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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Dorchester County

DeAndrea G. Benjamin, Circuit Court Judge

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ANTHONY SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213162

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REPLY BRIEF OF PETITIONER

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## ARGUMENT IN REPLY

The PCR court erred in summarily dismissing Petitioner's application for post-conviction relief without affording Petitioner the opportunity to present evidence that his purported waiver of his right to seek collateral relief was tainted by the advice of constitutionally ineffective trial counsel.

Petitioner seeks the opportunity to present evidence to support his claim that his waiver of his right to seek collateral relief was tainted by ineffective assistance of counsel. His pro se PCR application clearly stated Petitioner's ground for relief – his counsel misadvised him, rendering his signing of the waiver involuntary. Despite the clear claim that Petitioner sought to attack the waiver as tainted by ineffective assistance, the PCR judge denied Petitioner an opportunity to be heard, ruling Petitioner had waived his right to PCR completely and irrevocably no matter the circumstances under which it was rendered. Respondent's assertion that Petitioner failed to offer facts at the PCR hearing, abandoning the claim, ignores the record. Petitioner will not belabor the point because the brief and the record disclose fully the argument made at the PCR in favor of Petitioner having the opportunity to vet fully his claim of ineffective assistance. However, Respondent's present assertion even ignores Respondent's initial position in its return, which was that Petitioner's "allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute." App. 329. Based upon this fact, Respondent requested an evidentiary hearing to resolve the issue. App. 329.

In the current procedural posture of the case, Petitioner has not asked this Court to reverse Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008), which held that a criminal defendant may waive his right to appellate and collateral review as long as the waiver is

knowing and voluntary. However, Petitioner has asked this Court to hold that a convicted individual is entitled to an evidentiary hearing to address claims of ineffective assistance related to entering into the waiver. Relevant to the issue of whether Petitioner is entitled to a hearing on this matter are decisions of federal courts and state courts addressing the issue. No less relevant are the ethics opinions on the subject, which have been cited and discussed thoroughly in the brief.

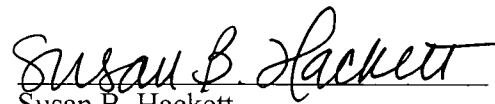
Finally, the day after Petitioner filed his brief, the Attorney General of the United States “set forth uniform Department of Justice policies relating to waivers of claims of ineffective assistance of counsel.” <http://www.justice.gov/sites/default/files/press-releases/attachments/2014/10/15/dept-policy-on-waivers-of-claims-of-ineffective-assistance-of-counsel.pdf> (last viewed on Feb. 23, 2015). The Attorney General declared: “Federal prosecutors should no longer seek in plea agreements to have a defendant waive claims of ineffective assistance of counsel whether those claims are made on collateral attack or, when permitted by circuit law, made on direct appeal.” *Id.* Further, the Attorney General set policy concerning existing waivers: “For cases in which a defendant’s ineffective assistance claim would be barred by a previously executed waiver, prosecutors should decline to enforce the waiver when defense counsel rendered ineffective assistance resulting in prejudice or when the defendant’s ineffective assistance claim raises a serious debatable issue that a court should resolve.” *Id.*

Thus, it is clear that Petitioner is entitled to an evidentiary hearing to present his case regarding whether trial counsel was ineffective in advising him to waive collateral review, which would necessarily include review of trial counsel’s performance as viewed through the lens of the United States Constitution.

CONCLUSION

For the reasons set forth in his brief and in this reply, Petitioner respectfully requests this Court remand for an evidentiary hearing on whether Petitioner's waiver of his right to seek PCR was tainted by ineffective assistance of trial counsel.

Respectfully submitted,

A handwritten signature in black ink that reads "Susan B. Hackett". The signature is written in a cursive style with a horizontal line underneath the name.

Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER.

This 23rd day of February, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

DeAndrea G. Benjamin, Circuit Court Judge

ANTHONY SANDERS,

PETITIONER,

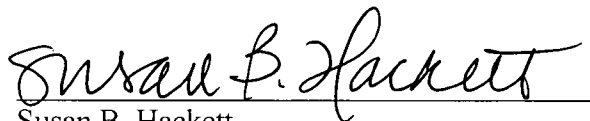
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STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

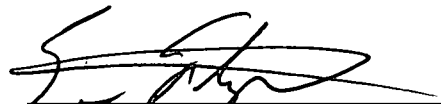
The undersigned attorney hereby certifies that a true copy of the Reply Brief of Petitioner in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Anthony Sanders, #339645, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 23<sup>rd</sup> day of February, 2015.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me  
this 23rd day of February, 2015.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.