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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Edgar W. Dickson, Circuit Court Judge

QUINCY HOLLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000817

JOHNSON PETITION FOR WRIT OF CERTIORARI

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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 allegation that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

STATEMENT

Petitioner Quincy Holley was convicted of first degree burglary during the May 2011 term of the Lexington County General Sessions Court before Judge Thomas A. Russo. App. 1-30. Petitioner was sentenced to imprisonment for a period of twenty years. Ola A. Johnson represented petitioner at this plea proceeding and Assistant Solicitor Lawrence G. Wedekind appeared on behalf of the state. No appeal of this plea proceeding was taken in the case.

On November 3, 2011, petitioner filed a PCR application with the Lexington County Office of the Clerk of Court. App. 32-38. The respondent filed a return dated April 5, 2012, requesting that a PCR hearing be held in the case. App. 39-42.

A PCR hearing was held on August 15, 2013, at the Lexington County Courthouse before Judge Edgar W. Dickson. App. 44-49. Petitioner was present at the hearing and represented by Francis M. Hinson IV, and Assistant Attorney General Walt Whitmire appeared on behalf of the state. On August 4, 2014, Judge Dickson signed an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 101-113.

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

ARGUMENT

The PCR judge erred in denying petitioner's allegation that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

During the plea proceeding, the state alleged that petitioner and another male forced their way into a trailer while holding guns and demanded money and drugs from the occupants (Rigoverto Ramirez, Merna Jolero, and Alexander Jolero) inside the trailer. App. 19, lines 1-20.

During the PCR hearing held in the case, trial counsel testified that petitioner sent him a letter requesting a direct appeal, but the letter came ten days after the deadline had passed to file the notice of appeal. Counsel added that he previously advised petitioner of the deadline to file an appeal. App. 89, 1.21 – p. 90, 1.15.

Kimberly Thompson, who is the grandmother of the petitioner, also testified at the PCR hearing and explained that she called trial counsel for several days after the plea, and actually went to find trial counsel at the county courthouse in order to request an appeal on petitioner's behalf. Thompson stated that trial counsel's response to her when they finally talked was that he (trial counsel) no longer represented petitioner. App. 76, 1.22 – p. 77, 1.13.

Petitioner testified at the PCR hearing and stated that after the plea he directed his mother to call trial counsel, which she did do, but counsel never returned her calls. App. 61, 13-19.

The PCR judge found in the Order of Dismissal that “[petitioner] failed to meet his burden to prove counsel was ineffective for failing to file a notice of appeal” because counsel put petitioner on notice of the ten-day deadline to file an appeal. App. 111.

As a rule, trial counsel has a duty to make certain that a client is fully aware of the right to appeal and ascertain whether his client wishes to appeal. See Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989) and Frasier v. State, 306 S.C. 158, 410 S.E. 2d 572 (1991). Although petitioner's

request for an appeal was not received by counsel until after the ten-day deadline for filing an appeal notice in the case had passed; nonetheless, it was clear from the letter written by petitioner requesting an appeal and Thompson's testimony about her contact with counsel regarding an appeal, that petitioner desired a direct appeal of his plea proceeding and therefore never voluntarily waived his right to an appeal. 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 S.C. 110, 208 S.E.2d 35 (1975). Thus, the PCR judge erred in denying petitioner's allegation that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

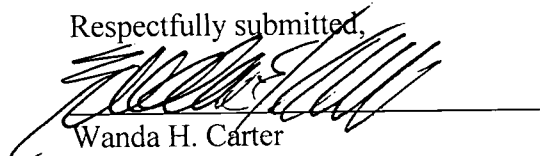
CONCLUSION

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

STATEMENT OF ISSUE ON DIRECT APPEAL

The plea judge erred in considering a conscience of the community matter prior to sentencing because this was a prejudicial sentencing factor that resulted in petitioner's receipt of an unfair sentence in the case.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
EDGAR W. DICKSON, CIRCUIT COURT JUDGE

QUINCY HOLLEY,

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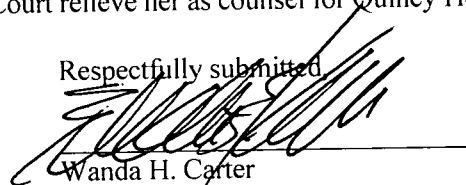
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quincy Holley 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 August 15, 2013. 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 Quincy Holley.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of November, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Edgar W. Dickson, Circuit Court Judge

QUINCY HOLLEY,

PETITIONER,

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STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

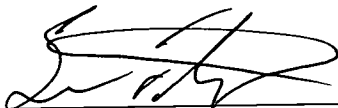
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Clay Mitchell, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Quincy Holley, #332439, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 20th day of November, 2015.


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of November, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.