

2010-153069

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

Cross-
Appeal

ERIC D. PHILLIPS,

RESPONDENT/PETITIONER,

V.

STATE OF SOUTH CAROLINA,

PETITIONER/RESPONDENT

PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR RESPONDENT/PETITIONER

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ISSUE PRESENTED

Did the PCR court correctly grant review pursuant to White v. State , 263 S.C. 110, 208 S.E.2d 35 (1974) because the applicant did not knowingly and voluntarily waive his appellate rights?

STATEMENT

Eric Phillips was indicted on two counts of assault and battery with intent to kill (ABWIK) and one count of possession of a weapon during the commission of a violent crime. On October 16, 2006, he proceeded to trial before the Honorable James C. Williams and a jury. Phillips was represented by the late Gene Dukes, Esquire. The jury returned a verdict of guilty on each charge as indicted. Judge Williams sentenced Phillips to fifteen years on each ABWIK and to five years on the possession of a weapons charge. App. 516; App. 521; App. 526. The sentences were to be served concurrently. Phillips did not file a notice of appeal.

On February 6, 2007, Phillips filed an application for post-conviction relief (PCR). The state filed a return on July 27, 2007. An amended PCR application was filed June 10, 2009. An evidentiary hearing was held on June 10, 2009 before the Honorable Diane S. Goodstein. Judge Goodstein issued an order on January 25, 2010 granting Phillips' PCR application, and ordering a new trial. Judge Goodstein also granted Phillips a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The state filed a notice of appeal on February 22, 2010. Phillips' PCR attorney filed a notice of appeal on February 23, 2010. The state filed a Petition for Writ of Certiorari October 11, 2010. A Return to the State's Petition is being filed simultaneously with this petition, and a brief pursuant to White v. State, Id., and Rule 227(i)(1), SCACR.

ARGUMENT

The PCR court correctly granted review pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) because the applicant did not knowingly and voluntarily waive his appellate rights.

Eric Phillips was convicted of shooting John Griffin in the side and Griffin's brother, Gerald, in the hand during an altercation at the Waffle House on December 14, 2003. John Griffin and Phillips had words earlier in the evening when both were at a club called the "Farm." The issue concerned the child that Phillips allegedly had with Griffin's sister. App. 211 – 213.

Phillips and his girlfriend, Louvenia Lloyd, left and Phillips took her home. Phillips then went back out to the Waffle House for food where Griffin started the same argument again. Griffin had a group of men with him who all started approaching Phillips while they were still outside. A gun fell from someone else onto the ground in the group, and Phillips grabbed the gun and started shooting into the air to disperse the crowd. One of the shots hit John Griffin in his side, and another bullet hit Gerald Griffin's hand. App. 214 – 226.

Phillips turned himself into the police at the precinct that night, and was charged with two counts of ABWIK and possession of a gun during a crime of violence. App. 224 – 227.

At his PCR hearing, Phillips testified that he asked his trial attorney for an appeal, but counsel told him he did not do appeals any longer. App. 411, ll. 10 – 25. Phillips then tried to file his own appeal, but it was too late. App. 412, ll. 1 – 25; App. 413, ll. 1 – 25; App. 414, ll. 1 – 12.

The PCR judge found that Phillips did not knowingly and voluntarily waive his right to a direct appeal and granted Phillips the right to a belated appeal according to *White v. State*, 263 S.C. 110, 108, S.E.2d 35 (1974).

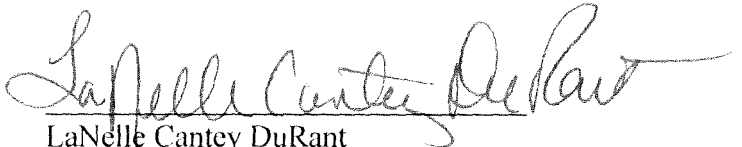
On review, a PCR judge's findings will be upheld if there is any evidence of probative value to support them. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

The order of the PCR court granting the belated appeal should be affirmed.

CONCLUSION

The order of the PCR court granting a belated appeal pursuant to White v. State should be affirmed.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

This 2nd day of March, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

ERIC D. PHILLIPS,

RESPONDENT/PETITIONER,

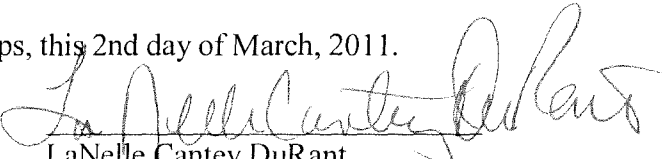
V.

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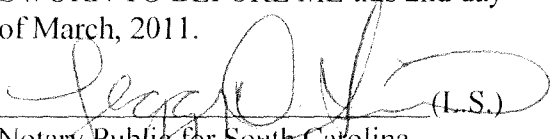
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari in this case have been served on
Mary S. Williams, Esquire, and Eric Phillips, this 2nd day of March, 2011.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER/ PETITIONER

SWORN TO BEFORE ME this 2nd day
of March, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017 .