

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

OCT - 9 2013

Certiorari to York County

Edgar W. Dickson, Circuit Court Judge

S.C. Supreme Court

PHILLIP WATTS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213513

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

INDEX 1

ISSUE PRESENTED 2

STATEMENT 3

ARGUMENT 4

CONCLUSION 5

ISSUE PRESENTED

Did the PCR judge correctly find that petitioner was entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), when petitioner did not knowingly and intelligently waive his right to direct appeal?

STATEMENT

In May of 2008, the York County Grand Jury indicted Watts for armed robbery, two counts of possession of a weapon during the commission of a violent crime, three counts of assault and battery with intent to kill, two counts of kidnapping and attempted armed robbery, indictments #2008-GS-46-2086, 2086(A), 2087, 2088, 2089, 2090, 2090(A), 2091, 2092. On April 27, 2009, Watts appeared before the Honorable Lee S. Alford and pled guilty but mentally ill to all of the charges. Attorney Douglas Gay represented Watts at the guilty plea. Attorneys Kevin Brackett and Willy Thompson prosecuted the case on behalf of the State. Judge Alford sentenced Watts to seven consecutive life sentences. The direct appeal was not perfected.

On September 17, 2010, Watts filed an application for post conviction relief, 2010-CP-46-3969. On November 10, 2011, the State filed a return and motion to dismiss all claims except the belated appeal claim. On October 9, 2012, an evidentiary hearing was held before the Honorable Edgar W. Dickson. Attorney Leah Moody represented Watts at the hearing. Attorney Rutledge Johnson was present on behalf of the State. In a written order filed November 5, 2012, Judge Dickson dismissed the application but granted a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). This petition for writ of certiorari and a separately filed brief follow.

ARGUMENT

The PCR judge correctly found that petitioner was entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), when petitioner did not knowingly and intelligently waive his right to direct appeal.

During the evidentiary hearing Watts testified that he asked his attorney to file an appeal after he pled guilty but mentally ill and was sentenced to seven consecutive life sentences. (App. p. 100, lines 12 – 22). Watts testified that he only learned that an appeal had not been filed when he contacted the South Carolina Court of Appeals in August of 2010. (App. p. 101, lines 3-23). Watts filed the application for post conviction relief in September of 2010.

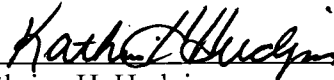
Plea counsel confirmed that Watts asked him to file the notice of intent to appeal and plea counsel testified that he filed the notice of intent to appeal. (App. p. 106, line 18 – p. 107, lines 1-17). Plea counsel testified, “I believe that ultimately it was dismissed for not filing the subsequent documents that would be required after the Notice of Appeal.” (App. p. 108, lines 3-5).

In the order the PCR judge wrote, “The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to direct appeal. The Court concludes that the Applicant is entitled to a belated review of his conviction(s). A petition for belated review pursuant to White v. State can remedy the Applicant’s lack of a direct appeal.” (App. p. 114). The PCR judge correctly found that petitioner was entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), when petitioner did not knowingly and intelligently waive his right to direct appeal.

CONCLUSION

Based on the above argument, this Court should grant the belated appeal.

Respectfully submitted,



Kathrine H. Hudgins

Appellate Defender

E-Mail: khudgins@sccid.sc.gov

1330 Lady Street, Suite 401

Columbia, South Carolina 29201

(803) 734-1343

ATTORNEY FOR PETITIONER

This 9th day of October, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Edgar W. Dickson, Circuit Court Judge

PHILLIP WATTS,

PETITIONER,

V.

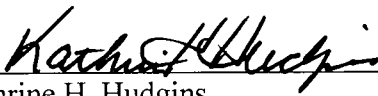
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213513

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also served upon Mr. Phillip Watts #307234 Perry Correctional Institution, 430 Oaklawn Road Pelzer, SC 29669. this 9th day of October, 2013.


Kathrine H. Hudgins
Appellate Defender
E-Mail: khudgins@sccid.sc.gov
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 9th day
of October, 2013.


(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.