

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
W. Jeffrey Young, Circuit Court Judge

Case No.: 2011-CP-23-04926

Harold Anthony Trout, Appellant,

v.

State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI

J. Falkner Wilkes, (SC Bar #12893)
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Counsel for Appellant

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OCT 31 2013

S.C. SUPREME COURT

QUESTIONS PRESENTED FOR REVIEW

- I. DOES THE RECORD SUPPORT THE COURT'S GRANTING A BELATED APPEAL IN THIS CASE?**

- II. DID THE PCR COURT IMPROPERLY LIMIT THE APPLICANT'S PRESENTATION OF OTHER ISSUES?**

STATEMENT OF THE CASE

Harold Anthony Trout was indicted by the State Grand jury for Official Misconduct in Office and Attempting to Influence a Juror by Written or Oral Communication. The trial proceeded before a jury in the Court of General Sessions for Greenville County on March 28, 29, 30, and 31 of 2011, the Honorable D. Garrison Hill, presiding.

Appellant was represented at trial by counsel, Kenneth C. Gibson. The State was represented by S. Creighton Waters, of the Office of the Attorney General. After a trial by jury the Appellant was found not guilty of Official Misconduct in Office and guilty on Attempting to Influence a Juror. He was sentenced to a period of six months incarceration. A notice of appeal was timely filed but trial counsel failed to properly perfect the appeal and the appeal was subsequently dismissed. Appellant filed a post conviction relief action and was granted a belated appeal. This petition follows.

PETITION

Pursuant to Rule 243, SCACR, Harold Anthony Trout hereby petitions this Court for a writ of certiorari based on the following:

I. THE PETITIONER IS ENTITLED TO A BELATED APPEAL.

To establish a claim for ineffective assistance of counsel, "the applicant must show that: (1) counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) counsel's deficient performance prejudiced the applicant's case." Speaks v. State, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (*citing* Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). An applicant may demonstrate prejudice by establishing, by a reasonable probability that, "but for counsel's unprofessional errors, the result of the proceeding would have been different." Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011).

In reviewing the findings of the PCR court, this Court applies an "any evidence" standard of review. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). The "PCR court's ruling should be upheld if it is supported by any evidence of probative value in the record." Speaks, 377 S.C. at 399, 660 S.E.2d at 514 (*citing* Cherry, 300 S.C. at 119, 386 S.E.2d at 626).

When a criminal defendant requests an appeal, but counsel fails to file an appeal, counsel is deemed deficient. In such a case, the defendant is entitled to a belated appeal without showing the appeal would likely have had merit. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Rodriguez v. United States, 395 U.S. 327, 89 S.Ct. 1715, 23 L.Ed.2d 340 (1969). Fleming v. State, 399 S.C. 380, 731 S.E.2d 889 (2012). In this case, the Petition desired an appeal, and although trial counsel filed a notice of appeal, he failed to perfect the appeal. As a result, the Petitioner's direct appeal was dismissed. (PCR T. 1-14). He is therefore entitled to a belated appeal. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

II. THE COURT IMPROPERLY LIMITED THE PETITIONER'S CLAIMS AND PREVENTED THE PETITIONER FROM PRESENTING ALL OF HIS ISSUES AND EVIDENCE.

The record of the Petitioner's PCR hearing show that the Petitioner attempted to bring up additional issues and evidence but was prevented from doing so. (PCR 1-14). The Application and Amended Application in this case show that the Petitioner had issues in addition to trial counsel's failure to perfect his direct appeal. Most important are the issues which, in addition to the ineffective assistance of counsel claim in general, the issues were important as they would have led to the introduction of evidence at the PCR that is relevant to the appeal.

Pursuant to Rule 59, the Applicant hereby moved the PCR Court to alter or amend its order, and further to reopen the case, take new evidence, and amend its order accordingly. Petitioner sought to raise and preserve other claims under his Application which were not allowed to be addressed by the Petitioner at his PCR hearing. The Application and Amended Application in this case allege a *prima facie* case for relief which require the Applicant be given an opportunity to submit evidence to support his claims. In this case the Applicant represented himself, without the benefit of counsel either in the drafting of the Application/Amended Application or in the actual hearing in the matter.

The record from the PCR hearing shows that the Petitioner was not afforded a full opportunity to present evidence on certain issues that were adequately pled and properly within the scope of the present post conviction relief action. Specifically the Petitioner sought to submit evidence as to the effectiveness of trial counsel to raise and preserve issues during the trial sufficiently for such issues to be addressed by the appellate court in this case. As the Applicant has been granted a belated direct appeal he faces the difficulty that he may still not have his issues ruled on by this Court if trial counsel was ineffective in preserving the issues for appeal.

The evidence which trial counsel failed to offer or proffer during the criminal trial included the recording of the phone conversations between the foreman of the

grand jury and the Petitioner. These conversations were initiated by the foreman of the grand jury and show that the Petitioner's continuing contact with the grand jury was the result of this contact with grand jury foreman. This evidence would have been relevant to the jury's determination of guilt as it bore on whether the Petitioner was attempting to influence the grand jury or simply responding to requests of an investigation. It was relevant to the case and trial counsel was ineffective for failing to offer it during the trial of the case.

The PCR court therefore erred in refusing to allow the Petitioner the opportunity to present evidence that should have been presented by trial counsel during the trial of the case.

Respectfully submitted,

J. Falkner Wilkes, 12893
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Counsel for Petitioner

October 27, 2013.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF STATE GRAND JURY
D. Garrison Hill, Circuit Court Judge

Case No.: 2009-GS-47-00006

State of South Carolina, Respondent,

v.

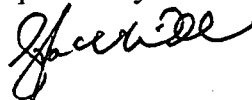
Harold Anthony Trout, Appellant.

CERTIFICATE OF SERVICE

I certify that I have served a copy of Appellant's Brief on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 27th day of October, 2013, addressed as follows:

Karen Ratigan, Asst. Atty. Gen.
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Respectfully submitted,



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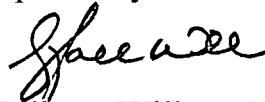
State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that I have served a copy of Petitioner's Petition for Writ of Certiorari on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 27th day of October, 2013, addressed as follows:

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W. Jeffrey Young, Circuit Court Judge

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State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that I have served a copy of Appendix on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 28th day of October, 2013, addressed as follows:

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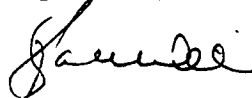
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State of South Carolina, Respondent.

CERTIFICATE

I certify that the Appendix has been redacted in compliance with the
Supreme Court's Order 2007-08-13-02.

Respectfully submitted,



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October 27, 2013.

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