

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Steven H. John, Circuit Court Judge  
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**RECEIVED**  
AUG 13 2014  
S.C. Supreme Court

BARBARA CHAVIS WRIGHT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000198  
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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

INDEX

INDEX.....1

ISSUE PRESENTED .....2

STATEMENT .....3

ARGUMENT .....4

CONCLUSION .....5

STATEMENT OF ISSUE ON DIRECT APPEAL.....5

PETITION TO BE RELIEVED AS COUNSEL.....6

ISSUE PRESENTED

The lower court erred in denying petitioner's allegation that she did not voluntarily and intelligently waive her right to a direct appeal in her case.

## STATEMENT

Petitioner Barbara Chavis Wright pled guilty to voluntary manslaughter and attempted murder during the April 2012 term of the Horry County General Sessions Court before Judge Edward B. Cottingham. Petitioner was sentenced to imprisonment for a period of twenty years. App. 1 - 12. Petitioner did not enjoy the benefit of a direct appeal in the case. William Edward Chrisco represented petitioner at the plea proceeding, and Assistant Solicitor Scott Hucks appeared on behalf of the state.

On September 11, 2012, petitioner filed a PCR application with the Horry County Office of the Clerk of Court alleging instances of ineffective assistance of trial counsel in her case. App. 14 – 20. The respondent filed a return dated November 29, 2012, requesting that a hearing be held in response to petitioner’s PCR action. App. 21 – 24.

A PCR hearing was convened on December 18, 2013, at the Horry County Courthouse before Judge Steven H. John. App. 25 – 50. Petitioner was present at the hearing and represented by Heather M. Cannon, and Assistant Attorney General Joshua L. Thomas appeared on behalf of the state.

On January 9, 2014, Judge John issued an Order of Dismissal therein denying petitioner’s allegations of ineffective assistance of counsel in the case. App. 52 – 59.

Petitioner appealed Judge John’s Order of Dismissal. This petition follows.

## ARGUMENT

The lower court erred in denying petitioner's allegation that she did not voluntarily and intelligently waive her right to a direct appeal in her case.

During the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, petitioner used her car to rear-end the moped her former boyfriend and female passenger were riding on September 7, 2011 in Horry County. The collision resulted in non-fatal injuries to the former boyfriend, but the female passenger died from her injuries. App. 3, l. 14 – p. 5, l. 13.

During the PCR hearing, petitioner testified that she did not know that she had a right to an appeal, and as a result did not request one. Petitioner stated that trial counsel did not advise her of appellate rights, and that had she known of her right to appeal, then she would have appealed. App. 28, l. 5 – p. 30, l. 7.

Trial counsel testified at the PCR hearing and explained that petitioner did not ask for an appeal. App. 43, l. 14 – p. 44, l. 8.

Since petitioner was unaware of her right to an appeal in her case, then she could not have voluntarily and intelligently waived her right to an appeal. A waiver is the intentional relinquishment of a **known** right. Johnson v. Zerbst, 304 U.S. 458 (1938).

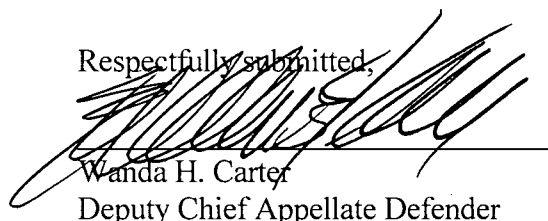
If after advising an indigent client requesting an appeal the client wishes to appeal, then trial counsel must serve and file a notice of appeal as required by Rule 203, SCACR. See In Re Anonymous Member of the Bar, 303 SE 306, 400 S.E. 2d 483 (1991). Here, it is clear that petitioner desired a direct appeal in his case. A defendant is entitled to an appeal where there has been no intelligent or voluntary waiver of the right to an appeal made by the defendant. White v. State, 263 SC 110, 208 S.E. 2d 35 (1975). See also, Frasier v. State, 306 S.C. 158, 410 S.E. 2d 572

(1991), where counsel was found ineffective in failing to appeal where the defendant desired an appeal, but counsel took no action to secure an appeal on his behalf. The PCR judge erred in denying petitioner's allegation that she did not voluntarily and intelligently waive her right to a direct appeal in the case because she did not in fact voluntarily waive her right to an appeal.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line. The signature is stylized and cursive.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of August, 2014.

Statement of Issue on Direct Appeal

The trial judge erred in accepting appellant's guilty pleas without first advising that he (trial judge) was not bound to accept the state's sentencing recommendation in the case.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO Horry COUNTY  
STEVEN H. JOHN, CIRCUIT COURT JUDGE

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BARBARA CHAVIS WRIGHT,

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PETITION TO BE RELIEVED AS COUNSEL

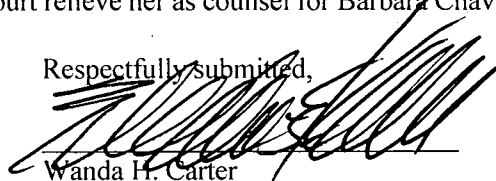
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Counsel for Barbara Chavis Wright states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on . In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Barbara Chavis Wright.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 13th day of August, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Horry County

Steven H. John, Circuit Court Judge

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BARBARA CHAVIS WRIGHT,

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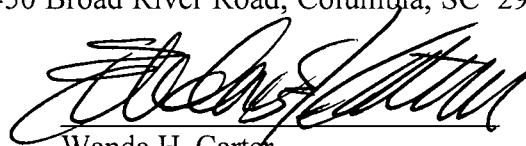
RESPONDENT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Barbara Chavis Wright, #350454, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 13th day of August, 2014.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day  
of August, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.