

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

S.C. Supreme Court

JARED WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001042

PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
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

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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

On April 13, 2010, the Greenville County grand jury indicted Petitioner Jared Lee Williams on one count of armed robbery and one count of possession of a weapon during the commission of a violent crime. App. 304-305. On September 7, 2010, Petitioner proceeded to trial on the armed robbery charge¹ before the Honorable D. Garrison Hill and a jury. App. 1. L. Mark Moyer represented the State and H. Chase Harbin represented Petitioner. App. 1.

On September 8, 2010, the jury found Petitioner guilty. App. 264, ll. 12-16. The trial judge sentenced Petitioner to thirty years imprisonment. App. 271, ll. 21-23. Petitioner did not appeal.

On August 18, 2011, petitioner filed an application for post-conviction relief alleging ineffective assistance of counsel. App. 273-280. The State filed a return on December 30, 2011. App. 281-284; App. 300. On April 16, 2013, Petitioner proceeded to a hearing before the Honorable G. Edward Welmaker. Rodney Richey represented Petitioner and Karen Ratigan represented the State. App. 286. Petitioner testified that immediately after the court sentenced him, Petitioner stood in front of the bench with counsel and told him to file an appeal. App. 292, ll. 2-16. Counsel testified that he did not recall Petitioner requesting an appeal, but he did not recall Petitioner indicating he did not want to file an appeal either:

A: I don't recall that he ever asked to have an appeal. I do recall that . . . I said, you know, we can file an appeal if we want to. . . .

. . .

Q: But your recollection is at the time of the conviction, he did not want to appeal or was he indifferent to it?

A: Well, he didn't say, I do not want to appeal. We had spoken before about, you know, if he gets convicted we can appeal. . . .

App. 295, ln. 2—App. 296, ln. 4.

On May 3, 2013, the PCR court issued an order of dismissal finding Petitioner did not knowingly and voluntarily waive his right to an appeal but ruling Petitioner must petition this Court to obtain relief pursuant to *White v. State*, 236 S.C. 110, 108 S.E.2d 35 (1974). App. 300-303.

ARGUMENT

THE EVIDENCE IN THE RECORD SUPPORTS THE PCR COURT’S FINDING THAT PETITIONER WAS DENIED AN OPPORTUNITY FOR A DIRECT APPEAL, AND THIS COURT SHOULD DECIDE PETITIONER’S APPELLATE ISSUES PURSUANT TO *WHITE V. STATE*.

STANDARD OF REVIEW

“This Court will uphold the findings of the PCR court when there is any evidence of probative value to support them, and will reverse the decision of the PCR court when it is controlled by an error of law.” *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

DISCUSSION

The evidence in the record supports the PCR court’s finding that Petitioner was denied an opportunity for a direct appeal, and this court should decide Petitioner’s appellate issues pursuant to *White v. State*. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). “*Following a trial*, counsel is required to make certain the defendant is made fully aware of the right to appeal.” *Clark v. State*, 396 S.C. 164, 168, 719 S.E.2d 708, 710 (quoting *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008)). Further, “[t]o waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” *Id.* “Absent 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 . . . (1967).” *Id.*

¹ The State did not proceed on the weapon charge. App. 5, ll. 4-9.

In this case, the testimony shows Petitioner did not make a knowing and intelligent waiver of his right to appeal. Petitioner testified that immediately after the court sentenced him, Petitioner stood in front of the bench with counsel and told him to file an appeal. Counsel testified and could not aver that Petitioner did not express a desire to appeal. Absent his valid waiver, counsel was required to file an appeal. Counsel failed to do so and denied Petitioner his opportunity for a direct appeal.

When a defendant is denied an opportunity for a direct appeal, he may petition this Court for a writ of certiorari pursuant to Rule 243(i), SCACR, and this Court may decide whether Petitioner is entitled to relief based on the merits of his appellate issues. *See generally Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) (citing *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974)).

CONCLUSION

For these reasons, Petitioner respectfully requests that this Court grant the petition for certiorari and decide Petitioner's appellate issues.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of January, 2014

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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 Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of January, 2014.


Benjamin John Kripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 2nd day
of January, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.