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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Walton McLeod, IV, Circuit Court Judge

SAMUEL SMILEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000337

PETITION FOR WRIT OF CERTIORARI

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The PCR court correctly granted petitioner a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).3

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ISSUE PRESENTED

Did the PCR court correctly rule Petitioner is entitled to a direct appeal where Petitioner and trial counsel credibly testified he "always wanted to appeal" and counsel failed to do so?

STATEMENT

Appellant was indicted on February 4, 2013, by the Charleston County grand jury as an accessory before the fact to armed robbery. App. 277. He was tried before judge Roger Young, Sr., and a jury from November 17 to 19, 2014. App. 25. He was represented at trial by Jason Bybee. App. 25. Lindsey McClain prosecuted the case. App. 25. Ultimately, the jury found him guilty as charged, and the trial court issued a thirty-year sentence. App. 269:1-11, 274:23-25.

Appellant filed a motion to reconsider the sentence. App. 2, 280. The trial court did not rule on the motion until it denied the motion in 2021.¹ App. 2. Appellant's counsel did not file a notice of appeal from that order. App. 2.

In December of 2021, Appellant filed an application for post-conviction relief, arguing counsel was ineffective for failing to seek appellate review and failed to adequately explain his ability to plead guilty. App. 2-3, 285, 287. Judge Walton McLeod, IV, held an evidentiary hearing on March 14, 2024. App. 304. Christopher Murphy represented Petitioner at the hearing, and Danielle Dixon represented the state. App. 304.

Following the hearing, the PCR court concluded Appellant "did not voluntarily waive his direct appeal." App. 1. Pursuant to *Davis v. State*, 288 S.C. 290, 290, 342 S.E.2d 60 (1986) (mem.), and Rule 243(i), SCACR, this brief of Appellant is filed with his petition for a writ of certiorari to review the PCR court's order.

¹ In the interim, appellant filed both a PCR application and federal habeas application, both of which were dismissed as premature due to the still-pending motion. App. 2.

ARGUMENT

The PCR court correctly granted petitioner a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

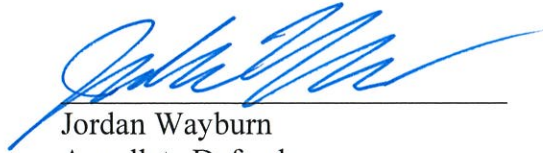
"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (citation omitted). "In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with 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 the 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; *see generally* Rule 243(i), SCACR (providing procedure for seeking *White v. State* review).

Here, as the PCR court found, Petitioner and trial counsel both testified that he "always wanted to appeal" and that trial counsel failed to timely file the notice of appeal, presumably due to the extensive delay prior to the trial court ruling on Petitioner's motion to reconsider the sentence. App. 4. The PCR court therefore correctly found Petitioner did not voluntarily waive his right to direct appeal, and a belated appeal is now appropriate. App. 1, 4.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant his petition and allow his belated *White v. State* appeal.



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This 17th day of September, 2025.