

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN 18 2014

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable James R. Barber, Circuit Court Judge

Case No. 2007-CP-07-2195

Osiel Narciso,.....Respondent,

v.

State of South Carolina,.....Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the order of the Honorable James R. Barber dated June 5, 2014. Petitioner received written notice of entry of this order on June 9, 2014. Enclosed is a copy of the above referenced order.

June 18, 2014



Ashleigh R. Wilson
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-4037
SC Bar #100269
Attorney for the Petitioner

Other Counsel of Record:
Carol Ruff, Esquire
Harley Ruff, Esquire
Ruff & Ruff, LLC
17 Professional Village Circle
Beaufort, SC 29907
Attorneys for Respondent

3. Petitioner later filed a PCR application, and Phillip Rios was appointed as his PCR lawyer.

4. At a PCR hearing held on August 26, 2008, the Attorney General offered Petitioner the opportunity to appeal his conviction, but only if Petitioner waived his right to PCR. Mr. Rios recommended Petitioner sign a Consent Order memorializing this bargain. There was no colloquy or other court record of Petitioner's waiver other than the following:

THE COURT: What's - what we got this morning?

MR. FRIEDMAN: Your Honor, the first one is Oseil Gomez Narciso

THE COURT: All right.

MR. FRIEDMAN: May we approach on this one?

THE COURT: Yeah. (Bench conference.)

MR. FRIEDMAN: Thank you, Your Honor.

THE COURT: Okay. Appreciate it. Thank you.

--- END OF TRANSCRIPT OF RECORD ---

(See Exhibit 1)

5. Mr. Rios also did not pursue an appeal of Petitioner's conviction, but instead made the aforementioned bargain with the Attorney General's office.

6. Petitioner is a native of Mexico. Spanish is his native language. He moved to the United States when he was 19 years old. Petitioner does not speak or read English adequately enough to understand legal proceedings or his statutory and constitutional rights.

7. Specifically, Petitioner could not read or understand the Consent Order presented to him by Mr. Rios, which was written in English. No one read the Consent Order to Petitioner in Spanish either on or off the record. No one translated the Consent Order into Spanish for Petitioner. There was no translating equipment used in the PCR hearing that allowed Petitioner to hear and understand anything said about his case.

CONCLUSIONS OF LAW

1. A defendant's knowing and voluntary waiver or statutory or constitutional rights must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both. *Brannon v. State*, 345 S.C. 437, 548 S.E. 2d 866 (2001).

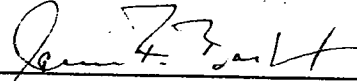
2. A valid waiver of the right to PCR must be knowing, intelligent and voluntary; and in making this determination, a court must examine the particular facts and circumstance surrounding the case, including the background, experience and the conduct of the accused. *Spoone v. State*, 370 S.C. 138, 665 S.E.2d 605 (2008).

3. Based on the facts that (1) Petitioner is a non-English speaker who could not read the Consent Order, (2) there was no colloquy whatsoever with the judge at the PCR hearing to establish that Petitioner understood the Consent Order and/or his waiver of PCR rights, and (3) Petitioner may have been entitled to an appeal anyway without having to waive his PCR rights under the case of *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), the record does not adequately demonstrate that Petitioner's waiver was knowing, intelligent and voluntary, and accordingly the PCR waiver fails the tests outlined in *Brannon* and *Spoone*.

IT IS THEREFORE ORDERED that:

1. The Petitioner's purported waiver of his PCR rights in the Consent Order is hereby declared null, void and of no effect;
2. The Petitioner's request to bring a PCR application is hereby granted; and
3. Counsel may seek reimbursement from the Office of Indigent Defense for their time and expenses pursuant to standard policy.

AND IT IS SO ORDERED.



The Honorable James R. Barber, III
Presiding Judge
Court of Common Pleas
Fourteenth Judicial Circuit

Beaufort, South Carolina

~~Jude~~
~~April~~ 5, 2014

STATE OF SOUTH CAROLINA)

IN THE SOUTH CAROLINA SUPREME COURT

COUNTY OF BEAUFORT)

Case No. 2007-CP-07-2195

OSIEL NARCISO)

Respondent,)

vs)

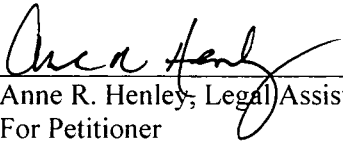
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)


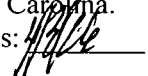
Petitioner.)

1. I am an employee of the Petitioner in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Notice of Appeal of Petitioner in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Carol Ruff
 Harley Ruff
 Ruff and Ruff LLC
 17 Professional Village Circle
 Beaufort, SC 29907


 Anne R. Henley, Legal Assistant
 For Petitioner

SWORN to before me this
 18th day of June, 2014.

 (L.S.)
 Notary Public for South Carolina.
 My Commission Expires: 

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JUN 18 2014

S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

June 18, 2014

The Honorable Jerri Ann Roseneau
Clerk of Court for Beaufort County
Post Office Drawer 1128
Beaufort, South Carolina 29901

Re: Osiel Narciso, Respondent v. State, Petitioner
Case No. 2007-CP-07-2195

Dear Ms. Roseneau:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order which is to be challenged on appeal.
2. Proof of service of notice of appeal on the Respondent.
3. A letter ordering the hearing transcript from the court reporter.

Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

cc: Carol Ruff, Esquire
Harley Ruff, Esquire
South Carolina Department of Corrections
S.C. Supreme Court
Solicitor I. Duffie Stone
Office of Appellate Defense
Trisha Allen, Victim Services



ALAN WILSON
ATTORNEY GENERAL

June 18, 2014

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JUN 18 2014

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

S.C. Supreme Court

Re: Osiel Narciso, Respondent v. State, Petitioner
Case No. 2007-CP-07-2195

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

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Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

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South Carolina Department of Corrections
Beaufort County Clerk of Court
Solicitor I. Duffie Stone
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