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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO DORCHESTER COUNTY
Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No. 2024-000696

DANIEL J. LAWRENCE,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

BRYAN T. HALL
Assistant Attorney General
S.C. Bar No. 106039
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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(1974), where the parties agree Petitioner did not knowingly and
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QUESTIONS PRESENTED

PETITIONER'S STATEMENT OF QUESTIONS

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?

RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS

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 Petitioner did not knowingly and voluntarily waive his right to an appeal based on trial counsel's letter to Petitioner in which he admitted to failing to file an appeal in a timely manner?

STATEMENT OF THE CASE

In May 2019, the Dorchester County Grand Jury indicted Daniel J. Lawrence (“Petitioner”) for burglary – first degree (2018-GS-18-2104) and unlawful carrying of a handgun (2018-GS-18-2106). (App. 275; 278). On November 12-13, 2019, Petitioner proceeded to a jury trial before the Honorable Maite Murphy. Assistant solicitors Donald Sorenson and George Smythe prosecuted the case. Petitioner was represented by John Loy, Esq. Petitioner was convicted by the jury, and Judge Murphy sentenced him to a concurrent sentence of forty (40) years for burglary – first degree and one (1) year for the weapon charge.

On December 9, 2019, a notice of appeal was filed on Petitioner’s behalf by John Loy. On January 6, 2020, the Court of Appeals dismissed the appeal for failure to timely serve the notice of appeal. *State v. Lawrence*, S.C. Ct. App. Order Filed Jan. 6, 2020. The remittitur was sent on January 24, 2020. (App. 311).

On May 18, 2020, Petitioner filed an application for post-conviction relief (“PCR”), alleging trial counsel was deficient for failing to file a notice of appeal and for other reasons. On February 8, 2024, an evidentiary hearing convened before the Honorable Paul M. Burch. Petitioner was present and represented by Christopher Geel, Esq. Petitioner knowingly and intelligently waived all grounds for PCR relief and proceeded solely on the issue of whether he is entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). Based on a letter from Petitioner’s trial counsel admitting to failing to timely file a notice of appeal, the State (“Respondent”) conceded that Petitioner is entitled to a belated appeal. (App. 305; 312).

On April 10, 2024, Judge Burch issued an Order granting Petitioner a belated appeal under *White* and dismissing all other PCR claims with prejudice. Petitioner’s petition for a writ of certiorari followed.

STANDARD OF REVIEW

Appellate courts give great deference to the PCR court's factual findings and will uphold them if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts will review the PCR court's conclusions of law *de novo* and will reverse if the PCR court's decisions are controlled by an error of law. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms (i.e. deficient performance), and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

ARGUMENT

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 Petitioner did not knowingly and voluntarily waive his right to an appeal based on trial counsel's letter to Petitioner in which he admitted to failing to file an appeal in a timely manner.

The State concedes that Petitioner did not knowingly and voluntarily waive his right to a direct appeal. Following a trial, counsel is required to inform a defendant of their right to an appeal. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). Absent an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedures of *Anders v. California*, 386 U.S. 738 (1967). *Turner v. State*, 380 S.C. 223, 670 S.E.2d 373 (2008). To waive his right to a direct appeal, a defendant must make a knowing and intelligent decision not to pursue an appeal. Where the PCR judge determines that Applicant did not knowingly and voluntarily waive his right to a direct appeal from his trial, Applicant may be allowed a belated appeal of trial errors. *White*, 263 S.C. at 119, 208 S.E.2d at 39-40; *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

Here, Petitioner alleged that he did not knowingly and voluntarily waive his right to an appeal. Petitioner's allegation is supported by a letter from his trial counsel in which counsel admitted that Petitioner expressed his desire to appeal, and counsel failed to appeal in a timely manner. Thus, the PCR court correctly found that Petitioner did not knowingly and voluntarily waive his right to a direct appeal and is entitled to a belated appeal pursuant to *White v. State*.

CONCLUSION

Based on the foregoing argument, the PCR court correctly found Petitioner did not knowingly and voluntarily waive his right to a direct appeal. Accordingly, the State respectfully requests this Court to affirm the PCR court's ruling and grant Petitioner a belated appeal.

Respectfully submitted,



BRYAN J. HALL
Assistant Attorney General

S.C. Bar No. 106039
Post Office Box 11549
Columbia, S.C 29211
(803) 734-3737

ATTORNEY FOR RESPONDENT

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