

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 23 2023

S.C. SUPREME COURT

Certiorari to Sumter County

Honorable Edward W. Miller, Circuit Court Judge

JEREL MARQUIS HERIOT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000038

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR judge erred in denying petitioner's allegation that trial counsel erred in failing to file an appeal of his guilty pleas submitted in the case.

STATEMENT

Petitioner Jerel M. Heriot pled guilty to possession of a weapon during the commission of a violent crime, carrying a pistol on premises serving alcohol, possession of a pistol by a person convicted of a crime, and two counts of attempted murder during the November 2021 term of the Sumter County General Sessions Court before Judge R. Kirk Griffin, and was sentenced to imprisonment for an aggregate fifteen-year term. App. 1-27. Ray E. Chandler, Esquire, represented petitioner at the guilty plea proceeding, and Assistant Solicitor Tyler B. Brown appeared on behalf of the state. Petitioner did not appeal his guilty pleas or sentences.

On May 16, 2022, petitioner filed a PCR application with the Sumter County Office of the Clerk of Court. App. 29-36. The respondent filed a Return dated September 8, 2022. App. 37-49. A PCR hearing in the case was convened on November 1, 2022, at the Sumter County Courthouse before Judge Edward W. Miller. App. 51-107. Petitioner was present at the PCR hearing and represented by Attorney Timothy L. Griffith, and Assistant Attorney General Daniel E. Dixon appeared on behalf of the state.

On December 1, 2022, Judge Miller issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App.111-119. Petitioner appealed Judge Miller's Order of Dismissal. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's allegation that trial counsel erred in failing to file an appeal of his guilty pleas submitted in the case.


At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. According to the solicitor's summary, petitioner fired gunshots into the parking lot at Club Melted Whiskey in Sumter, South Carolina, during the early morning hours of February 2, 2020. App. 14, l. 5 – p. 17, l. 23.

During the PCR hearing held in the case, petitioner testified that counsel never advised him of the right to appeal his case, and in effect claimed that he wanted such an appeal. App. 57, l. 15 – p. 59, l. 15; App. 71, lines 15-2.,

Trial counsel had a duty to make certain that petitioner was fully aware of his right to appeal and to ascertain whether petitioner desired an appeal, and then to file an appeal if an appeal was desired. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Frasier v. State, 306 S.C.158, 410 S.E.2d 572 (1991). Here, trial counsel did not perform his duty with respect to petitioner's appellate rights. A defendant is entitled to an appeal where there has been no intelligent or voluntary waiver of the right to an appeal made by the defendant. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975). Petitioner desired an appeal of his case and did not voluntarily waive his right to an appeal. Therefore, trial counsel erred in failing to take the appropriate steps to ensure petitioner's right to have his case reviewed on direct appeal. If after an indigent client requesting an appeal the client wishes to appeal, then trial counsel must serve and file a notice of appeal. In Re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E. 483 (1991). The PCR judge erred in denying petitioner's request for a belated appeal in the case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant petitioner's petition and allow full briefing on the issue raised above.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of August, 2023.

STATEMENT OF ISSUE ON DIRECT APPEAL

The trial judge erred in accepting partial guilty pleas in the case where two pleas were entered pursuant to Alford v. North Carolina, 400 U.S. 25 (1970), and the remaining pleas were entered as guilty pleas in the case. See App. 13, lines 7-14.

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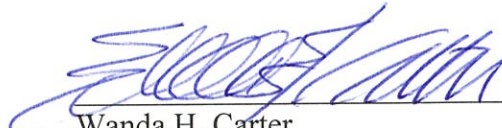
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jerel Marquis Heriot states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Edward W. Miller, which was held on November 1, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Jerel Marquis Heriot.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of August, 2023.

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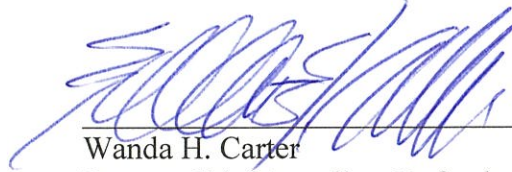
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her 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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