

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2014-000591
Lower Court Case No. 2012-CP-19-0304

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S.C. Supreme Court

FREDY DELEON, #304977,

RESPONDENT-PETITIONER,

v.

STATE OF SOUTH CAROLINA,

PETITIONER-RESPONDENT.

MOTION TO RELAX RULE 243(i), SCACR

NOW COMES the Respondent-Petitioner (hereinafter "Respondent") in the above-captioned action, acting by and through undersigned counsel, respectfully moving this Honorable Court to relax Rule 243(i), SCACR, and to permit him to not file a brief pursuant to Rule 243(i)(1).

In support of this motion, the Respondent would show unto this Court the following:

This matter comes before the Court by way of an appeal from a Post-Conviction Relief Order granting the Respondent a second belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), after finding Respondent's appellate counsel ineffective.¹ Both the

¹ Respondent's appellate counsel represented the Respondent on his first White appeal.

Respondent and the Petitioner-Respondent (hereinafter “Petitioner”) agree that this remedy was inappropriate and that the PCR court erred in failing to grant the Respondent a new trial.² See Petitioner’s Certiorari Petition at 19-21; Respondent’s Return at 27-29; Respondent’s Certiorari Petition at 18-20.

Rule 243(i)(1), SCACR, provides for certain procedures to be followed “[w]here the petition seeks review under White,” including the filing of a “brief addressing the direct appeal issues.” These procedures appear to be mandatory. See Rule 243(i), SCACR (“the following procedure shall be followed”); 243(i)(1) (“the petition shall contain a question raising the [White] issue”); (“petitioner shall serve and file a brief addressing the direct appeal issues.”) The Respondent has had difficulty applying these mandatory provisions to this case because of the unusual procedural posture presented here. Unlike almost all PCR applicants appealing a White order, the Respondent does not seek review under White. Moreover, the PCR judge did not “affirmatively [find] that the right to a direct appeal was not knowingly and intelligently waived”; instead, the PCR judge found that the appropriate remedy for ineffective assistance of appellate counsel was a new belated appeal. Rule 243(i)(1), SCACR. Furthermore, any brief filed pursuant to White would look remarkably similar to the Respondent’s return and certiorari petition, inasmuch as the direct appeal issues sought to be reviewed are the same as those the Respondent alleges that appellate counsel was ineffective for failing to argue on the Respondent’s first direct appeal.

Given the unusual posture of this case and the PCR court’s lack of typical White findings, the Respondent does not believe that the filing of a brief pursuant to White is necessary or appropriate in this case. To the extent that Rule 243(i), SCACR, mandates the filing of a White

² To be specific, the Petitioner does not believe that relief should have been granted, but that if relief was warranted, then the Respondent should have received a new trial instead of a second belated appeal.

brief in this matter, the Respondent respectfully moves this Court to relax Rule 243(i) and allow him to proceed without filing a White brief in this matter.³

Respectfully submitted,



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**ATTORNEY FOR RESPONDENT-
PETITIONER.**

This 12th day of February, 2015.

³ If the Respondent is misreading the provisions of Rule 243(i), SCACR, and those rules are discretionary and only apply to those PCR petitioners who want White review, then the Respondent believes that this motion is moot and apologizes to the Court for unnecessarily having to review this motion.