

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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SC SUPREME COURT

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Certiorari to York County  
Roger M. Young, Circuit Court Judge  
\_\_\_\_\_

ARTEASA M. WHITLOCK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-00001  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

WANDA H. CARTER  
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ISSUE PRESENTED

Sentencing counsel erred in failing to place a timely request for petitioner's trial transcript because the failure to do so denied him of the right to a direct appeal.

## STATEMENT

Petitioner Arteasa Maurice Whitlock was tried in absentia per jury trial held during the March 2005 term of the York County General Sessions Court before Judge Lee S. Alford and found guilty of trafficking in crack cocaine and possession of crack cocaine with intent to distribute within proximity of a park. Supp. App. p. 16. A sealed sentence was imposed by Judge Alford. Jim Morton represented petitioner at trial and Assistant Solicitor Misty S. Horton appeared on behalf of the state.

On June 6, 2013, a sentencing hearing was held before Judge Alford at the York County General Sessions Court during which time the sealed sentence containing petitioner's aggregate eighteen-year prison term was published. App. 1 - 25. Petitioner was present at the sentencing hearing and represented by Twana Burris, and Assistant Solicitor Misty Shelton appeared on behalf of the state. Sentencing counsel filed a notice of appeal on June 17, 2013. However, only the sentencing transcript was available for appellate review of petitioner's case. Ultimately, the direct appeal was dismissed by Order of the South Carolina Court of Appeals dated May 14, 2014, in conjunction with the denial of appellate counsel's motion to reconstruct petitioner's trial in order to produce a trial transcript for appellate review. Supp. App. 1-16. Therefore, petitioner did not enjoy the benefit of a direct appeal of his trial court convictions and sentences.

On July 18, 2014, petitioner filed a PCR application with the York County Office of the Clerk of Court. App.27 – 41. The respondent filed a return dated March 19, 2015, requesting that a PCR hearing be held in the case. App. 42 – 47.

A PCR hearing was convened on August 5, 2015, at the York County General Sessions Court before Judge Roger M. Young. App. 48 – 111. Petitioner was present at the hearing and represented by Nathan Sheldon, and Assistant Attorney General Justin Hunter appeared on behalf of

the state. On September 11, 2015, Judge Young filed an Order of Dismissal denying and dismissing petitioner's allegations of ineffective assistance of trial counsel and sentencing counsel in the case. App. 113 – 122.

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

### ARGUMENT

Sentencing counsel erred in failing to place a timely request for petitioner's trial transcript because the failure to do so denied him of the right to a direct appeal.

This case emanated from a search warrant executed at a co-defendant's apartment where petitioner was present and drugs were seized. Petitioner was tried by jury in absentia and found guilty of trafficking in crack cocaine and possession of crack cocaine with intent to distribute within proximity of a park. App. 22 lines 15 - 20. A sealed sentence was imposed. Apparently, petitioner began serving a federal sentence on March 3, 2009, which ended on February 21, 2013. Then, on June 6, 2013, petitioner appeared for sentencing in York County to have his sealed sentence published in open court. App. 15, lines 11 – 18; App. 10, lines 6 – 23; App. 12, lines 13 – 23. When the sentencing judge inquired as to the whereabouts of petitioner's 2005 trial transcript in order to ascertain whether all bond issues were handled properly prior to the trial in absentia, sentencing counsel answered that “[she] tried..[but] the [trial] transcript had actually been deleted and expunged.” App. 17, l. 21 – p. 18, l. 14.

During the PCR hearing, petitioner testified that he hired sentencing counsel in 2009, but his sentencing attorney did not request his 2005 trial transcript in 2009 when she was retained. App. 63, l. 7 – 65, l. 1; App. 71, l. 4 – 12; App. 26, lines 2 – 25; App. 74, l. 2 – p. 75, l. 5; App. 76, lines 2 – 25. It appeared as though sentencing counsel remained on the case from 2009-2013. Note that

sentencing counsel sent a letter to the clerk of court in November 2009 indicating that she was retained in the case. App. 92, l. 20 – p. 93, l. 25.

Sentencing counsel testified at the PCR hearing and explained that she had been contacted by petitioner’s representatives in December 2009, and was retained in 2010 to represent petitioner at his sentencing hearing. Sentencing counsel admitted she did not request petitioner’s 2005 trial transcript during the year 2009, and the inference is that she failed to do so in the year 2010 also. Sentencing counsel testified that she “[made] efforts to get a transcript, but of course at that time the transcript had been purged from the system.” App. 87, lines 4 – 11; App. 89, l. 4 – p. 96, l. 22. With regard to the allegation of ineffective assistance of sentencing counsel, PCR counsel made the following argument at the PCR hearing:

Your Honor, furthermore we would argue [that sentencing counsel] has been ineffective in this case...She sent a letter of representation to the solicitor’s office and to the Clerk of Court in November of 2009. We have stipulated to the fact in this case that a transcript existed at that time and wasn’t destroyed until sometime in 2010 or 2011. And so, had she diligently pursued the transcript like she stated she did she would have had no problem obtaining it... It is ineffective not to because as we heard going back to the actual trial there was a Jackson v. Denno hearing argument, there was a suppression motion argument. All of that is lost at this point because that transcript was never obtained. [Petitioner] is not able to have his appeal...[Sentencing Counsel] had every opportunity to do that. She waited to do that...Had she been diligent in obtaining that transcript in 2009 when she initially undertook representation she would have been able to have the transcript and because she failed to do that [petitioner] has been prejudiced in the case. App 108, l. 15 – p 109, l. 24.

