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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

Honorable Daniel D. Hall, Circuit Court Judge

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DEVROSS MCCORFT SULLIVAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000620

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Wanda H. Carter  
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ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

ARGUMENT ..... 3

CONCLUSION ..... 4

STATEMENT OF ISSUE ON DIRECT APPEAL ..... 4

PETITION TO BE RELIEVED AS COUNSEL ..... 5

**ISSUE PRESENTED**

The PCR judge erred in denying petitioner's allegation that he was denied the right to a direct appeal in his case.

## STATEMENT

Petitioner Devross Sullivan pled guilty to trafficking in cocaine, possession with intent to distribute a controlled substance, trafficking in heroin, possession of a weapon during the commission of a violent crime, and possession with intent to distribute crack cocaine during the May, 2014 term of the Greenville County General Sessions Court before Judge Letitia H. Verdin. Petitioner was sentenced to an aggregate eighteen-year prison term. App. 1 – 16. James Brehm represented petitioner at the plea proceeding, and Assistant Solicitors Joyce L. Monts and Jeffrey Weston appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal of his convictions and/or sentences.

On April 20, 2015, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 18 – 32. The respondent filed a return dated September 15, 2015, requesting that an evidentiary hearing be held in the case. App. 33 – 39.

A PCR hearing was convened on February 16, 2016, at the Greenville County General Sessions Court before Judge Daniel Dewitt Hall. App. 40 – 62. Petitioner was present at the hearing and represented by Brian P. Johnson, and Assistant Attorney General Karen C. Ratigan appeared on behalf of the state.

On March 4, 2016, Judge Hall issued an Order of Dismissal in the case therein denying petitioner's allegations of ineffective assistance of trial counsel. App. 64 – 70.

Petitioner appealed. This petition follows.

## ARGUMENT

The PCR judge erred in denying petitioner's allegation that he was denied the right to a direct appeal in his case.

At trial, the solicitor apprised the plea judge of the facts of the case. Police officers were conducting a drug operation on July 18, 2013, when they followed petitioner, who was driving a rental car, into a Home Depot store parking lot in Greenville, South Carolina. Police officers confronted petitioner when he exited the store, and when petitioner fled after being questioned, he was captured by police shortly thereafter. The K-9 dogs alerted police and a subsequent search of the vehicle petitioner had been driving yielded the presence of heroin, cocaine, and crack cocaine. App. 12, l. 13 – p. 13, l. 22.

In petitioner's PCR application, he alleged that "counsel filed a motion for [re]consideration, but failed to file a[n] appeal as requested from the denial." App. 19 – 20. During the PCR hearing, petitioner alleged that he "wanted" a direct appeal filed in his case. App. 46, lines 9 – 14.

Trial counsel testified during the PCR hearing and explained that he filed a motion to have matters regarding petitioner's sentence reconsidered with respect to time served while on house arrest, and presumably a sentence reduction and the opportunity for a sentence reduction via the assistance of a drug informant's cooperation. Originally, counsel sought a ten-year plea sentence per petitioner's request during plea negotiations. Ultimately, petitioner received credit for time served, but apparently his remaining sentencing issues were denied. All issues emanating from the resentencing could have been reviewed on appeal had trial counsel filed a notice of appeal after the adjudication of the reconsideration motion, which presumably occurred when the trial judge granted time served. App. 57, l. 1 – p. 60, l. 6. As a rule, a sentence can be

reviewed for reasonableness under an abuse of discretion claim against the trial judge. Gall v. United States, 552 U.S. 38 (2007); State v. Franklin, 276 S.C. 240, 226 S.E.2d 896 (1976).

Note that it appeared that no formal in-court sentencing reconsideration hearing (from which a transcript could be ordered) was ever held in the case. The PCR judge ruled that petitioner “failed to meet his burden of proving plea counsel erred in not failing the appeal.” App. 68 – 69.

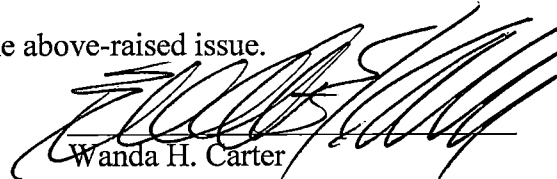
A defendant is entitled to a direct appeal where there has been no intelligent or voluntary waiver of the right to an appeal made by the defendant. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975). As a rule, trial counsel has a duty to make certain a client is fully aware of the right to appeal and ascertain whether his client desires an appeal, and then file an appeal if the client wishes to appeal. See Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991). In Re Anonymous member of the Bar, 303 S.C. 308, 400 S.E.2d 483 (1991). Here, trial counsel did not perform his duty with respect to petitioner’s appellate rights and as a result, petitioner did not voluntarily waive his right to a direct appeal in the case.

**STATEMENT OF ISSUE ON DIRECT APPEAL**

The plea judge erred in denying appellant’s motion to grant all sentencing requests contained in his sentencing reconsideration motion.

**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.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of September, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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DEVROSS MCCORFT SULLIVAN,

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STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_

PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Devross M. Sullivan 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 record of petitioner's trial before Judge Daniel D. Hall, which was held on February 16, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Devross M. Sullivan.

Respectfully Submitted,

  
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Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 7th day of September, 2016.

STATE OF SOUTH CAROLINA

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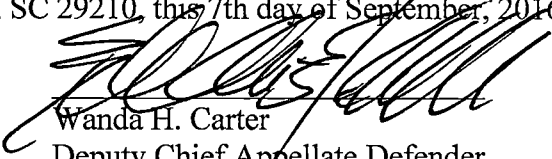
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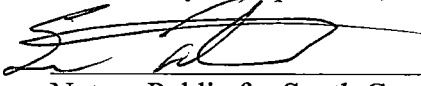
RESPONDENT

—————  
CERTIFICATE OF SERVICE  
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Patrick Schmeckpeper, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Devross M. Sullivan, #319615, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of September, 2016.

  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 7th day of September, 2016.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: 10/30/2022