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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

G. Thomas Cooper, Circuit Court Judge

CLIFFORD RAMSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000018

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Deputy Chief 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

The PCR judge erred in denying petitioner's request for belated direct appeal in the case because petitioner did not voluntarily and intelligently waive his right to a direct appeal.

STATEMENT

Petitioner Clifford Ramsey pled guilty to second degree burglary and possession of a firearm during the commission of a violent crime during the April 2012 term of the Berkeley County General Sessions Court before Judge R. Markley Dennis, Jr. and was sentenced to imprisonment for an aggregate period of seventeen years. App. 48 – 99. Roger Dixon represented petitioner at the plea proceeding, and Assistant Solicitors Ashley Cornwell and Anne Williams appeared on behalf of the state.

Petitioner did not enjoy the benefit of a direct appeal in the case.

On April 8, 2013, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 101-108. The respondent filed a return dated October 10, 2013, requesting that a hearing be held in the case. App. 109-112.

A PCR hearing was convened on September 10, 2014, at the Berkeley County Courthouse before Judge G. Thomas Cooper. Petitioner was present at the hearing and represented by Rodney Davis, and Assistant Attorney General Ashleigh R. Wilson appeared on behalf of the state. App. 114 – 129. On November 24, 2014, Judge Cooper issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 131 – 138.

Petitioner appealed Judge Cooper's Order of Dismissal. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's request for belated direct appeal in the case because petitioner did not voluntarily and intelligently waive his right to a direct appeal.

At the plea proceeding, the solicitor apprised the trial judge of the facts in the case. Apparently, Berkeley County homeowner Cecil Barwick was inside his house on the morning of April 13, 2011, when he heard sounds of activity afoot upstairs, and in response to this Barwick pulled a gun and shot one of the intruders (co-defendant Bobby Gadsden). Petitioner, who was also in the house, managed to escape, but was apprehended shortly thereafter in the area by police per canine tracking. App. 82, l. 17 – p. 86, l. 19.

During the PCR hearing, petitioner testified that after his plea, trial counsel did not advise him with respect to an appeal. App. 119, l. 22 – p. 120, l. 2; App. 121, l. 20 – p. 122, l. 8.

Petitioner stated that an inmate told him he had ten days to appeal, and that by then at least thirty days had passed. App. 122, l. 9 – p. 123, l. 17. Since it was obvious that petitioner desired an appeal, he stated that his only recourse was to file the instant PCR action in order to obtain his direct appeal. App. 123, l. 18 – 23. Petitioner explained as follows:

Q. [Did you not tell] trial counsel that you wanted an appeal?

A. No [trial counsel] ain't (sic) never brought it to my attention. I didn't know I could have appeal[ed]. App. 124, l. 3 – 6

Trial counsel testified that petitioner never asked for an appeal even though “[they] talked about his right to appeal.” App. 126, l. 2 – 21.

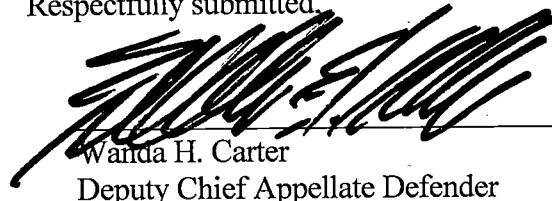
The PCR judge ruled that “trial counsel was not ineffective for failing to file an appeal,” and that “[petitioner] failed to carry his burden of proving he did not freely and voluntarily waive his right to appeal.” App. 135-136.

Clearly, petitioner did not voluntarily and intelligently waive his right to an appeal because he was unaware of his right to appeal. A voluntary waiver is freely given when there is a known right that is waived. Johnson v. Zebst, 304 U.S. 458 (1938). Hence petitioner could not have voluntarily waived a right (i.e. the right to appeal) that was unknown to him. A defendant is entitled to an appeal where there has been no intelligent or voluntary waiver of the right to an appeal. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975).

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant petitioner's petition and allow full briefing on the issue raised above.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of July, 2015.

STATEMENT OF ISSUE ON DIRECT APPEAL

The trial judge erred in failing to advise petitioner that a guilty plea would waive his right to cross-examine the state's witnesses against him.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO BERKELEY COUNTY
G. THOMAS COOPER, CIRCUIT COURT JUDGE

CLIFFORD RAMSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

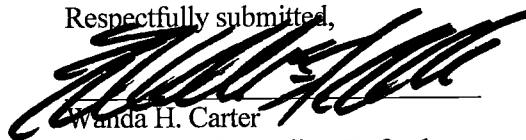
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Clifford Ramsey 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 September 10, 2014. 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 Clifford Ramsey.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 27th day of July, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

G. Thomas Cooper, Circuit Court Judge

CLIFFORD RAMSEY,

PETITIONER,

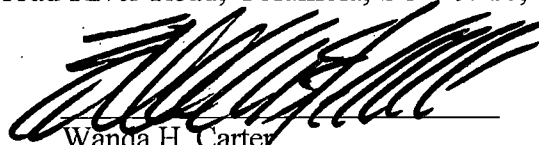
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

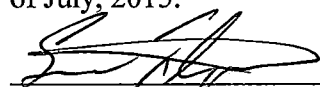
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Clifford Ramsey, #350632, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 27th day of July, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of July, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.