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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Darlington County

Honorable George M. McFaddin, Circuit Court Judge

ANGELO HAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000550

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the post-conviction relief (PCR) court correctly grant Petitioner a belated direct appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974)?

STATEMENT OF THE CASE

On September 14, 2004, the state filed juvenile petitions charging Petitioner with murder, armed robbery, and possession of a weapon during the commission of a violent crime for actions that occurred on September 9, 2004, when Petitioner was fifteen years old. App. 1. That same day, the state filed a motion requesting the petitions be transferred to the Court of General Sessions. App. 1. On July 18, 2005, a hearing was held before the Honorable Roger E. Henderson to determine whether jurisdiction should be transferred to the Court of General Sessions. App. 2. Then Assistant Solicitor Kenard Redmond represented the state. Henry “Hank” Anderson, Jr. represented Petitioner. App. 2. By order dated August 3, 2005, Judge Henderson found it was “in the best interest of Angelo Ham that he be waived up to the Court of General Sessions.” App. 50-51.

A Darlington County grand jury indicted Petitioner in October 2005 for murder, armed robbery, and criminal conspiracy. App. 590-595. On April 17, 2006, Petitioner pled guilty as indicted before the Honorable John Milling. App. 52. Judge Milling sentenced Petitioner to five years imprisonment for conspiracy. App. 80, ll. 9-24. However, he deferred sentencing on the murder and armed robbery offenses until after Petitioner’s codefendant Anthony Robinson, who was served with notice of the state’s intent to seek the death penalty, was tried. The state anticipated that Petitioner and his other codefendant Dennis Hunter would testify against Robinson. App. 56, l. 22 – 57, l. 6.

Petitioner’s codefendant Anthony Robinson ultimately pled guilty in exchange for a sentence of life without parole. Consequently, Petitioner’s testimony against Robinson was not needed. On September 14, 2007, a sentencing hearing was held before Judge Milling. At the

conclusion of the hearing, Judge Milling sentenced Petitioner to life without parole for murder and twenty-five years for armed robbery. App. 122, ll. 19-21.

Petitioner timely filed a notice of appeal. However, with the advice of counsel, Petitioner ultimately withdrew his direct appeal. By order filed June 9, 2008, the Court of Appeals dismissed Petitioner's appeal. App. 125-128.

On November 21, 2008, Petitioner filed an application for post-conviction relief. App. 145-149. The state filed a return to this application dated February 25, 2009. App. 150-154. An evidentiary hearing was convened on September 13, 2010, before the Honorable Thomas A. Russo. Then Assistant Attorney General Karen Ratigan represented the state. Gary Finklea represented Petitioner. By order filed December 10, 2010, Judge Russo denied Petitioner relief. App. 156-167. On March 11, 2014, the Court of Appeals dismissed Petitioner's appeal after a review pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). App. 168-169.

On March 20, 2013, Petitioner filed a successive application for post-conviction relief arguing his sentence of life without parole imposed for a crime he committed as a juvenile violated the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution pursuant to Miller v. Alabama, 567 U.S. 460 (2012), where the United States Supreme Court held that mandatory sentences of life without parole for juvenile offenders violate the Eighth Amendment. App. 171-181. On that same day, Petitioner filed a motion to stay the proceedings until the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). App. 182-185. By order filed March 16, 2017, the circuit court ultimately dismissed Petitioner's application in light of our Supreme Court's holding in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

On June 8, 2016, Petitioner filed a motion for resentencing pursuant to Aiken v. Byars, App. 431-433. A resentencing hearing was held on March 3, 2022, before the Honorable Roger E. Henderson. App. 434. Deputy Solicitor Kenard Redmond represented the state. Robert Gailliard represented Petitioner. App. 434. At the conclusion of the hearing, Judge Henderson resentedenced Petitioner to life without parole for murder. App. 521, ll. 13-25.

While a timely notice of appeal was filed on Petitioner's behalf, the Court of Appeals dismissed Petitioner's appeal because counsel for Petitioner failed to timely serve the notice of appeal on the state. App. 560. The Court of Appeals denied Petitioner's subsequent motion to recall the remittitur. App. 572-573.

On April 26, 2022, Petitioner filed an application for post-conviction relief (PCR) seeking a belated direct appeal from his resentencing pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974). App. 574-580. The state filed a return to this application on February 8, 2023. App. 581-589. An evidentiary hearing was convened on March 4, 2024, before the Honorable George McFadden, Jr. App. 596. Assistant Attorney General D. Russell Barlow represented the state. Steven Fowler represented Petitioner. App. 596. By order filed March 15, 2024, Judge McFadden granted Petitioner a belated appeal. App. 606-611.

This petition for writ of certiorari follows.

ARGUMENT

The post-conviction relief (PCR) court correctly granted Petitioner a belated direct appeal pursuant to *White v. State*, 236 S.C. 110, 108 S.E.2d 35 (1974).

The PCR court correctly granted Petitioner a belated direct appeal pursuant to *White v. State*, 236 S.C. 110, 108 S.E.2d 35 (1974). Robert Gailliard, who represented Petitioner during his resentencing proceeding, testified at the evidentiary hearing that he failed to timely serve the state with the notice of appeal. App. 602, l. 24 – 603, l. 8. Consequently, the Court of Appeals dismissed Petitioner’s direct appeal. Based on Gailliard’s testimony, the state conceded Petitioner was entitled to a belated direct appeal. App. 603, ll. 21-25.

The PCR court found Petitioner did not knowingly and intelligently waive his right to appeal. App. 610. Consequently, the court found Petitioner was entitled to a belated direct appeal pursuant to *White v. State*. App. 610-611.

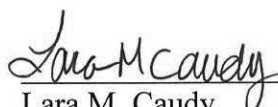
“The appropriate scope of review of this Court is that any evidence of probative value is sufficient to uphold the PCR judge’s findings.” *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). When a client is convicted and sentenced, trial counsel has a duty to make certain the client is fully aware of the right to appeal. *In re Anonymous Member of the Bar*, 303 S.C. 306, 400 S.E.2d 483 (1991); *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738 (1967).” *Smith v. State*, 309 S.C. 413, 424 S.E.2d 480 (1992). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” *Simuel v. State*, 390 S.C. 267, 271, 701 S.E.2d 738, 740 (2010) (citing *Sheppard v. State*, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004)).

It is obvious Petitioner wished to appeal his sentence since he timely filed a notice of appeal, but his counsel failed to timely serve the notice of appeal on the state. This evidence supports the PCR court's conclusion that Petitioner did not knowingly and voluntarily waive his right to appeal. Because there is evidence of probative value to support the court's finding, respectfully, this Court should grant certiorari and consider Petitioner's belated direct appeal.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and consider his belated direct appeal. Petitioner ultimately requests this Court reverse his sentence and remand for a new sentencing hearing in compliance with Miller v. Alabama, 567 U.S. 460 (2012) and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of November, 2024.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Honorable George M. McFaddin, Circuit Court Judge

ANGELO HAM,

PETITIONER

V.

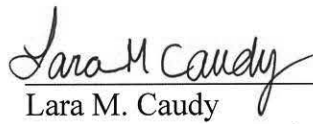
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000550

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case have been served upon D. Russell Barlow, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 12th day of November, 2024.



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER