State of South Carolina	)	THE SUPREME COURT OF
County of Richland	)	SOUTH CAROLINA
	)	
William McLaughlin, #368667	)	Case No. 2016-CP-406348
Petitioner,	)	
	)	
	)	
VS.	)	Petition For Belated Appeal Review
	)	
State of South Carolina	)	
Respondent.	)	
	)	

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S.C. SUPREME COURT

Comes now, the applicant William McLaughlin, # 368667, who requests pursuant to Austin v. State, 305 S.C. 452, 409 S.E. 2d 395 (1991). He respectfully request that this Honorable court grant him the appropriate appellate review in this case.

The applicant is presently confined at the Broad River Correctional Institution of the South Carolina Department of Corrections pursuant to order of commitment from Richland county clerk of court. The applicant was indicted at the November 12, 2014, term of the Richland county grand jury for Attempted murder case No. 2014-GS-400-7073), and indicted again on June 17, 2015, for Kidnapping (2015-GS-400-2822). The applicant pleads guilty on the advise of his counsel and was convicted as charged. He was sentenced by the Honorable Clifton Newman, Judge. to confinement. And Mr. McLaughlin, was indicted again in June 17, 2015 for kidnapping 2015-GS-400-2822) there in Richland County.

The defendant was abandoned after his trial when he advised his counsel Stephen Krzyston, to filed the notice of appeal on his behalf. Counsel did not file the direct appeal from the conviction during a critical stage of defendant's case. Counsel was ineffective in failing to file notice of appeal, after the defendant advised his counsel to appeal. The defendant is precluded from exhausting all available state remedies state remedies are not deemed exhausted until the applicant utilized

law to raise his claim, see Id. § 2254 (c). The applicant satisfies the exhaustion requirement by properly pursuing a claim throughout the entire appellate process of the state. See Justice of Boston Mun. Court v. Lyden, 466 U.S. 294, 302-03 (1984) (Exhaustion requirement satisfied by presentation of claim on appeal to state supreme court from denial of motion to dismiss, see e.g. McCandless v. Vaugh, 172 F. 3d 255, 260 (3d cir. 1999). (Exhausted remedies available in court of state). Rust v. Zent, 17 F. 155, 160 (6th cir. 1994 (exhaustion requirement satisfied by filing required application in state appellate and supreme court. Wayne v. Missouri, Bd. of probation & parole, 83 F. 3d 994, 996 (8th cir. 1996).

Now I bring to the awareness of other issues that applicant should have received; that is the fact of direct appeal, of the subject matters pertaining to the case the applicant sixth Amendment entitles him to effective assistance of counsel on direct appeal. The sixth Amendment as applied to the states through the fourteenth Amendment, guarantees a criminal defendant the right to counsel on his first appeal as of right and also guarantees him the effective assiance of counsel on such an appeal U.S.C.A. Const. Amends 6. 14. It appeared that counsel had no timely direct appeal from the conviction and that the deadline did abridge the defendant's constitutional right to counsel on appeal. U.S.C.A. Const. Amend 6. Since the applicant told his lawyer Stephen Krzyston, Assist. public defender to appeal from the conviction, and the lawyer Stephen Krzyston, deopped the ball, then the defendant has been deprived of counsel but no assistance of counsel on appeal and abandonment is per se violation of the sixth Amendment U.S.C.A. Const. Amend. 6. In fact it would show prejudice to the applicant. Hudson v. Hunt, 235 F. 2d 882 (4th cir. 2000).

The court went on to hold that a professionally reasonable attorney should in all cases, consult with the defendant regarding an appeal. Id; White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1994).

In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstance must be considered. Id. In examining the totality of the circumstances courts should consider; (1) that a rational defendant would want to appeal for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonable demonstrated to counsel that he was intested in appealing. id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina supreme court for review of direct appeal issues pursuant to White v. State, see Rule 227 (g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E. 2d 60 (1986).

Presented Federal claims in full round of litigation before state trial and appellate courts ever though relitigation in state forumthough an other procedural device possible). After counsel refused to perfect an appeal the applicant begain the appeal process pro - se with notice of intent to appeal, and request for appellate defense assistance with notice, note Rule 71. 1 is based in part on former supreme court Rule 50 (1)-(8) and has no counter-part in the federal Rule 71. 1 was added by order of the supreme court on April 17, 1990, and became effective September 1, 1990. South Carolina PCR case law. Austin v. State, 305 S.C. 453, 409 S.E. 2d 345 (1991) state. "The right to seek appellate review of the denial of directed appeal is expressly authorized by state law S.C. code Ann.§ 17-27-100 (1995), supreme court Rule 50 (3).

