

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County
Paul M. Burch, Circuit Court Judge

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Nov 13 2024

S.C. SUPREME COURT

DANIEL JAMAAL LAWRENCE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000696

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

1. Whether the PCR court correctly found petitioner is entitled to belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), where the parties agree he did not knowingly and voluntarily waive his right to a direct appeal?

STATEMENT OF THE CASE

On November 13, 2019, a jury found petitioner guilty of first-degree burglary and the unlawful carrying of a handgun. App. 262:16-24, 275, 278. John Loy represented appellant, and Donald Sorenson represented the state. App. 1, 54. Trial counsel did not file a notice of appeal. App. 312, 314. Petitioner filed a *pro se* notice of appeal on December 4, 2019, but it was dismissed as untimely. App. 310. Thereafter, trial counsel informed petitioner he knew of petitioner's desire to appeal and failed to file a notice due to a "break down in communication" in his office. App. 312, 314.

Petitioner filed an application for post-conviction relief on May 18, 2020, alleging trial counsel was ineffective for failing to timely file the notice of appeal. App. 289. He also alleged, among other things, that counsel was ineffective for failing to request a competency evaluation. App. 289. Christopher Geel represented appellant at the PCR hearing, and the state "concede[d] that Mr. Lawrence did not voluntarily waive his right to a direct appeal." App. 301, 305:16-17. Petitioner then "waive[d] all of the remaining grounds for relief" after informing the court he understood what he was doing. App. 314, 306:16-307:5. The PCR court, Judge Paul M. Burch, issued an order finding petitioner was entitled to a belated appeal and dismissing his other claims. App. 313-15.

This petition for a writ of certiorari and accompanying brief follow, pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), and *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60, (1986) (mem.).

ARGUMENT

I. The PCR court correctly granted petitioner a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), where the parties agree he did not knowingly and voluntarily waive his right to a direct appeal.

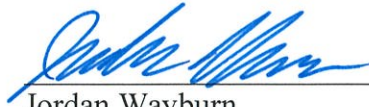
"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (citation omitted). "In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)." *Id.* "To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." *Sheppard v. State*, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) (citing *Davis v. State*, 288 S.C. 290, 290, 342 S.E.2d 60 (1986) (mem.)).

In *Davis* this Court ordered that where a PCR court finds a defendant did not knowingly and intelligently waive his right to direct appeal, "the applicant must petition this Court for a *White v. State* review." 288 S.C. at 291 n.1, 342 S.E.2d 60. The PCR court cannot itself grant relief by ordering belated appellate review. *Id.* The order further directed: "On the date the Petition is served, Petitioner shall also serve and file a brief addressing all direct appeal issues." 288 S.C. at 291, 342 S.E.2d 60.

Here, trial counsel was aware of petitioner's intent to appeal any conviction. Nonetheless, counsel failed to timely file the notice of appeal. The Court of Appeals then correctly dismissed his *pro se* notice because it was untimely. Given the state's concession petitioner did not waive his right to direct appeal and the letter from trial counsel admitting that fact, the PCR court properly entered an order finding petitioner has a right to belated review under *White* and *Davis*. Petitioner now requests this Court grant relief and also serves his brief for the direct appeal.

CONCLUSION

As the PCR court held and the state concedes is proper, Petitioner requests this Court grant him belated appellate review.



Jordan Wayburn
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ATTORNEY FOR PETITIONER

This 13th day of November, 2024.