

2010-178010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

D. Garrison Hill, Circuit Court Judge

TYRONE PERRY EDWARDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR court erred in denying petitioner's allegation that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

STATEMENT

Petitioner Tyrone Perry Edwards pled guilty to strong arm robbery, possession of crack cocaine, second offense, and unlawful carrying of a pistol during the January 2009 term of the Greenville County General Sessions Court before Judge Edward Miller. On March 23, 2009, Judge Miller sentenced petitioner to imprisonment for a period of eight years on the robbery conviction, five years on the possession of crack cocaine conviction, and one year on the pistol conviction. Petitioner was represented by Amanda H. Lackland at the plea proceeding. App. 1-35.

On August 5, 2009, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 46-53. The respondent filed a return dated November 23, 2009, requesting that a hearing be held in the case. App. 54-58. A hearing was convened on August 26, 2010, at the Greenville County Courthouse before Judge D. Garrison Hill. App. 50-97. On October 25, 2010, Judge Hill issued an order of dismissal in the case. App. 99-104. Petitioner was represented by Paige E. Tiffany at the PCR hearing.

Petitioner appealed Judge Hill's order of dismissal issued in the case. This petition follows.

ARGUMENT

The PCR court erred in denying petitioner's allegation that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

During the PCR hearing, petitioner testified that he attempted to appeal his case when trial counsel did not file the notice of appeal for him. Petitioner stated that he obtained the information on how to appeal and sent in his notarized paperwork and notified appellate defense and his trial attorney of his attempt to appeal via letters. Petitioner explained that he was not unsuccessful in his pro se attempt to appeal because certain documents were missing from his notice and there was a problem with the court's receipt of his paperwork. Petitioner stated that trial counsel informed him that "she was unable to represent [him]" on appeal and that he could "represent [himself] on appeal." App. 78, l. 25 – p. 84, l. 9. Trial counsel admitted in effect her inaction regarding the appeal of this case. App. 96, l. 6-22. The PCR court ruled that petitioner failed to prove that he was entitled to a belated appeal. App. 103.

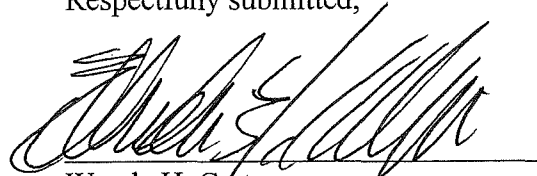
If after advising an indigent client requesting an appeal the client wishes to appeal, then trial counsel must serve and file a notice of appeal as required by Rule 203, SCACR. In Re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991). See also Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), where counsel was found ineffective in failing to appeal where the defendant desired an appeal, but counsel took no action to secure an appeal on his behalf with state appellate counsel due to his indigent status. A defendant is entitled to an 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 (1974). After a client is convicted, trial counsel in all cases has a duty to make certain that the client is fully aware of the right to appeal. Cherry v. State, 300 S.C.

115, 386 S.E.2d 624 (1989). It is clear in this case that the PCR court erred in denying petitioner's allegation that he did not voluntarily and intelligently waive his right to a direct appeal in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue.

Respectfully submitted,

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

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of June, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
D. GARRISON HILL, CIRCUIT COURT JUDGE

TYRONE PERRY EDWARDS,

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V.

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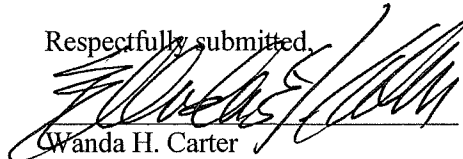
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyrone Perry Edwards, Jr. 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 records and transcript of petitioner's post-conviction relief hearing which was held on August 26, 2010. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Tyrone Perry Edwards, Jr.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 28th day of June, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
D. Garrison Hill, Circuit Court Judge

TYRONE PERRY EDWARDS,

PETITIONER,

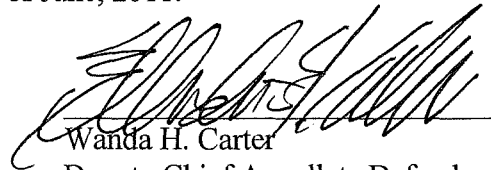
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE


I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Tyrone Perry Edwards, Jr., #293186, at Kershaw Correctional Institution this 28th day of June, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 28th day
of June, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.