

STATE OF SOUTH CAROLINA
In The Supreme Court

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MAR 11 2014

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-001042

Jared Lee Williams, Petitioner,

v.

State of South Carolina, Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

QUESTION PRESENTED.....2

STATEMENT OF THE CASE.....3

STANDARD OF REVIEW4

ARGUMENT

 The PCR judge erred in granting Petitioner a review of
 direct appeal issues pursuant to White v. State.....5

CONCLUSION.....6

QUESTION PRESENTED

1. Did the trial judge correctly grant Petitioner a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)?

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Petitioner at the April 2010 term of General Sessions for armed robbery (2009-GS-23-10022, count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-10022, count 2). (App.pp.304-06). H. Chase Harbin, Esquire represented Petitioner.

After the State called the case to trial on the armed robbery indictment, the Applicant was found guilty.¹ On September 8, 2010, the Honorable D. Garrison Hill sentenced the Applicant to thirty years imprisonment. The Applicant did not appeal. (App.p.271).

Petitioner filed an application for post-conviction relief (PCR) on August 18, 2011 (2011-CP-23-5583). (App.pp.273-80). A hearing was convened at the Greenville County Courthouse on April 16, 2013. (App.pp.286-99). Petitioner was present and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office represented Respondent. The Honorable G. Edward Welmaker issued an order dated April 24, 2013 and filed May 3, 2013 in which he granted a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). (App.pp.300-03).

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction

¹ The indictment for possession of a weapon during commission of a violent crime was subsequently not prossed.

relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

The PCR judge erred in granting Petitioner a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

At the PCR hearing, Petitioner stated that he spoke to trial counsel after the trial about filing an appeal. (App.pp.291-92). Petitioner stated trial counsel said “he would try to, I guess, find something to try to get me back into court, you know, to try appeal the decision.” (App.p.292). Petitioner stated he wrote trial counsel several months later to ask why the appeal was not filed but could not recall trial counsel’s response. (App.p.293).

Trial counsel testified he discussed the right to appeal with Petitioner before trial. (App.p.297). Trial counsel testified that, after the conviction, he advised Petitioner that he could file an appeal and was surprised that Petitioner did not want to do so. (App.p.295; p.297). Trial counsel testified Petitioner appeared to be resigned to what happened in his case. (App.p.295). Trial counsel testified Petitioner “just kind of shrugged his shoulders or shook his head. I don’t remember, but it was kind of a non-verbal thing.” (App.p.297). Trial counsel testified he would have filed an appeal if Petitioner had requested he do so. (App.pp.297-98).

In the final order, the PCR judge found Petitioner “did not knowingly and voluntarily waive his right to a direct appeal.” (App.p.302).

For an applicant to be granted PCR as a result of ineffective assistance of counsel,

he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006).

The PCR judge erred in finding Petitioner was entitled to a review of his direct appeal issues pursuant to White v. State. At the PCR hearing, trial counsel testified they discussed appellate options both before Petitioner's trial and after his conviction. Petitioner confirmed he was aware of the right to appeal. Trial counsel specifically recalled Petitioner did not ask him to file an appeal and that he seemed to have accepted his conviction. Trial counsel remembered this exchange after Petitioner's conviction because he was "surprised that somebody in his position didn't want to appeal." (App.p.295). Based upon the record, it is clear trial counsel satisfied his obligation to advise Petitioner of his appellate rights. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) ("Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal."). Trial counsel testified he would have filed an appeal if Petitioner had asked for him to do so. Therefore it is clear that Petitioner, having been advised of his appellate rights, simply chose not to pursue them. See Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) ("To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal."). There is no evidence of probative value to support the PCR judge's decision to allow Petitioner to pursue a review of his direct appeal issues. See Cherry v. State, 300 S.C. at 119, 386 S.E.2d at 626.

CONCLUSION


Accordingly, Petitioner failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under professional norms. As Petitioner failed to meet his burden of proving ineffective assistance of trial counsel, the PCR judge erred in finding he was entitled to a review of direct appeal issues pursuant to White v. State. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (“The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”); see also Cherry v. State, 300 S.C. at 119, 386 S.E.2d at 626.

Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

March 11, 2014

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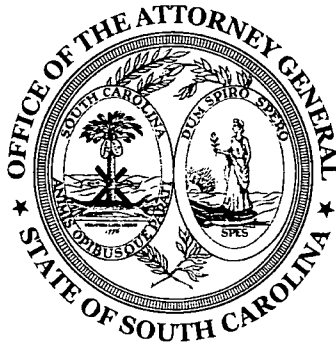
CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Benjamin J. Tripp, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 11th day of March, 2014.


KAREN C. RATIGAN
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ATTORNEY FOR RESPONDENT



ALAN WILSON
ATTORNEY GENERAL

March 11, 2014

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MAR 11 2014

S.C. Supreme Court

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

Re: Jared Lee Williams v. State of South Carolina
Appellate Case No: 2013-001042
Lower Court Case No: 2011-CP-23-5583

Dear Mr. Shearouse:

Enclosed for filing please find an original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-captioned case. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General
SC Bar #68331

KCR/jacc
Enclosures

cc: Benjamin J. Tripp, Esquire
Trisha Allen, Victim Services Counselor