

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Clarendon County

William Jeffrey Young, Circuit Court Judge  
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NOV 15 2013

S.C. Supreme Court

LEON A. GOODMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213366  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
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WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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(803) 734-1343

ATTORNEY FOR PETITIONER

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### ISSUE PRESENTED

The PCR judge erred in denying petitioner's request for a belated direct appeal after finding that trial counsel performed competently by filing the notice of appeal in the case because counsel's error in failing to provide Appellate Defense with petitioner's indigency affidavit needed in order to request his trial transcript and perfect the appeal after the appeal notice had been filed was the inaction that led to the dismissal of the direct appeal.

## STATEMENT

Petitioner Leon Goodman was convicted of possession with intent to distribute crack cocaine per jury trial held in his absence during the January 2010 term of the Clarendon County General Sessions Court before Judge Ferrell Cothran. Judge Cothran imposed a sealed sentence in the case. App. 1-285. Scott Robinson represented petitioner at trial.

A sentencing hearing was held during the March 2010 term of the Clarendon County General Sessions Court before Judge Cothran, who published the sealed sentence. Petitioner was present at the sentencing hearing and represented by Scott Robinson. Petitioner was sentenced to imprisonment for a period of twenty years.

Petitioner's case was appealed, but he did not enjoy the benefit of a direct appeal because an order was issued dismissing the appeal due to the failure to order the trial transcript in a timely manner. App. 297. The remittitur was sent down on May 18, 2010. App. 298.

On December 15, 2010, petitioner filed a PCR application with the Clarendon County Office of the Clerk of Court. App. 299-303. The only matter petitioner presented in the PCR application was the request for a belated direct appeal. The respondent filed a return dated August 5, 2011, requesting that a hearing be held in response to petitioner's PCR action. App. 306-308.

A PCR hearing was convened on September 18, 2012, at the Clarendon County Courthouse before Judge W. Jeffrey Young. App. 310-340. The sole issue addressed was petitioner's request for a belated direct appeal. Petitioner was present at the PCR hearing and represented by Eleazer R. Carter. On October 16, 2012, Judge Young issued an Order of Dismissal in the case. App. 342-346.

Petitioner appealed Judge Young's Order of Dismissal. This petition follows.

## ARGUMENT

The PCR judge erred in denying petitioner's request for a belated direct appeal after finding that trial counsel performed competently by filing the notice of appeal in the case because counsel erred in failing to provide Appellate Defense with petitioner's indigency affidavit needed in order to request his trial transcript and perfect the appeal was the inaction that led to the dismissal of the direct appeal.

At trial, Officer Phil Ardis testified that he supervised a controlled undercover purchase of crack cocaine on February 11, 2009, by using a confidential informant who requested the drugs from petitioner. Petitioner brought the drugs to the Quality Inn in Clarendon County and made the exchange of the drugs for the money and was arrested thereafter. App. 47, l. 23 – p. 53, l. 6.

During the PCR hearing held in the case, the only matter presented was petitioner's request for a belated direct appeal. Petitioner testified at the hearing and explained that he expected trial counsel to appeal his case, but that trial counsel did not "perfect the appeal." App. 320, l. 11-p. 322, l. 21. Petitioner stated that he "felt that it was [his] constitutional right to have an appeal." App. 323, l. 3-19. Petitioner added that his appeal was ultimately dismissed for failure to order his trial transcript in a timely manner. Petitioner insisted that he wanted an appeal and was expecting an appeal to be perfected in his case, but that he did not know the process for obtaining his trial transcript. Petitioner claimed that if he had known that his trial transcript was not going to be ordered, then he would have attempted to remedy the problem. Note that petitioner sought redress with the disciplinary counsel by filing a grievance against trial counsel because counsel did not secure his direct appeal. App. 324, l. 2-p. 326, l. 4. App. 328, l. 4-p. 329, l. 24; App. 331, l. 7-p. 332, l. 11.

