

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
D. Garrison Hill, Circuit Court Judge

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S.C. Supreme Court

MICHAEL HENDERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001254

PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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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 October 19, 2010, the Greenville County Grand Jury indicted Petitioner Michael W. Henderson for possession of methamphetamine with intent to distribute and unlawful conduct towards a child. App. 538-541. On December 7, 2011, Petitioner proceeded to trial before The Honorable Edward Miller and a jury. Chase Harbin represented Petitioner, and Kayce McCall and Ryan Holloway represented the State. App. 1. The jury found Petitioner guilty on both counts. App. 475, lines 12-23. Judge Miller sentenced Petitioner to concurrent ten year sentences for the convictions. App. 530.

On April 23, 2012, Petitioner filed an application for post-conviction relief (PCR) alleging ineffective assistance of counsel. App. 493-500. The State filed a return on August 31, 2012. App. 501-505. On April 25, 2014, Petitioner proceeded to an evidentiary hearing before The Honorable D. Garrison Hill. Rodney W. Richey represented Petitioner and Karen C. Ratigan represented the State. App. 506. At the outset the parties stipulated that Petitioner was entitled to a direct appeal of his conviction pursuant to *White v. State*.¹ App. 509, lines 3-22. On May 22, 2014, the PCR court issued an order of dismissal concluding Petitioner did not knowingly voluntarily waive his right to an appeal and was therefore entitled to a belated review pursuant to *White v. State*. App. 529—App. 537.

¹ 263 S.C. 110, 208 S.E.2d 35 (1974).

ARGUMENT

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*.

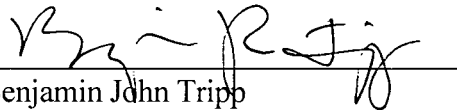
The record supports the PCR court's finding that Petitioner was denied an opportunity for a direct appeal, and this court should decide Petitioner's appellate issues pursuant to *White v. State*. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance 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.*

In this case, the State agreed at the outset of the PCR hearing that that Petitioner was entitled to a direct appeal of his conviction pursuant to *White v. State*. Accordingly, the PCR court's order of dismissal properly concluded Petitioner did not knowingly voluntarily waive his right to an appeal and was therefore entitled to a belated review. 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 4th day of February, 2015.

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IN THE SUPREME COURT

Certiorari to Greenville County
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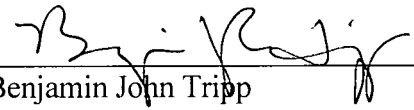
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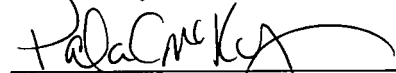
CERTIFICATE OF SERVICE

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 4th day of February, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day
of February, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.