

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
D. Craig Brown, Circuit Court Judge

2021-CP-40-2769

Edward Kirk, # 368801,

Appellant,

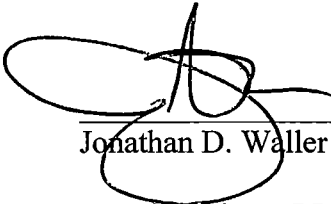
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Edward Kirk, # 368801, appeals his June 28, 2016, conviction as allowed by the Consent Order Granting Belated Appellate Review Pursuant to White v. State filed December 16, 2022, issued by the Honorable D. Craig Brown, Presiding Judge, Fifth Judicial Circuit.



Jonathan D. Waller

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DEC 30 2022

S.C. SUPREME COURT

December 27, 2022

Other Counsel of Record:
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Edward Kirk, Jr., #368801

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

) CASE NO. 2021-CP-40-2769

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S.C. SUPREME COURT

**CONSENT ORDER GRANTING
BELATED APPELLATE REVIEW
PURSUANT TO WHITE v. STATE**

2022 DEC 16 AM 9:58
FILED
C.C.P. Sec. 17-1-10

RICHLAND COUNTY
FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 8, 2021. Respondent made its Return on August 18, 2021. An evidentiary hearing on the matter was scheduled for November 15, 2021, at the Richland County Courthouse. Prior to the commencement of the hearing, counsel for the Applicant, Jonathan Waller, Esquire, and counsel for the Respondent, D. Russell Barlow, II, Esquire, of the South Carolina Office of the Attorney General, informed the court that the parties had reached a consent resolution to the matter and presented the proposed resolution to the court. This Order follows.

The Court had before it the Richland County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the August 2015 term, the Richland County Grand Jury indicted Applicant for armed robbery (2015-GS-40-4155), pointing and presenting firearms at a person (2015-GS-40-4156), and kidnapping (2015-GS-40-4161). Anna R. Good, Esquire, represented Applicant. April Sampson

*DCS
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of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant pled guilty on June 28, 2016, before the Honorable Jocelyn Newman. Judge Newman sentenced Applicant pursuant to a recommendation by the State, to sixteen years imprisonment for armed robbery, five years for pointing and presenting a firearm, and sixteen years for kidnapping, to run concurrently. Applicant alleges he submitted a *pro se* appeal.

ALLEGATIONS

In his application for PCR, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Was the Applicant denied Appellate Counsel on direct review"
 - a. "The Applicant had filed a *pro se* appeal to the South Carolina Court of Appeals. The Applicant also wrote a letter to the South Carolina Commission on indigent defense requesting for the appointment of counsel on direct appeal. The Applicant had not received any response from them."
2. "Was plea counsel ineffective for failure to file a timely appeal on direct review"
 - a. "The Applicant had informed plea counsel to file a notice of appeal upon information and belief the Applicant family member had recently informed him that the South Carolina Court of Appeals had informed them that there was no appeal pending for the Applicant."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges Counsel failed to file an appeal of his guilty plea after Applicant requested Counsel to do so. The State has consented to Applicant receiving a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35, (1974). Therefore, based on the foregoing, this Court finds Applicant is entitled to a belated direct appeal pursuant to White, and grants relief in the form of a belated appeal only.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate

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review. See Rule 203, SCACR. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Court grants Applicant a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35, (1974); and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 19 day of November, 2022.



D. CRAIG BROWN
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

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Dec 30 2022



ANGELL
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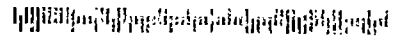
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S.C. SUPREME COURT



FARRIS HOWARD
CLERK OF COURT
SUPREME COURT OF SOUTH CAROLINA
PO BOX 11330
COLUMBIA SC 29211-1530