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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County
Doyet A. Early, III, Circuit Court Judge

2015-CP-02-2458
Appellate Case No. 2016-001979

WILLIAM MCCLADDIE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

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I. The PCR court correctly granted Petitioner a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), where the state consented to the request and the undisputed evidence showed that although trial counsel filed and served a notice of appeal, he failed to do so in a timely manner as required by Rule 203(b)(2), SCACR.5

II. The PCR Court did not rule as to whether Petitioner knowingly, intelligently, and voluntarily waived his right to raise post-conviction relief claims independent of his request for a belated appeal, and therefore, the issue is not preserved for appellate review.5

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RESPONDENT'S ISSUES PRESENTED

- I. Did the PCR court correctly grant Petitioner a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), where the state consented to the request and the undisputed evidence showed that although trial counsel filed and served a notice of appeal, he failed to do so in a timely manner as required by Rule 203(b)(2), SCACR?

- II. Did the PCR court rule as to whether Petitioner knowingly, intelligently, and voluntarily waived his right to raise post-conviction relief claims independent of his request for a belated appeal to the lower court?

STATEMENT OF THE CASE

William McCladdie (“Petitioner”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. On February 20, 2015, Petitioner burglarized the house of Ms. Evelyn Clark just six weeks after her sister died and left the house to her in her will. He stole several items from inside the house and placed them inside a stolen vehicle that he had driven to the home. Petitioner was found hiding in the bushes outside the house lying on top of a crowbar with the keys to the stolen car in his pocket.

Petitioner was true bill indicted at the July 2015 term of the Aiken County Grand Jury for first degree burglary (2015-GS-02-01103), possession of tools capable of being used in crime (2015-GS-02-0104), and possession of a stolen vehicle (2015-GS-02-01105). Petitioner proceeded to a jury trial before the Honorable Doyet A. Early, III. Michael B. McMillian, Esquire represented Petitioner at trial. On July 8, 2015, a jury found Petitioner guilty on all charges. Judge Early sentenced Petitioner to fifteen year term of imprisonment for first degree burglary, five year term of imprisonment for possession of tools capable of being used in a crime, and ten year term of imprisonment for possession of a stolen vehicle, with all sentences to be served concurrently.

Petitioner filed a notice of appeal. On August 19, 2015, the South Carolina Court of Appeals dismissed the notice of appeal for untimely service. The remittitur was returned to the circuit court on September 28, 2015.

Petitioner filed an application for post-conviction (2015-CP-02-02458) relief on October 19, 2015, alleging the following grounds for relief:

1. Ineffective assistance of counsel
 - a. Failed to file appeal in time.
2. Subject matter jurisdiction
 - a. Sham indictments
3. Illegal sentence
 - a. Sentence exceeds and or does not coincide with charge.

Respondent made its Return on December 18, 2015. After reviewing the file and speaking with the appropriate parties, Respondent indicated to Petitioner it would consent to Petitioner's request for a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Accordingly, Petitioner's attorney requested the matter be handled via consent order. An Order was drafted, and all parties reviewed and signed the Order indicating their consent to dismissing the application and granting Petitioner a belated review of his direct appeal issues pursuant to White. On August 10, 2016, Judge Early, acting in his capacity as Chief Administrative Judge for the Second Judicial Circuit, signed the Order dismissing the application with prejudice and granting a belated review of direct appeal issues pursuant to White. The Order was filed August 22, 2016.

Petitioner filed a timely Notice of Appeal on September 22, 2016. Petitioner's Appendix, Petition for Writ of Certiorari, and Brief of Appellant Pursuant to White v. State were filed on March 13, 2017. This Return to the Petition for Writ of Certiorari follows.

ARGUMENT

- I. The PCR court correctly granted Petitioner a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), where the state consented to the request and the undisputed evidence showed that although trial counsel filed and served a notice of appeal, he failed to do so in a timely manner as required by Rule 203(b)(2), SCACR.**

Respondent agrees with Petitioner's assertion that he is entitled to a belated review of direct appeal issues. It is clear from the record Trial Counsel did not file the notice of appeal in a timely manner as required by the appellate court rules. Respondent consented to the granting of this relief and does not oppose it on appeal.

- II. The PCR Court did not rule as to whether Petitioner knowingly, intelligently, and voluntarily waived his right to raise post-conviction relief claims independent of his request for a belated appeal, and therefore, the issue is not preserved for appellate review.**

Petitioner argues he is entitled to a remand for a determination of whether he knowingly, intelligently, and voluntarily waived his right to raise post-conviction relief claims independent of his request for a belated direct appeal. However, this issue was never raised to nor ruled upon by the lower court, and Petitioner never filed a motion to reconsider to address the issue. Therefore, this issue is not preserved for appellate review and should be dismissed.

It is well settled that an issue that has not been presented to or passed upon by trial judge will not be considered on appeal. State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974). If an issue is raised but not ruled upon, it is not preserved for appeal. State v. Watts, 321 S.C. 158, 467 S.E.2d 272 (1996). Only a matter that has been ruled on below can be reviewed, otherwise, the appellate court would be exercising original jurisdiction. Gee, 262 S.C. 373, 204 S.E.2d 727. "When a trial court makes a general ruling on an issue, but does not address the specific

argument raised by a party, that party must make a motion asking the trial court to rule on the issue in order to preserve it for appeal.” Cowburn v. Leventis, 366 S.C. 20, 619 S.E.2d 437 (Ct. App 2005).

In the present case, Petitioner voluntarily signed an order consenting to the dismissal of all of his claims for post-conviction relief outside the scope of his request for a belated appeal. While the order did not specifically make factual findings about the knowing and intelligent nature of his waiver, Petitioner did not file a Rule 59(e) SCRPC, motion to ask the PCR court to reconsider or rule upon the issue. When a party fails to file a Rule 59(e), SCRPC, motion asking the post-conviction relief court “to make specific finds of fact and conclusions of law,” the issue on appeal is not preserved for review. Burgess v. State, 402 S.C. 92, 738 S.E.2d 264 (2013).

As this issue was never ruled upon by the post-conviction relief court and Petitioner failed to file a Rule 59(e), SCRPC, motion, requesting such a ruling, the issue is not preserved for this Court’s review. Therefore, this Court should deny the Petition for Writ of Certiorari and Petitioner’s request for remand, as this Court has no jurisdiction over this issue in this case.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE A. COLEMAN
Assistant Attorney General
for S.C. Bar No. 102214

By: 
ATTORNEYS FOR RESPONDENT

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July 26, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS.

Certiorari to Aiken County

The Honorable Doyet A. Early, III, Circuit Court Judge

WILLIAM MCCLADDIE,

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
South Carolina Office of Indigent Defense
1330 Lady St., Suite 401
Columbia, South Carolina 29201

I further certify that all parties required by Rule to be served have been served.

This 26th day of July, 2017.



CHANDRA E. YOUNG
Legal Assistant
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RECEIVED
JUL 26 2017
S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

July 26, 2017

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: William McCladdie, v. State of South Carolina
2016-001979

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case.

Sincerely,

for Julie A. Coleman
Assistant Attorney General

JAC:cey
Enclosures

cc: Susan B. Hackett, Esquire