

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

TRE'VION ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000946

JOHNSON PETITION FOR WRIT OF CERTIORARI

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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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Feb 02 2024

S.C. SUPREME COURT

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ISSUE PRESENTED

The PCR judge erred in denying petitioner's claim that counsel erred in failing to file a notice of appeal in the case.

STATEMENT

Petitioner Tre'vion Anderson pled guilty to two counts of first-degree assault and battery, assault and battery of a high and aggravated nature, attempted murder, and two counts of unlawful possession of a weapon during the October 2019 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole, and was sentenced to imprisonment for an aggregate period of eighteen years. App. 1-65. Attorneys J. Patricia Anderson and William S. Bean, IV, represented petitioner at the guilty plea proceeding, and Assistant Solicitor Spenser Holloram-Smith appeared on behalf of the state. Patricia Rivers, Esquire, also represented petitioner in the lower court. Petitioner did not appeal his guilty pleas or sentences.

On September 17, 2020, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 67-73. The respondent filed a Return dated April 11, 2022. App. 73-83.

A PCR hearing in the case was convened on June 8, 2022, at the Spartanburg County Courthouse before Judge William A. McKinnon. App. 85-137. Petitioner was present at the hearing and represented by Attorney Fletcher N. Smith, and Assistant Attorney General Chelsey F. Marto appeared on behalf of the state.

On March 22, 2023, Judge McKinnon signed an Order of Dismissal in the case. App. 142-158. On March 27, 2023, petitioner filed a second PCR application and Motion to Reopen the first PCR case. App. 159-172. On April 24, 2023, Judge McKinnon signed an Order granting the Motion to Reopen. App. 173. A second PCR hearing was held on June 1, 2023, before Judge Frank R. Addy, who denied relief to petitioner per Order dated June 2, 2023. App. 174-187; App. 189-192. Petitioner appealed. This brief follows.

ARGUMENT

The PCR judge erred in denying petitioner's claim that counsel erred in failing to file a notice of appeal in the case.

In the case at bar, several males were wounded via gunshots fired by alleged gang members. The events occurred on October 29, 2018, in the East Blackstock Road area of Spartanburg, South Carolina, and petitioner was arrested and charged in connection with the shooting. App. 21, l. 21 – p. 30, l. 23.

During the PCR hearing held in the case, petitioner testified that he asked trial counsel about an appeal and a PCR action at the close of the guilty plea proceeding because he wanted an appeal. Petitioner stated that the only response he received from trial counsel was that he (trial counsel) did not handle PCR cases. App. 94, l. 3 – p. 97, l. 16.

Both trial counsels from this case testified at the PCR hearing and stated in effect that they had no recollection of a request for an appeal from petitioner. App. 117, l. 25 – p. 118, l. 7; App. 120, lines 3-11; App. 125, l. 13 – p. 126, l. 25.

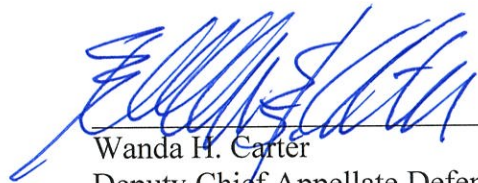
The PCR judge denied petitioner's claim that counsel erred in failing to appeal the case because it appeared that PCR was petitioner's intended pathway for relief. App. 155.

Trial counsel has a duty to make certain a client is fully aware of the right to appeal, and ascertain whether his client desires an appeal, and then file an appeal if the client wishes to appeal. 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, but was denied that right. Trial

counsel erred in failing to take the appropriate steps to ensure a review of petitioner's case on direct appeal. If an indigent 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).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition, and allow appellate review of the case pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of February, 2024.

STATEMENT OF QUESTION ON DIRECT APPEAL

The plea judge erred in issuing what was in effect a thirty-three year sentence in the case as this exceeded the recommended twenty-year sentencing cap negotiated by the parties in the case.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tre'Vion Antonio Anderson 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 Frank R. Addy, which was held on June 1, 2023, 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 Tre'Vion Antonio Anderson.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of February, 2024.

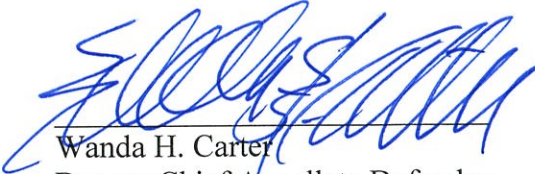
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CERTIFICATE OF COUNSEL

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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