCR court erred in denying petitioner a belated appeal of his guilty plea.

Plea counsel admitted visiting petitioner after he was sentenced to discuss filing appeal and that he did not file an appeal for petitioner. App. 78, l. 10 – 79, l. 6. Plea counsel explained appellate rights before the guilty plea. App. 78, l. 4 – 17. Petitioner’s mother called shortly after the plea and mentioned that petitioner might want to appeal. App. 78, l. 4 – 17.

Plea counsel visited petitioner on March 2, 2021, which was five days after the plea hearing. App. 78, l. 4 – 17. App. 1. He discussed filing an appeal with petitioner at this meeting. App. 78, l. 10 – 79, l. 6. Plea counsel testified that petitioner did not ask him to file an appeal at that time. App. 79, l. 4 – 5. Even though only five days remained before the time to file a notice of appeal were left and petitioner was incarcerated at Kirkland, plea counsel filed no appeal.

While petitioner admitted he never asked his attorneys to file a notice of appeal, he unequivocally testified that he wanted to appeal. App. 56, l. 7 – 57, l. 15. App. 67, l. 7 – 14. He wanted to appeal because he felt like something was wrong. App. 67, l. 7 – 14. Judge Manning asked petitioner when he made the decision to appeal and petitioner responded that he made the decision while he was still in processing at Kirkland prison. App. 67, l. 21 – 68, l. 2.

Petitioner explained the impossibility of filing a *pro se* appeal in Kirkland and the difficulty in contacting his lawyers. App. 65, l. 1 – 66, l. 17. He was in lock-up. App. 65, l. 1 – 66, l. 17. He could not use the telephone. App. 65, l. 1 – 66, l. 17. He was on “letter restriction.” App. 65, l. 1 – 66, l. 17. He could not even order a PCR form. App. 65, l. 1 – 66, l. 17. He filed his PCR application as soon as he could. App. 66, l. 15 – 20. Petitioner testified

that he was not an attorney, did not know the proper procedures, but knew that he wanted an appeal. App. 67, l. 2 – 17.

The PCR court denied petitioner a belated appeal. App. 106-07. Judge Manning found petitioner failed to satisfy his burden of proof. App. 106-07. To support this conclusion, the court relied on the fact that petitioner was told of his right to appeal and never asked his attorneys to file one. App. 106-07.

The PCR court erred in denying petitioner a belated appeal. See White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). “Any party aggrieved may appeal. . . .” S.C. Code Ann. § 18-1-30. “Only a party aggrieved by an order, judgment, sentence or decision may appeal.” Rule 201(b), SCACR. “Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.” Rule 201(a), SCACR. “After a plea or trial resulting in conviction . . . a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed.” Rule 203(b)(2), SCACR.

When a criminal defendant appeals a guilty plea, the notice of appeal must contain “a written explanation showing that there is an issue which can be reviewed on appeal.” Rule 203(d)(1)(B)(iv), SCACR. The written explanation must identify the issue, its factual basis, and the ruling of the lower court on the issue. Rule 203(d)(1)(B)(iv), SCACR.

“Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967).” Id. (internal quotations and citations omitted). “To waive a direct appeal, a defendant must make a knowing

and intelligent decision not to pursue the appeal.” Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) (citation omitted).

Counsel in Simuel substituted his own judgment about the merits of an appeal for that of his client. While in Simuel, the defendant asked his attorney to appeal, that difference is not fatal to petitioner’s case. Simuel at 269-70, 701 S.E.2d at 738-39. The attorney in Simuel said he would speak to the defendant’s mother about it and file the appeal. Id. At PCR, the attorney admitted discussing an appeal with the defendant’s mother, but told her that the defendant received a good sentence and did not think there were any grounds for appeal. Id.

This Court reversed, holding that even in the face of adverse credibility findings by the PCR judge, no probative evidence existed that the defendant knowingly waived his right to a direct appeal. Id. at 271, 701 S.E.2d at 740. Whether petitioner had no grounds is not a valid legal reason to deny a client his appeal. The proper recourse is to file the appeal and follow the Anders procedure.

“A defendant has the procedural right to one fair bite at the apple.” Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002). “That is, every defendant has a right to file a direct appeal and one PCR application.” Id. In Wilson, the PCR applicant filed his application almost two years after his conviction. Id. at 216-17, 559 S.E.2d at 582. The PCR court granted the State’s motion to dismiss based on the statute of limitations. Id. Wilson’s lawyer failed to file an appeal and viewing the evidence in the light most favorable to Wilson, the Court found that he “did not voluntarily waive his direct appeal.” Id. The Court then concluded that the PCR statute of limitations did not apply because Wilson did not have his direct appeal. Id.

Here, petitioner testified unequivocally that he decided he wanted an appeal while under the strict confinements at Kirkland. Plea counsel knew the conditions of petitioner’s

confinement and knew that he was considering an appeal. Because plea counsel knew that petitioner was still considering an appeal, he was required to file the notice under Simuel because no final, voluntary waiver was obtained from petitioner. Plea counsel should have filed a notice of appeal to preserve petitioner's rights. The PCR court should have granted petitioner a belated appeal of his guilty plea.

STATEMENT OF ISSUE TO BE REVIEWED ON APPEAL UNDER

ANDERS V. CALIFORNIA PURSUANT TO RULE 243(I)(2)

Whether the trial court erred in accepting petitioner's guilty plea because it was unknowing and involuntary and petitioner wanted to go to trial?

CONCLUSION

For the foregoing reasons, this Court should reverse.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of November, 2022.

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Counsel for Jaelon Markell Jackson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge L. Casey Manning, which was held on February 16, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Jaelon Markell Jackson.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of November, 2022.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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This 10th day of November, 2022.