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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
In The Supreme Court

On Petition for Writ of Certiorari  
from Berkeley County

Honorable Walton J. McLeod IV, Circuit Court Judge

Appellate Case No. 2025-000550

JEFFERY LAMONT SANDERS,..... PETITIONER,

v.

STATE OF SOUTH CAROLINA,.....RESPONDENT.

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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### **PETITIONER'S ISSUE PRESENTED**

The PCR judge erred in denying Petitioner's request for a belated direct appeal due to trial counsel's failure to file a notice of appeal in the case because this precluded appellate review on the issue of the plea judge's denial of time-served credit in the case.

### **RESPONDENT'S ISSUE PRESENTED**

Probative evidence supports the PCR court's denial of Petitioner's request for a belated direct appeal on the issue of not getting time-served credit during his guilty plea where Petitioner failed to demonstrate extraordinary circumstances warranting an appeal on an issue that is now moot.

## STATEMENT OF THE CASE

In May 2021, a Berkeley County Grand Jury indicted Petitioner Jeffery Lamont Sanders with the offenses of unlawful carrying of a pistol (2021-GS-08-00663) and failure to stop for a blue light (2021-GS-08-00664). In September 2021, a Berkeley County Grand Jury indicted Petitioner with trafficking in fentanyl, fourteen grams or more (2021-GS-08-01417). On May 9, 2022, Petitioner appeared before the Honorable Roger M. Young to plead guilty to the aforementioned offenses, as well as another offense from Charleston County.<sup>1</sup> Petitioner was represented by Assistant Public Defender Jason C. Bybee, while the State was represented by Assistant Solicitor Kawohikukapulani Schaumburg Morris. (App. 1–3). Per an agreement with the State, Petitioner pled guilty to the listed offenses, with the trafficking charge reduced to a possession with intent to distribute (PWID) heroin, second offense. (App. 3–5). Pursuant to the negotiation, Judge Young imposed an eight-year active sentence.<sup>2</sup> Specifically, Judge Young imposed concurrent sentences of eight years for PWID heroin, three years for failure to stop for a blue light, and one year for unlawful carrying of a pistol. Relevant to his action, Judge Young did not give Petitioner credit for time served on GPS-monitored house arrest, approximately a year and a half.<sup>3</sup> (App. 11). Petitioner did not appeal.

On March 6, 2023, Petitioner timely filed an application for post-conviction relief (PCR) in Berkeley County. Therein, Petitioner's sole allegation was that plea counsel was ineffective for failing to appeal the plea judge's decision to deny Petitioner credit for time served while on GPS-monitored house arrest. (App. 13–19). On October 4, 2023, the State filed its Return. On March

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<sup>1</sup> This was another failure to stop for blue light offense (2021-GS-10-1937) that Petitioner waived venue for in his guilty plea, but it is not a subject of this PCR action.

<sup>2</sup> As discussed further below, this sentence expired as of February 3, 2026.

<sup>3</sup> Judge Young also terminated probation for Petitioner that was active out of Orangeburg County.

11, 2024, Petitioner appeared with counsel before the Honorable Walton J. McLeod, IV, for an evidentiary hearing. Petitioner was represented by Denise Swope, Esquire, while the State was represented by Assistant Attorney General Danielle Dixon. (App. 27). Following the testimony of Petitioner and his plea attorney Jason Bybee, and argument by counsel, the PCR court took the matter under advisement. (App. 42–43). In a written order dated February 13, 2025, the PCR court denied relief, ruling that Petitioner failed to demonstrate extraordinary circumstances that would entitle him to a belated direct appeal from his guilty plea as to the issue of credit for time served. (App. 46–49).

Petitioner filed a timely notice of appeal. On September 26, 2025, Petitioner filed a Petition for Writ of Certiorari. This Return follows.

## STANDARD OF REVIEW

The standard of review for post-conviction relief matters “depends on the specific issue” before the appellate court. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate court defers to the post-conviction relief court’s factual findings “and will uphold them if there is evidence in the record to support them.” *Id.* at 180, 810 S.E.2d at 839 (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). However, pure questions of law will be reviewed de novo without deference to the lower court. *Id.* at 180–81, 810 S.E.2d at 839–40.

