

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Certiorari to Lexington County **NOV - 1 2013**

Clifton Newman, Circuit Court Judge **S.C. Supreme Court**

JEFFERY T. LUCAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000455

PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
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 PRESENTED2

STATEMENT3

ARGUMENT4

CONCLUSION5

ISSUE PRESENTED

Whether the trial court correctly granted petitioner a belated appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974)?

STATEMENT

Petitioner was originally indicted for assault and battery with intent to kill, but in March 2009, he was indicted in Lexington County for the same factual circumstances for infliction of great bodily injury upon a child. App. 505. App. 435, ll. 15 – 22. On March 16 – 18, 2009, petitioner was tried before the Honorable William P. Keesley and a jury. App. 1. Lawrence G. Wedekind, Sara McMahan, and Michael D. Ross represented the State. App. 1. H. Wayne Floyd represented petitioner. App. 1. The jury convicted petitioner. App. 334, ll. 19 – 24. Petitioner did not appeal.

On February 19, 2010, petitioner filed a PCR application. App. 375. On April 25, 2012, a hearing was held before the Honorable Clifton Newman. App. 432. Tommy A. Thomas represented petitioner. App. 432. Kaelon E. May represented the State. App. 432. On February 15, 2013, Judge Newman granted petitioner a belated appeal. App. 492. Judge Newman denied petitioner's remaining PCR allegations. App. 492. This petition follows.

ARGUMENT

The trial court correctly granted petitioner a belated appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974).

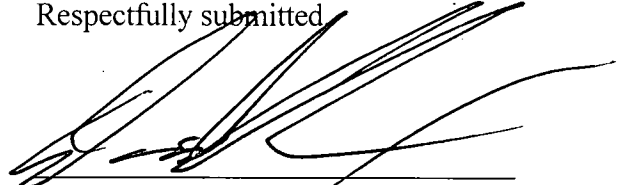
Judge Newman correctly granted petitioner a belated appeal. The PCR judge found that petitioner “did not knowingly and voluntarily waive his right to a direct appeal. App. 501. Petitioner testified that he asked trial counsel to file an appeal. App. 479, ll. 5 – 7. Petitioner did not find out that trial counsel failed to file an appeal for him until he was allowed access to his family by the Department of Corrections. App. 479, ll. 8 – 20. Trial counsel testified that he felt an appeal “would have been a waste of money.” App. 450, ll. 1 – 4.

“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). This case meets that standard. The PCR judge’s ruling is supported by petitioner’s testimony that he asked his attorney to file an appeal. Trial counsel admitted that he did not file an appeal. Therefore, this evidence supports the PCR judge’s conclusion that petitioner is entitled to a belated appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974).

CONCLUSION

For these reasons, the Court should grant the petition and consider petitioner's belated appeal.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of November, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
Clifton Newman, Circuit Court Judge

JEFFERY T. LUCAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000455


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 John Walt Whitmire, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and upon Jeffery T. Lucas, #333799 at McCormick Correctional Institution, this 1st day of November, 2013.


David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day
of November, 2013.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: August 21, 2023.