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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Roger M. Young, Circuit Court Judge

TRAVIS BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000077

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

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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's failure to file a notice of appeal denied him the benefit of appellate review of his case.

STATEMENT

Petitioner Travis Brown pled guilty to failure to stop for a blue light, trafficking in cocaine (10 grams or more but less than 28 grams), second offense, and possession with intent to distribute cocaine base, second offense, during the October 2021 term of the Jasper County General Sessions Court before Judge Carmen T. Mullen. Petitioner was sentenced him to imprisonment for an aggregate period of eight years. App. 1-19. Assistant Solicitor Lynorr Musser prosecuted the case and Carolyn Carmody, Esquire, appeared on behalf of petitioner. Petitioner did not appeal his convictions and/or sentences.

On June 30, 2022, petitioner filed a PCR application with the Jasper County Office of the Clerk of Court. App. 21-29. The Respondent filed a Return dated December 21, 2022. App. 27-41.

A PCR hearing was convened on November 27, 2023, at the Colleton County Courthouse before Judge Roger M. Young, Senior. App. 43-63. Petitioner was present at the hearing and represented by Chelsey Marto and Assistant Attorney General Chase Seymour appeared on behalf of the state.

On December 23, 2023, Judge Young issued an Order of Dismissal in the case. App. 65-74. Petitioner appealed Judge Young's Order of Dismissal. This petition follows:

ARGUMENT

The PCR judge erred in denying petitioner's allegation that trial counsel's failure to file a notice of appeal denied him the benefit of appellate review of his case.

At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. In the case at bar, police observed petitioner driving a vehicle with a non-working tail light and a traffic stop ensued. This event occurred on the night of January 31, 2019, on Highway 17 in Jasper County, South Carolina. After petitioner stopped his vehicle, he sped away before the police approached his vehicle. A high speed chase by police followed. Ultimately, petitioner was apprehended and drugs were found on his person pursuant to a search at the scene. App. 11, l. 18 – p.12, l. 10.

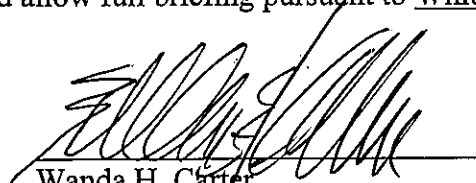
During the PCR hearing held in the case, petitioner testified that he did not ask for an appeal, but that he believed an appeal would have been beneficial in his case. App. 51, lines 4-13. Trial counsel testified at the hearing and stated that petitioner did not request an appeal in the case. App. 60, lines 7-9.

The dispositive issue here is whether petitioner was advised of his right to an appeal; and if so, whether he voluntarily waived his right to appeal. The record appeared to indicate that petitioner was not informed of his right to appeal. Therefore, petitioner in effect did not voluntarily waive his right to an appeal in his case. One can only waive a right that has been made known to exist. See Johnson v. Zerbst, 304 U.S. 458 (1938), where the court held that a waiver is the intentional relinquishment of a known right. Apparently, petitioner was not advised by counsel of his right to an appeal. As a result, petitioner did not voluntarily waive his right to an appeal. Note the inference that appellant would have exercised his right to an appeal had he been properly advised of the same because he testified that an appeal would have benefitted him.

Trial counsel has a duty to make certain a client is fully aware of the right to appeal, and ascertain whether the 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). Undoubtedly, petitioner desired an appeal of his case and did not voluntarily waive his right to an appeal. 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).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court reverse the PCR judge's finding on this issue and allow full briefing pursuant to White v. State, 263 S.C. 110, 208 S.E 2d 35 (1974) in the case.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of July, 2024.

STATEMENT OF ISSUE ON DIRECT APPEAL

The plea judge erred in not allowing the parties to exercise the option of a plea bargain reached wherein the terms of the plea offer would remain open “until the time a verdict [would have been] reached” in the event of a trial in the case.

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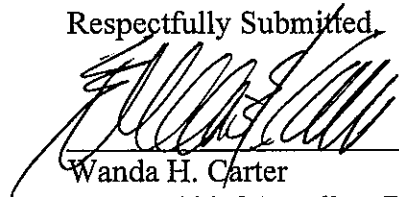
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Lamont Brown 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 Roger M. Young, which was held on November 27, 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 Travis Lamont Brown.

Respectfully Submitted,



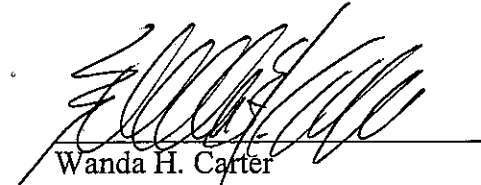
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of July, 2024.

CERTIFICATE OF COUNSEL

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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This 1st day of July, 2024.