## ARGUMENT

**Probative evidence supports the PCR court’s denial of Petitioner’s request for a belated direct appeal from his negotiated guilty plea on the issue of not getting credit for time served on GPS-monitored house arrest since Petitioner did not demonstrate extraordinary circumstances for an appeal, and in any event this appeal is now moot as Petitioner has completed his sentence and is not challenging the collateral consequences of said sentence.**

Petitioner argues the PCR court erred in failing to grant him relief in the form of a belated direct appeal on the issue of whether the plea judge erred in failing to give credit for time served for time spent on GPS-monitored house arrest. However, Petitioner fails to demonstrate ineffective assistance of plea counsel that would entitle him to a belated direct appeal of his guilty plea. Accordingly, probative evidence supports the PCR court’s decision denying relief. Furthermore, the subject of Petitioner’s requested relief—a belated direct appeal of an issue regarding credit for time served on GPS-monitored house arrest—is now moot as of the filing of this return as Petitioner *is not presently incarcerated under this sentence*.<sup>4</sup> And because Petitioner is not presently challenging any collateral consequences of these convictions/sentences, mootness is not defeated.

The Petition should be denied.

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<sup>4</sup> Petitioner was released from prison on supervised re-entry as of August 1, 2025. A certificate regarding Petitioner’s release from the Department of Probation, Pardon, and Parole (PPP) revealed an “expiration date” of February 3, 2026—reflecting the effective end of the sentence at issue. *See also Released Inmate List*, SCDC, <https://doc.sc.gov/released-inmate-list> (select “Release Date” containing Aug. 1, 2025 in date range; then select “Berkeley County” under “County” section; then click “Search”) (last visited Feb. 4, 2026). Assuming this Court were to grant the petition, Respondent would submit the documents from PPP reflecting Petitioner’s currently expired sentence as a supplemental record.

## A. Relevant Facts

### *The Plea Hearing*

At the plea hearing, the issue of credit for time served on GPS-monitored house arrest came up as follows, with the solicitor emphasizing they would oppose such a request due to alleged violations of conditions while on bond:

And the State is aware that the defense plans on asking for credit for the GPS monitor, and the State does not agree with giving the defendant credit for being on the GPS monitor. I had moved to revoke his bond twice for violations. He . . . was allowed to work between the hours of 6:45 a.m. to 6:45 p.m. He was consistently out past that time. He was . . . and this was only during the time period Monday through Friday. He was consistently violating his house arrest on the weekends, as well, and so I just wanted the Court to be aware that the State is not consenting to giving credit for GPS monitoring.

(App. 8, ll. 1–11). Petitioner requested a total of 492 days for time-served credit. (App. 9). Judge Young denied the request to consider the GPS-monitored time for time-served credit, noting: “I’m not going to give you any credit for the GPS time because it didn’t sound like you were doing that successfully.” (App. 11 ll. 19–20).

### *The PCR Hearing*

At the hearing, only Petitioner and his plea attorney Jason Bybee testified. When asked about the issue of time-served credit, Petitioner testified that Judge Young gave him credit for the 79 days he spent in jail but denied credit for his time spent on GPS-monitored house arrest. He stated he did not understand he had a right to appeal and that he filed the present PCR action once he realized he was ineligible to seek a timely direct appeal. (App. 32). Petitioner’s plea counsel testified, regarding whether he informed Petitioner of his right to appeal, the following:

If he didn’t understand that . . . it’s possible that I didn’t go over that with him. It being a negotiated plea, we were going in with the understanding that the judge could either accept or reject that plea and I don’t have a record or a memory of whether I specifically advised him of that or not.

(App. 35, ll. 9–14). Regarding the length of sentence, plea counsel emphasized the “only question” was whether he would get time-served credit for the time on GPS monitoring. (App. 35). Plea counsel testified that by the time Petitioner asked him to file a notice of appeal, it was already months later. He indicated that he had filed a motion to reconsider some time after the plea but withdrew it believing there were no non-frivolous grounds. (App. 36).

