

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE SUPREME COURT

Certiorari to Aiken County

Doyet A. Early, Circuit Court Judge

WILLIAM MCCLADDIE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001979

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

II. Is Petitioner 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?

ARGUMENT

II. Petitioner 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.

In his petition for writ of certiorari, Petitioner requested this Court remand his PCR action to the circuit court for a determination of whether he knowingly, intelligently, and voluntarily waived his right to raise PCR claims separate and apart from his claim that trial counsel was ineffective for failing to timely serve the notice of appeal, which denied Petitioner a direct appeal. Respondent argued the issue was not preserved for review because the PCR court did not rule on the issue and no motion pursuant to Rule 59(e), SCRCP was filed. Ret. at 5-6. It is precisely the PCR court's failure to make findings regarding whether the waiver of the right to present PCR claims that requires this case be remanded.

In the "Statement of The Case" portion of the return, Respondent purportedly recounted how the order of dismissal granting the belated direct appeal developed:

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.

Ret. at 4. Tellingly, Respondent provided no citations to the Appendix for these statements as these matters were *not* before the PCR judge and *not* included in the Appendix. Presumably, these statements are Respondent's recollection of what transpired. Therefore, Respondent's inclusion of these matters in the return is improper. See Rule 243(g), SCACR. The statements were not contained in documents presented to the lower court or as part of the "entire lower court

record.” See Rule 243(f)(1), SCACR; cf. Rule 210(c), SCACR (explaining the Record on Appeal “shall not ... include matter which was not presented to the lower court or tribunal”).

Although Petitioner’s signature appeared on the order of dismissal, there was no indication in the order that Petitioner was waiving his PCR claims. Therefore, Petitioner would have been unaware of such a waiver from the face of the order. In no way did the order indicate Petitioner was waiving his PCR claims or, more importantly, that he was doing so in a knowing and voluntary manner. Respondent’s statement that “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” is not supported by the record. See Ret. at 6. Petitioner signed the order, but the record contained no evidence that Petitioner understood he was waiving the right to present his PCR issues. Why would Petitioner waive his right to present his PCR claims in order to obtain a belated direct appeal when he was clearly entitled to both -- a belated direct and a full PCR evidentiary hearing?


“A defendant’s knowing and voluntary waiver of statutory or constitutional rights *must* be established by a complete record, and may be accomplished by a colloquy between the court and defendant, between the court and defendant’s counsel, or both.” Moore v. State, 399 S.C. 641, 732 S.E.2d 871 (2012)(citing Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000))(emphasis added). “The validity of a defendant’s waiver” turns “on the presence of a record supporting the validity of that waiver.” Moore v. State, 399 S.C. 641, 641, 732 S.E.2d 871, 874 (2012). There is no record in this case to support a valid waiver of Petitioner’s right to present his PCR claims to a court for disposition.

Petitioner respectfully requests this Court follow the precedent it set in a series of cases remarkably similar to Petitioner’s and remand his case to the circuit court for a determination of

whether he knowingly and voluntarily waived adjudication of his PCR claims. See Narciso v. State, 397 S.C. 24, 723 S.E.2d 369 (2012); Turner v. State, 380 S.C. 223, 225, 670 S.E.2d 373, 374 (2008); Brannon v. State, 345 S.C. 437, 548 S.E.2d 866 (2001). There is a paucity of evidence in the record that Petitioner signed the consent order with knowledge that he was also waiving the right to have his PCR allegations considered. Therefore, this Court should remand the matter for a hearing to determine whether Petitioner intelligently, knowingly, and voluntarily waived his right to consideration and adjudication of his PCR claims.

CONCLUSION

In addition to his request for a belated direct appeal, Petitioner respectfully requests this Court remand his PCR application to the Court of Common Pleas for the Second Judicial Circuit for a determination of whether Petitioner knowingly, intelligently, and voluntarily waived his right to raise any other PCR allegations. If the circuit court judge determines Petitioner did not waive voluntarily his right to raise other PCR allegations, then the circuit court shall proceed with a hearing on Petitioner's other PCR allegations. Petitioner respectfully requests his case be remanded to a judge other than Judge Early pursuant to Floyd, supra.


Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of August, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County

Doyet A. Early, Circuit Court Judge

WILLIAM MCCLADDIE,

PETITIONER

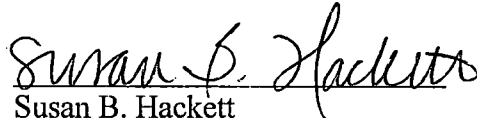
V.

STATE OF SOUTH CAROLINA,

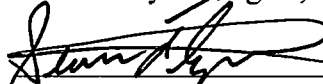
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Reply to Return to Petition for Writ of Certiorari in the above referenced case has been served upon Julie Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and William McCladdie, #364614, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 4th day of August, 2017.


Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 4th day of August, 2017.



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