Whether such review is granted is discretionary with court. Knight v. State, 284 S.C. 138, 325 S.E. 2d 535 (1985).

State v. Truesdale, 278 S.C. 368 S.E. 2d 528 (1982). The cardinal rule when evaluating the voluntariness of guilty pleas is to determine whether or not they were knowingly and intelligently entered. Boykin v. Alabama, 395 U.S. 238, 87 S.Ct. 1709 (1969).

Defense counsel for a criminal defendant must advise his client of the right to appeal following a guilty plea only when there are exceptional circumstances present. Weather v. State, 319 S.C. 59, 459 S.E. 2d 838 (1995).

The state charged the petitioner "with Attempted Murder, (2014-GS-400-7073), on November 13, 2014 the Richland county grand convened upon their oath. And indicted again on June 18, 2015 for kidnapping (2015-GS-400-2822). Counsel ill advised petitioner to agree to plead guilty and received 20years sentence for the attempted murder, and 5 years for the kidnapping for a total of (25) years sentence.

Counsel was ineffective for failing to appeal the sentence, and defendant did not waive his righs to appeal. The applicant contends due to his illiteracy to the law he was entitled to rely upon his counsel to make reasonable decision. Pursunat to U.S. v. Dewalt, 92 F. 30, 1209 without some authortative guidance the defendant did not understand the appeal process, from the guilty plea. Counsel failure to advised the applicant of his appeal, the counsel must ensure that a criminal defendant is made fully aware of his appeal right White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1994). A gross miscarriage of justice. See Butler v. State, 297 S.E. 2d 87 (S.C. 1990), in the applicant case the applicant has not had under judicial circumstances, a full fair bite at the apple.

An applicant who enters a plea on the advise of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation feil below an objective standard of reasonableness and that there is a reasonable probability that but for trial counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E. 2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E. 2d 795, 797 (1993). Given the applicant's burden of proof and the analysis to be applied to this claim, the applicant's claim of involuntary plea is in essence, a claim of ineffective of counsel, and it will be treated as such.

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 SW.E. 2d 373, 374 (2008). Absent extraordirary circumstances such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-fivolous grounds for appeal) or when the defendant reasonable demonstrated an interest in appealing there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E. 2d 20 at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470, 12) S.Ct. 1029, 145 L. Ed. 2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E. 2d 838 (1995). "Acts in consistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E. 2d 597, 598 (1981) (citing 92 C.J.S. Waiver P. 1063 (1955)).

See Aice v. State, 409 S.C. 2-395 (S.C. 1994, Anders requires appellate counsel to brief arguable issues despite counsel' to belief the appeal is frivolous, as a safeguard of the rights to appeal.

Applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence "Rule 71. 1 (e) SCRCP. normally, if trial counsel fails to file a notice of appeal error is proven, and a belated appeal is granted. In re Anonymous member of the bar, 303 S.C. 306, 400 S.E. 2d 483 (1991). However, in this case the facts support a clear conclusion of error on the part of trial counsel. In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered Id. In examining the totality of the circumstances courts should consider; (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal; or (2) that the supreme court has also adopted procedures from Anders v. California, 386 U.S. 738 (1967) to review of an application where appointed counsel does not

find any meritorious issues to appeal. Johnson v. State, 294 S.C. 310, 364 S.E. 2d 201 (1988). Therefore, if counsel believe that an appeal is frivolous, counsel must raise an arguable issue and move to be relieved. Id. Applicant is entitled to his "one bite at the apple and this includes appeal from the denial of Post-Conviction relief. Austin; Aice v. State, 305 S.C. 448, 450 409 S.E. 2d 392, 394 (1991). If the applicant request an appeal and none is given or if the record otherwise shows that the applicant did not knowingly and intellgently waive his right to appeal the PCR court in a successive application may find that the applicant is entitled to a belated appeal of his first application.

Odom v. State, 337 S.C. 256, 523 S.E. 2d 733 (1999), Austin. Procedures for review are the same as for a belated direct appeal' See SCACR Rule 227 (g), the supreme court has determined that the statute of limitations does not apply to seeking a belated appeal from a PCR application.

This particular defendant reasonable demonstrates to counsel that he was interested in appealing. Where the Post- Conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights the applicant may petition the South Carolina supreme court for review.

CONCLUSION

WHEREFORE, Defendant prays, this Honorable court will allow him to have his fair bite at the apple to this belated appeal review that being file with the Richland county clerk of court.