Petitioner's trial counsel testified during the PCR hearing and explained that petitioner asked about an appeal and that he advised that an appeal was the only real option available for relief in the case. Counsel stated that he filed a timely notice of appeal in petitioner's case, but added that it was not his job to order petitioner's trial transcript because Appellate Defense was responsible for ordering said transcript after the appeal notice was filed. App 304; App 297. Counsel stated that he learned subsequently that petitioner's trial transcript was never ordered and that his appeal had been dismissed. App. 337, l. 21-p. 338, l. 14; App. 337, l. 14-p. 337, l. 4.

In the Order of Dismissal filed in the case, the PCR judge ruled that since trial counsel timely filed the notice of appeal of petitioner's trial court conviction, then he was not ineffective in his legal representation and went on to deny and dismiss petitioner's PCR action and his request for a belated direct appeal. App. 344-346.

Rule 207(a)(1), SCACR, lists the requirements for ordering a transcript after a notice of appeal is filed in a case, and how the failure to timely order the same would result in the dismissal of the appeal. However, in criminal cases assigned to Appellate Defense, an affidavit of indigency must be submitted as the next step in the appeal process after the appeal notice has been filed so that the trial transcript can be ordered by Appellate Defense and the appeal perfected. Apparently, an appropriate affidavit of indigency by petitioner was never submitted to Appellate Defense in the case. See Appellate Defense letter to petitioner regarding the matter at App. 305. Therefore, through no fault of his own, petitioner's appeal was dismissed because Appellate Defense did not order his trial transcript since his affidavit of indigency was not properly submitted as required. It was trial counsel's duty to ensure that petitioner's affidavit of indigency was forwarded to Appellate Defense, and as a result of counsel's failure to do so, petitioner's direct appeal was dismissed.

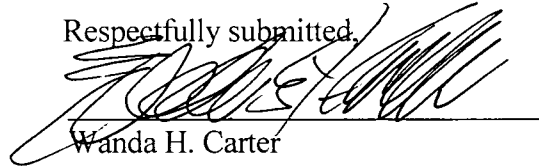
In the case at bar, counsel erred in failing to take the additional step needed, i.e., the submission of the indigency affidavit, after the filing of the notice of appeal was done, in order to ensure that petitioner's appeal would be perfected. Clearly, the omitted step in question denied petitioner of his right to a direct appeal. See Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), where counsel was found ineffective in failing to appeal where the defendant desired an appeal, but counsel did not take the proper action to secure an appeal. Here, petitioner established by a preponderance of the evidence that he desired an appeal and believed that counsel paved the way for his appeal, but never received his direct appeal due to counsel's error.

This missing affidavit of indigency that Appellate Defense needed from petitioner in order to perfect his appeal was an omitted act which counsel had an affirmative duty to accomplish. Counsel's failure to follow-up with the additional step of supplying petitioner's affidavit of indigency needed so that the Appellate Defense Office could order the trial transcript and perfect the appeal constituted ineffective assistance of counsel. Counsel's error in this regard constituted deficient representation in violation of the Sixth Amendment such that but for the error, petitioner would have enjoyed the benefit of a direct appeal in the case. See Strickland v. Washington, 466 U.S. 668 (1984). The PCR court erred in not finding counsel responsible for the dismissed appeal and in denying petitioner's request for a belated direct appeal.

CONCLUSION

Based on the foregoing argument, petitioner requests that the petition be granted and full briefing allowed on the issue in the case.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 15th day of November, 2013.

STATEMENT OF ISSUES ON DIRECT APPEAL

- 1.) The trial judge erred in allowing into evidence prior bad act testimony regarding the confidential informant's previous drug purchases made from the appellant.
- 2.) The trial judge erred in denying appellant's request to charge entrapment in the case.

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Certiorari to Clarendon County  
William Jeffrey Young, Circuit Court Judge

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LEON A. GOODMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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CERTIFICATE OF SERVICE

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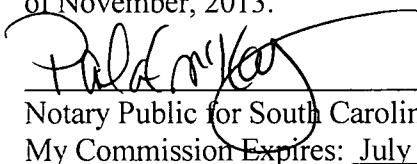
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of November, 2013.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day  
of November, 2013.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.