After this testimony, plea counsel emphasized that the sole issue of the PCR action was getting appellate review for the time-served credit issue: “[Petitioner] *is not disputing his sentence. He’s not disputing the plea.* He is simply asking for appellate review as to whether he should’ve been granted the time-served because counsel has no recollection of that discussion.” (App. 39, ll. 19–23) (emphasis added). In response, the State emphasized the narrow scope of appellate review from a guilty plea and the fact that the issue of whether to grant credit for time served is “purely discretionary” for the plea judge.<sup>5</sup> (App. 40–42).

## **B. Discussion**

“Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal.” *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (citing *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974)). However, in the guilty plea context, the standard is different:

*Absent extraordinary circumstances*, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, *there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.*

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<sup>5</sup> As discussed above in a prior footnote, Petitioner is no longer incarcerated under the sentence at issue in this PCR action. It expired on February 3, 2026.

*Id.* (citing *Roe v. Flores–Ortega*, 528 U.S. 470 (2000); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995)) (emphasis added).

In the present case, the PCR court correctly identified that there existed no extraordinary circumstances that would have required counsel to inform Petitioner of his right to appeal:

At the PCR hearing, Applicant testified he did not understand he had a right to appeal or that he only had ten days to file an appeal. He stated he first learned he could file an appeal when he filed his PCR application. Plea counsel could not recall if he discussed an appeal with Applicant, but he testified Applicant did not ask him to file a notice of appeal while they were in court. He stated Applicant called more than ten days later about an appeal.

This Court finds plea counsel’s foregoing testimony credible. This Court further finds Applicant did not demonstrate he is entitled to a late appeal. Although plea counsel could not recall whether he discussed a plea with Applicant, an attorney does not have a duty to inform a defendant of the right to appeal from a guilty plea. See id. Further, Applicant did not relay to counsel that he wanted to appeal until after the time for filing the appeal had passed, and this Court finds Applicant did not demonstrate extraordinary circumstances for appealing this guilty plea.

(App. 48–49). Probative evidence supports the PCR court’s findings of fact, and credibility determinations should not be second-guessed on appeal. Specifically, plea counsel testified that Petitioner did not request an appeal until the time for an appeal had passed. The PCR court found that testimony credible, and this Court should defer to that finding. Further, the PCR court correctly found that due to the discretionary nature of an award of time served on monitored house arrest, the issue of that credit was not an extraordinary circumstance that should have alerted plea counsel to appeal this negotiated guilty plea. Thus, probative evidence supports the PCR court’s denial of a belated direct appeal. For these reasons alone the Petition should be denied.

Additionally, this appeal is now moot as Petitioner has already completed his sentence. Normally, in the context of most PCR actions, completion of the underlying sentence while the action or appeal is pending does not make the matter moot. *See Jones v. State*, 322 S.C. 101, 102, 470 S.E.2d 110, 110 (1996) (“A petitioner has standing to petition for PCR if he is in custody *or*

*the results of his prior conviction still persist.*”) (citations omitted); *Brown v. State*, 423 S.C. 56, 814 S.E.2d 146 (2018) (extending prior holding that PCR act has no “in custody” requirement).

However, in this narrow context of a PCR applicant seeking a belated direct appeal on the issue of credit for time served while on monitored house arrest—where the applicant is explicitly *not otherwise challenging the legality of the underlying conviction/sentence* (See App. 39, ll. 19–23)—the mootness doctrine applies since Petitioner has completed his sentence. See *Justice v. State*, 441 S.C. 623, 896 S.E.2d 319 (2023) (finding PCR appeal on revocation of parole issue moot since Petitioner was released from prison while appeal was pending); *Mathis v. S.C. State Highway Dep’t*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.”).

Thus, even if the PCR court erred in denying Petitioner a late appeal, the Petition should be denied as the matter is now moot. There is no cognizable relief available to him in this PCR appeal.

**CONCLUSION**

WHEREFORE, based on the foregoing, this Court should deny the petition.

Respectfully submitted,

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This 5<sup>th</sup> day of February, 2026