

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to York County

S.C. SUPREME COURT

Honorable Daniel D. Hall, Circuit Court Judge

STEVEN SPAGNOLI,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000961

PETITION FOR WRIT OF CERTIORARI

LARA M. CAUDY
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ATTORNEY FOR PETITIONER

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1.

The court correctly granted Petitioner a belated direct appeal pursuant to
White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974). 5

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ISSUE PRESENTED

Did the court correctly grant Petitioner a belated direct appeal pursuant to White v. State,
236 S.C. 110, 108 S.E.2d 35 (1974)?

STATEMENT

A York County Grand Jury indicted Petitioner on April 21, 2011 for murder, attempted murder, criminal conspiracy, and two counts of possession of a firearm during the commission of a violent crime. App. 932-937. A pretrial hearing was held on April 19, 2012 before the Honorable John C. Hayes. App. 1. Jury selection was held that following Monday, April 23, 2012, before the Honorable Lee S. Alford.¹ Petitioner's case was ultimately called to trial on April 24, 2012 before Judge Hayes, and a jury. App. 1. Solicitor Kevin Brackett and Deputy Solicitor Willy Thompson represented the state, and James W. Hancock represented Petitioner. App. 1.

On April 26, 2012, the jury found Petitioner guilty as indicted. App. 902, 1. 5 – 903, 1. 3. He was sentenced by Judge Hayes to life without parole for murder, thirty years consecutive for attempted murder, five years concurrent for criminal conspiracy, and five years concurrent for each count of possession of a firearm during the commission of a violent crime. App. 914, 11. 4-9.

The Court of Appeals dismissed Petitioner's direct appeal by order filed January 30, 2013 for failure to timely order the transcript as required by Rule 207, SCACR.

On May 28, 2013, Petitioner filed an application for post-conviction relief (PCR) seeking, *inter alia*, a belated direct appeal because his trial attorney "failed to communicate with appeals court." App. 916-922. The state filed a return to this application dated May 6, 2015. App. 923-927. Assistant Attorney General Justin Hunter represented the state, and Leah Moody represented Petitioner. App. 931. By a consent order dated April 22, 2016, the Honorable Daniel D. Hall

¹ The appendix does not include the *voir dire* and jury selection proceedings that were held before Judge Alford on April 23, 2013.

granted Petitioner a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).² App. 929-931.

This petition for writ of certiorari follows.

² Judge Hall dismissed Petitioner's PCR application "**with prejudice.**" App. 931 (emphasis added). This language must have been in error because it is nonsensical that Petitioner would waive his remaining ineffective assistant of counsel claims in order to receive a belated direct appeal of his convictions to which he was entitled.

ARGUMENT

The court correctly granted Petitioner a belated direct appeal pursuant to *White v. State*, 236 S.C. 110, 108 S.E.2d 35 (1974).

The PCR court correctly granted Petitioner a belated direct appeal pursuant to *White v. State*, 236 S.C. 110, 108 S.E.2d 35 (1974). Judge Hall found Petitioner “did not knowingly and voluntarily waive his right to a direct appeal” and “is entitled to a belated review of his convictions.” App. 931. Moreover, both counsel for Respondent and counsel for Petitioner consented to the grant of a belated direct appeal. App. 931.

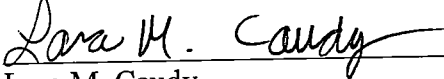
“The appropriate scope of review of this Court is that any evidence of probative value is sufficient to uphold the PCR judge’s findings.” *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). This case meets that standard. The PCR judge’s ruling is supported by an affidavit from Petitioner’s trial counsel, James W. Hancock.³ In this affidavit, Mr. Hancock stated that a few days after his conviction, Petitioner “fell or jumped from the second floor of the Moss Justice Center and landed directly on his head.” App. 928. The affidavit explains that Petitioner was hospitalized for several months, was on life support, and was “not capable of speaking” due to his injuries. App. 928. Understandably, this prevented counsel from properly communicating with Petitioner and perfecting his direct appeal. This evidence supports the PCR judge’s conclusion that Petitioner is entitled to a belated direct appeal pursuant to *White v. State*.

Respectfully, this Court should grant the petition for writ of certiorari and consider Petitioner’s belated direct appeal.

³ Mr. Hancock passed away before this PCR proceeding.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and consider Petitioner's belated direct appeal.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of November, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Daniel D. Hall, Circuit Court Judge

STEVEN SPAGNOLI,

PETITIONER,

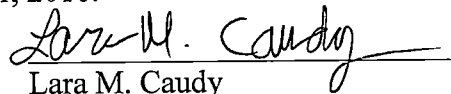
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

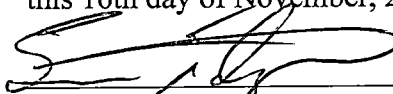
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case have been served upon Justin Hunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served upon Steven Spagnoli, #350895, at Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472, this 16th day of November, 2016.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 16th day of November, 2016.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.