

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Anderson County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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CARLOS SCOTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001118

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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**ISSUE PRESENTED**

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

## STATEMENT

Petitioner Carlos Antonio Scott pled guilty to first degree burglary, attempted armed robbery, grand larceny, possession of a weapon during the commission of a violent crime, and four counts of kidnapping during the July 2013 term of the Anderson County General Sessions Court before Judge Alexander McCauley. App. 1-10. Sentencing was deferred until the July 2014 term of the Anderson County General Sessions Court when Judge Alexander McCauley sentenced petitioner to an aggregate forty-year prison term. App. 18-31. M. Scott McElhannon represented petitioner at both proceedings and Assistant Solicitor Lauren D. Price appeared on behalf of the state. Petitioner did not appeal his convictions and sentences.

On May 12, 2015, petitioner filed a PCR application with the Anderson County Office of the Clerk of Court. App. 33-39. The respondent filed a return dated September 2015, requesting that a hearing be held in response to petitioner's PCR application. App. 40-44

A PCR hearing was convened on February 9, 2016, at the Anderson County Courthouse before Judge Brooks P. Goldsmith. App. 45-61. Petitioner was present at the hearing and represented by High Welborn, and Assistant Attorney General Patrick Schmeckpeper appeared on behalf of the state. On May 10, 2016, Judge Goldsmith issued an Order of Dismissal denying PCR relief to petitioner. App. 62-67.

Petitioner appealed Judge Goldsmith's Order of Dismissal. This brief follows.

## ARGUMENT

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

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. On August 8, 2011, petitioner and co-defendant Adarius Bell allegedly forced their way into a homeowner's residence and tied the homeowner up while they took her money (\$6,200.00), personal belongings and her automobile, which they attempted to sell. Then, on September 17, 2012, petitioner and co-defendant Cedric Ramsey allegedly entered the Waffle House on Highway 28 Bypass at 5:40 a.m. and demanded that the employee open the cash register. Ramsey fired shots and pointed a weapon at the people inside. App. 12, l. 18 – App. 14, l. 17

During the PCR hearing held in the case, petitioner testified that he requested an appeal via a letter to counsel, but that counsel did not file a notice of appeal in his case. App. 35, l. 16 – App. 36, l. 6 ; App. 38, l. 17 – App. 39, l. 8.

Trial counsel testified during the PCR hearing and explained that petitioner never asked for an appeal and that he never received a letter from petitioner requesting an appeal of the case. App. 41, l. 18 – App. 42, l. 25.

The PCR judge found credible counsel's testimony that petitioner did not request an appeal and denied petitioner's allegation that counsel erred in failing to appeal his case. App. 48 – 49.

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.

### **CONCLUSION**

Based on the foregoing argument, 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 27th day of January, 2017.

### **STATEMENT OF ISSUE OF DIRECT APPEAL**

The plea judge erred in failing to fully explain sentencing consequences (concurrent versus consecutive) in the case.

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PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Carlos Scott states that:

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 Brooks P. Goldsmith, which was held on February 9, 2016 (Evidentiary Hearing), 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 Carlos Scott.

Respectfully Submitted,

Wanda H. Carter for  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 27th day of January, 2017.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

*Suzanne B. Hackett for*  
Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

This 27th day of January, 2017.

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CERTIFICATE OF SERVICE

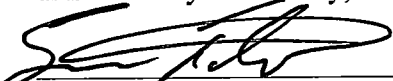
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly 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 Carlos Scott, #302450, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 27th day of January, 2017.

  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 27th day of January, 2017.

 (L.S)

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