The PCR judge denied petitioner’s allegation that sentencing counsel’s performance was deficient in the case and found that sentencing counsel “made reasonable efforts to obtain the trial

transcript, but was unsuccessful because over five years had elapsed since the trial and the transcript was purged.” App. 120 – 121.

A criminal defendant may not appeal until sentenced. Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986). Thereafter, an appeal notice is permitted to be filed, and subsequently, the trial transcript must be ordered. See Rules 207(a) and 243(b), SCACR. The time limits for the court reporter to retain court tapes can be found under Rule 607 (i), SCACR, which mandates that “a court reporter shall retain the primary and back-up tapes of a proceeding for a period of at least (5) years after the date of the proceeding.”

Sentencing counsel filed the notice of appeal in petitioner’s case as it was sentencing counsel who was responsible for filing the appeal notice at the conclusion of the sentencing hearing held on June 6, 2013. However, it was also sentencing counsel who should have foreseen the scenario where the filing of the notice of appeal after the sentencing hearing would include appellate review of petitioner’s **entire** case on appeal, including the 2005 trial transcript as well as the 2013 sentencing transcript. Thus, in anticipation and contemplation of appellate review of petitioner’s **entire** case on appeal, an order for the 2005 trial transcript should have been placed immediately by sentencing counsel when she was retained in 2009 or in 2010 at the very latest. Had sentencing counsel placed an order for the 2005 trial transcript in 2009 when she was first retained as sentencing counsel, or in the alternate in 2010 when she claimed she was on record as petitioner’s sentencing attorney, then petitioner would have enjoyed the benefit of a direct appeal of his case. Note that in 2009 and 2010, the trial tapes would have been available for transcription.

Sentencing counsel’s failure to request petitioner’s 2005 trial transcript when she was retained in 2009 or later in 2010 demonstrated her lack of foresight as to what was needed for the appeal after the sentencing hearing, which constituted deficient representation in petitioner’s case.

Petitioner was prejudiced by sentencing counsel's ineffective representation in this regard because the omission denied him of the statutory right to a direct appeal.<sup>1</sup> Furthermore, petitioner was prejudiced because it appeared as though his direct appeal would have been meritorious. Note that in appellate counsel's motion to reconstruct petitioner's trial record in order to have a trial transcript available for the purpose of securing a direct appeal, it was discovered that a continuance motion was made and that there was a question regarding the legality of the search and seizure in the case; and in addition, the solicitor testified at the PCR hearing that a Jackson v. Denno<sup>2</sup> motion and hearing were entertained in the case. See Supp. App. Pages 1 – 6; App. 103, l. 21 – p. 104, l. 13. Compare, the case of Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), where the Court found that in considering whether counsel was ineffective in failing to obtain a transcript from the defendant's first trial in order to impeach witnesses during the second trial, it was decided that the omission did not prejudice the defense for the second trial because evidence of guilt was overwhelming. In the case at bar, there would appear to be no indication that petitioner's guilt was overwhelmingly established at trial or that the issues from the trial were non-meritorious, which in turn meant that there was a reasonable likelihood that an appeal might have been beneficial to petitioner.

Sentencing counsel's error in failing to place a timely request for petitioner's 2005 trial transcript when she was retained in 2009/2010 to represent petitioner at his 2013 sentencing hearing violated his Sixth Amendment right to effective assistance of counsel in his case. But for sentencing

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<sup>1</sup> See Rule 602, SCACR, S.C. Code Ann. § 14-3-330, Rule 201, SCACR.

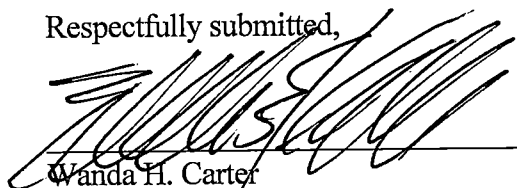
<sup>2</sup> 378 U.S. 368 (1964).

counsel's error in this regard, a reasonable probability exists that petitioner's direct appeal would have materialized along with a favorable outcome on appeal.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of June, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Roger M. Young, Circuit Court Judge

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ARTEASA M. WHITLOCK,

PETITIONER,

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CERTIFICATE OF SERVICE

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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Justin Hunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Arteasa M. Whitlock, #277009, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 20th day of June, 2016.



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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day  
of June, 2016.



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(L.S.)

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