

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Orangeburg County

Benjamin H. Culbertson, Circuit Court Judge

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AMY RENEE LANE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002403

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PETITION FOR WRIT OF CERTIORARI

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South Carolina Commission on Indigent Defense  
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ATTORNEY FOR PETITIONER

 ORIGINAL

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**ISSUE PRESENTED**

The PCR judge ruled properly that petitioner did not voluntarily waive her right to a direct appeal in the case.

## STATEMENT

Petitioner Amy Renee Lane pled guilty to armed robbery during the November 2014 term of the Richland County General Sessions Court before Judge Edgar W. Dickson and was sentenced to imprisonment for a period of ten years. App. 1-21. Michael Culler represented appellant at the plea proceeding, and Assistant Solicitor Ashley Cornwell appeared on behalf of the state. Petitioner appealed, but the appeal was dismissed.

On June 5, 2015, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 23-29. On October 29, 2015, the respondent filed a return and partial motion to dismiss requesting that a hearing be held in response to petitioner's PCR action. App. 30-35.

A PCR hearing was convened on May 16, 2016, at the Orangeburg County Courthouse before Judge Benjamin H. Culbertson. App. 37-66. Petitioner was present at the hearing and represented by Jonathan D. Waller, and Assistant Attorney J. Clayton Mitchell, III, appeared on behalf of the state.

On October 27, 2016, Judge Culbertson issued an Order of Dismissal on the ineffective assistance of counsel allegations, but granted relief on petitioner's request for a belated direct appeal in the case. App. 68-75.

Petitioner appealed Judge Culbertson's Order of Dismissal. This petition follows.

## ARGUMENT

The PCR judge ruled properly that petitioner did not voluntarily waive her right to a direct appeal in the case.

During the PCR hearing, petitioner testified that she desired an appeal of the plea proceeding and that she informed trial counsel that she wanted an appeal of her case. Petitioner added that her mother discussed an appeal with counsel also on the day after the plea proceeding. App. 50, l. 12-22; App. 54, l. 21-25.

Trial counsel admitted that an appeal was requested and testified at the PCR hearing as follows:

A. Her mother came to the office and asked for [an appeal] and we had a girl in the office that frankly just screwed it up and there is no question that she should be granted a belated appeal. App. 60, l. 22 – App. 61, l. 3.

PCR counsel explained that petitioner’s direct appeal was dismissed because it was untimely filed fourteen days after the guilty plea and “never served on the appropriate people.” App. 43, lines 1-12. See Supplemental Appendix.

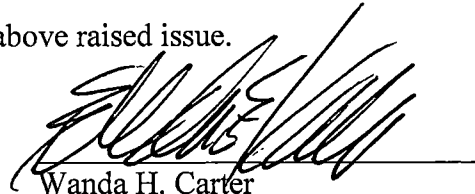
In the Order, the PCR judge granted petitioner’s request for a belated direct appeal per White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), on the ground that “while a notice of appeal was filed by counsel, it was not perfected and was eventually dismissed by the Court of Appeals because of the deficiencies in filing.” App. 73. See Supplemental Appendix.

Trial counsel has a duty to make certain that 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. 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). Here, trial counsel did not perform his duty with respect to petitioner’s

appellate rights. 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 (1975). Here, petitioner did not voluntarily waive her right to an appeal. Rather, trial counsel erred in failing to take the appropriate steps to ensure petitioner's appellate rights were safeguarded. If after an indigent client requesting an appeal the client wishes to appeal, then trial counsel must serve and file a notice of appeal. In Re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E. 483 (1991). The PCR judge ruled properly that since trial counsel failed to properly file and serve the appeal notice, which petitioner requested, then petitioner established that there was no voluntarily waver of her right to a direct appeal in the case

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner would request 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 12th day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Orangeburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

\_\_\_\_\_  
AMY RENEE LANE,

PETITIONER

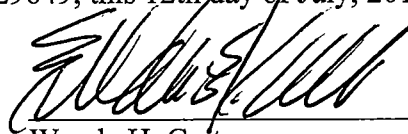
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

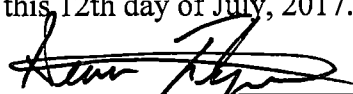
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Ruston Neely, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix and Supplemental Appendix have been served on Amy Renee Lane, #362247, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 12th day of July, 2017.



\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 12th day of July, 2017.

 (L.S)

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: 10/30/2022