

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

DEC 20 2013

CERTIORARI TO YORK COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2012-213513

Phillips Watts.....Petitioner,

v.

State of South Carolina.....Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
SC Bar # 78871

P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

QUESTION PRESENTED.....1
STATEMENT OF THE CASE.....2
ARGUMENT.....3
CONCLUSION.....4

QUESTIONS PRESENTED

- I. Whether the PCR court was correct in ruling that Petitioner was entitled to a belated review of direct appeal issues through PCR as plea counsel failed to properly perfect an appeal after Petitioner requested one?

STATEMENT OF THE CASE

The Appellant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's order of commitment. Appellant was indicted at the May 2008 term of the York County Grand Jury for Armed Robbery (2008-GS-46-2086), two counts of Possession of a Weapon During the Commission of a Violent Crime (2008-GS-46-2086(A), 2090(A)), three counts of Assault and Battery with Intent to Kill (2008-46-2087, 2089, 2090), Kidnapping (2008-GS-46-2091), and Attempted Armed Robbery (2008-GS-46-2092). Douglas F. Gay, Esquire, represented him on these charges. On April 27, 2009, the Appellant pled guilty but mentally ill to all charges as indicted. The Honorable Lee S. Alford sentenced the Appellant to a mandatory sentence upon the Appellant for life without parole pursuant to §17-25-45. The direct appeal was not properly perfected.

The Appellant filed an Application for Post-Conviction relief on September 17, 2010. The State filed its return on or about November 9, 2011. An evidentiary hearing was convened on October 9, 2012 at the York County Courthouse. The Appellant was represented by Leah Moody, Esquire. The State was represented by J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General. The Honorable Edgar W. Dickson, granted Appellant this belated review of direct appeal issued pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974) in an order dated January 9, 2013. The Appellant filed a petition for writ of certiorari on October 9, 2013. This return to the petition follows.

ARGUMENT

The PCR court was correct in ruling that Petitioner was entitled to a belated review of direct appeal issues pursuant to White v. State.

Petitioner's plea counsel admitted that he failed to perfect an appeal from the denial of the first PCR application, even though Petitioner timely requested that he file an appeal. Respondent agrees that Petitioner should be allowed to petition this Court for belated review of direct appeal issues, since he did not knowingly and voluntarily waive his right to an appeal.

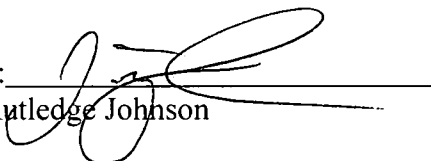
CONCLUSION

For all the foregoing reason, it is respectfully submitted that this Court grant the Petition for Writ of Certiorari only to allow a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Respectfully submitted,

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
S.C. Bar #78871

BY: 
J. Rutledge Johnson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

December 20, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY
Court of Common Pleas
The Honorable Edgar W. Dickson, Circuit Court Judge

PHILLIP WATTS,

Petitioner,

STATE OF SOUTH CAROLINA

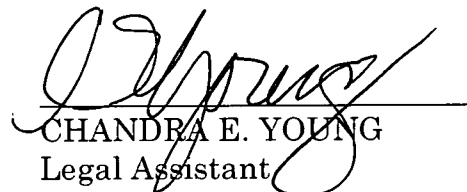
Respondent.

PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served, this 20TH day of December, 2013.


CHANDRA E. YOUNG
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

DEC 20 2013

S.C. Supreme Court

December 20, 2013

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

**RE: Phillip Watts v. State of South Carolina
2012-213513**

Dear Mr. Shearouse:

I am enclosing the original and fourteen (14) copies of the Brief of Respondent pursuant to White v. State and the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case.

Sincerely,


J. Rutledge Johnson
Assistant Attorney General

JRJ:cey
Enclosures

cc: Kathrine H. Hudgins, Esquire
Trisha Allen, Victim Services