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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Clifton Newman, Circuit Court Judge

JAMES EDGAR HUTCHINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000638

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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The PCR judge erred in denying petitioner’s claim that counsel was ineffective in failing to appeal his burglary convictions and sentences, which in turn deprived him of the right to challenge the legality of a 2002 prior burglary conviction that was used as an LWOP sentencing enhancer in order to threaten and coerce him into accepting a plea bargain in the case.....3

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ISSUE PRESENTED

The PCR judge erred in denying petitioner's claim that counsel was ineffective in failing to appeal his burglary convictions and sentences, which in turn deprived him of the right to challenge the legality of a 2002 prior burglary conviction that was used as an LWOP sentencing enhancer in order to threaten and coerce him into accepting a plea bargain in the case.

STATEMENT

Petitioner James Edgar Hutchinson pled guilty to two counts of first degree burglary during the January 2019 term of the Florence County General Sessions Court before Judge Thomas A. Russo, and was sentenced to imprisonment for a period of twenty-six years. App. 1-21. Caroline Lawson, Esquire, represented petitioner at the guilty plea proceeding, and Assistant Solicitor John Jepertinger appeared on behalf of the state. Petitioner did not appeal his guilty pleas or sentences.

On October 4, 2019, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 23-32. Subsequently, petitioner filed seven additional PCR applications as well. App. 33-111. The respondent filed a Return dated January 4, 2021. App. 112-118.

A PCR hearing in the case was convened on October 18, 2022, at the Florence County Courthouse before Judge Clifton Newman. App. 179-264. Petitioner was present at the hearing and represented by Attorney Steven W. Fowler, and Assistant Attorney General Danielle Dixon appeared on behalf of the state.

On April 3, 2024, Judge Newman issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 269-283.

Petitioner appealed Judge Newman's Order of Dismissal. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's claim that counsel was ineffective in failing to appeal his burglary convictions and sentences, which in turn deprived him of the right to challenge the legality of a 2002 prior burglary conviction that was used as an LWOP sentencing enhancer in order to threaten and coerce him into accepting a plea bargain in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, there were two break-ins at Rita Pattillo's home located in Florence County, South Carolina, on April 9, 2018, and April 10, 2018, which resulted in stolen televisions taken from therein on both occasions. App 14, l. 11 – p. 18, l.7.

During the PCR hearing held in the case, petitioner testified that he asked trial counsel to “file my direct appeal,” and that counsel's failure to appeal his case “denied that whole process [the appeal] altogether.” Petitioner added that he “would have filed an appeal [himself]” had he known in effect that counsel had not planned to honor his request for an appeal. App. 223, lines 19-25; Tr. 208, l. 22 – p. 209, l. 4. Petitioner testified that both he and his wife asked trial counsel to appeal the case. App. 209, l. 17 – p. 210, l. 11. Also, petitioner testified that his appellate issue would have included an attack on the legality of the 2002 prior burglary conviction that was used as a sentencing enhancer to trigger the LWOP notice that was filed in the case. App 202, l. 12 – p. 204, l.9; Tr. 217, l.16 - p.218, l.5. Petitioner stated that his 2002 prior burglary conviction was not a serious offense, and that it was used to support the LWOP notice filed in the case, which in effect coerced or “railroad[ed]” him into pleading guilty as charged. App. 218, l.23 - p. 219, l. 14. Again, petitioner would have argued on appeal that the 2002 prior burglary conviction was not an LWOP sentencing enhancer because it was a “daytime offense” and not a serious offense. App. 229, l. 2- p. 230, l.13; App. 206, lines 17- 24. Petitioner

asserted that his pleas were coerced and thus involuntarily given based on the illegal 2002 prior burglary conviction used to invoke the LWOP notice that was submitted in the case. App. 232, l. 7 – p. 233, l. 11.

Trial counsel testified at the PCR hearing and claimed that petitioner did not request an appeal of his case. App. 245, lines 19-24.

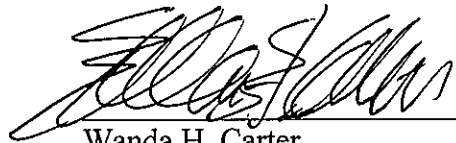
Note that petitioner alleged further that trial counsel failed to investigate into the legality of the 2002 prior burglary conviction that was used to trigger LWOP, and that but for counsel's omission in this regard, the same could have been successfully challenged and eliminated as an LWOP sentencing enhancer in the case. App. 218, l.23 - p. 219, l.1; App. 219, l.15 - p. 220, l.25; App. 229, l.13 - p. 230, l.13; App. 215, l.17 - p. 216, l.13; App. 203, l.2 - p. 205, l.5; App. 207, lines 15-17. All in all, trial counsel's performance in petitioner's case was deficient in violation of the Sixth Amendment, such that but for counsel's errors, the outcome of the case would have been different. See Hill v. Lockhart, 474 U.S. 52 (1985).

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 for an appeal if the client desires an 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 and 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 with respect to petitioner's request for an appeal of his case. If an indigent client requests an appeal,

then trial counsel has a duty to 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 full briefing on the above raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of August, 2024.

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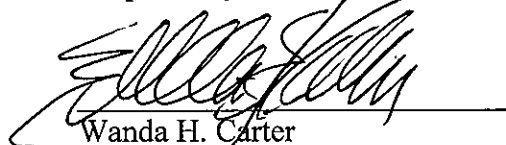
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Edgar Hutchinson 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 Clifton Newman, which was held on Oct. 18, 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 James Edgar Hutchinson.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of August, 2024.

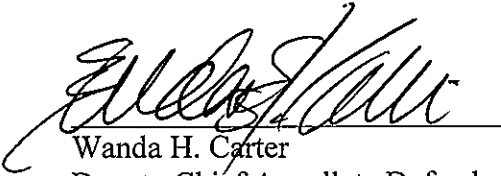
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CERTIFICATE OF COUNSEL

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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