

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Union County

Honorable Roger L. Couch, Circuit Court Judge

---

**RECEIVED**

**AUG 18 2017**

SAMUEL EARL JETER,

**PETITIONER SUPREME COURT**

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000116

---

PETITION FOR WRIT OF CERTIORARI

---

DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

**INDEX**

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR court erred in summarily dismissing petitioner’s PCR as  
untimely where no evidence showed petitioner knowingly and  
voluntarily waived his right to appeal because he represented  
himself at trial and the trial judge never informed him of his right  
to appeal.....3

CONCLUSION.....6

**ISSUE PRESENTED**

Whether the PCR court erred in summarily dismissing petitioner's PCR as untimely where no evidence showed petitioner knowingly and voluntarily waived his right to appeal because he represented himself at trial and the trial judge never informed him of his right to appeal?

## STATEMENT

On November 4, 2010, petitioner was indicted for second degree criminal sexual conduct with a minor. App. 153. On January 27, 2011, petitioner was indicted for lewd act on a minor. App. 150. On February 1, petitioner was tried before the Honorable John C. Hayes, III. App. 1. John Cleveland Anthony represented the State. App. 1. Petitioner represented himself. App. 5, ll. 11 – 14. Petitioner waived his right to a jury trial. App. 5, l. 15 – 7, l. 16. Judge Hayes convicted petitioner. App. 114, ll. 6 – 25. The court sentenced petitioner to concurrent terms of twenty years' imprisonment for CSC and fifteen years' imprisonment for lewd act. App. 117, ll. 18 – 24. Petitioner did not appeal. App. 135, ll. 18 – 22.

On May 15, 2015, petitioner filed a PCR application. App. 119. On November 7, 2016, a hearing was held before the Honorable Roger L. Couch. App. 133. N. Beth Ramsey Faulkner represented petitioner. App. 133. Justin James Hunter represented the State. App. 133. Judge Couch summarily dismissed petitioner's application. App. 144-148. This petition follows.

## ARGUMENT

The PCR court erred in summarily dismissing petitioner's PCR as untimely where no evidence showed petitioner knowingly and voluntarily waived his right to appeal because he represented himself at trial and the trial judge never informed him of his right to appeal.

Even though petitioner never had a direct appeal and no evidence showed he was ever advised of his right to appeal, the State moved to dismiss petitioner's PCR application based on the statute of limitations. App. 136, ll. 12 – 22. Petitioner's trial concluded February 2, 2011. App. 1. Petitioner represented himself at trial. App. 5, ll. 11 – 14. At the end of the trial, Judge Hayes did not inform petitioner of his right to appeal. App. 117, ll. 18 – 24. After pronouncing sentence, Judge Hayes said, "And that's it. Thank you." App. 117, ll. 23 – 24.

Petitioner filed the instant PCR application in 2015. App. 119. Petitioner alleged ineffective assistance of counsel, but the transcript of the hearing relieving his attorneys before the trial was not available at the PCR hearing. App. 138, ll. 16 – 18. Petitioner's attorneys were relieved the day before the trial. App. 137, l. 11 – 139, l. 22. The trial was transcribed, but no explanation for the failure to obtain the previous day's transcript appears in the record at the PCR hearing. App. 137, l. 11 – 139, l. 22.

Petitioner argued at the PCR hearing that the statute of limitations should not apply because he was never advised of his right to appeal. App. 137, l. 3 – 138, l. 8. At the PCR hearing, the State presented no evidence that petitioner knew about his right to appeal and petitioner argued that he did not knowingly and voluntarily waive his right to an appeal. App. 137, l. 3 – 140, l. 25. Nevertheless, the PCR court ruled that no one "owed" petitioner "a duty to advise him of that right to appeal" and that petitioner "assumed the obligation to file an appeal on his own behalf if he wished to do so." App. 142, ll. 3 – 9. In the written Order of Dismissal,

the PCR court reasoned that having elected to proceed *pro se*, petitioner “should have been aware of his right to an appeal as he represented himself.” App. 147. The PCR court made this finding without hearing any testimony. App. 133-42.

“Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.” Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). “When considering the State’s motion for summary dismissal of an application, where no evidentiary hearing has been held, the PCR judge must assume the facts presented by the applicant are true and view those facts in the light most favorable to the applicant.” Mose v. State, \_\_\_ S.C. \_\_\_, \_\_\_ S.E.2d \_\_\_, Op. No. 27732 (Aug. 16, 2017). “When reviewing the propriety of a dismissal, an appellate court must view the facts in the same fashion.” Id.

The PCR court failed to apply the proper standard and viewed the facts in the light most favorable to the State. It is routine practice for trial judges to advise criminal defendants of their right to appeal at the conclusion of a trial even when defendants are represented by counsel, yet this *pro se* petitioner was given no such advice from the trial court. Without any evidence that petitioner knew of his right to appeal and knowingly and voluntarily waived that right, the PCR court erred in making this summary finding and dismissing petitioner’s application without taking any evidence. As stated by PCR counsel, dismissal was unexpected because petitioner’s trial lawyers were not subpoenaed for the motion hearing. App. 138, ll. 19 – 24. No transcript existed of the previous day of the trial during which petitioner’s attorneys were relieved. App. 138, ll. 9 – 18. The PCR court had no record of a proper inquiry by the trial court pursuant to Faretta v. California, 422 U.S. 806 (1975).

“A defendant has the procedural right to one fair bite at the apple.” Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002). “That is, every defendant has a right to file a direct appeal and one PCR application.” Id. In Wilson, the PCR applicant filed his application almost two years after his conviction. Id. at 216-17, 559 S.E.2d at 582. The PCR court granted the State’s motion to dismiss based on the statute of limitations. Id. Wilson’s lawyer failed to file an appeal and viewing the evidence in the light most favorable to Wilson, the Court found that he “did not voluntarily waive his direct appeal.” Id. The Court then concluded that the PCR statute of limitations did not apply because Wilson did not have his direct appeal. Id.

The reasoning of Wilson applies to petitioner’s case. Whether the blame for the failure to advise petitioner of his right to appeal falls at the feet of trial counsel or the court, no evidence before the PCR court at the summary dismissal stage indicated a knowing and voluntary waiver of petitioner’s right to appeal. Without a valid appeal waiver, the rule of Wilson applies and the statute of limitations cannot be used to summarily dismiss petitioner’s PCR application. Petitioner asks the Court to grant certiorari, dispense with further briefing, reverse in light of Wilson, and remand to the PCR court for a full hearing. At this hearing, petitioner should be allowed to present any claims regarding ineffective assistance of counsel, whether his waiver of the right to appeal was knowing and voluntary, and whether petitioner is entitled to a belated appeal.

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari and summarily reverse the PCR court in light of Wilson, and remand for an evidentiary hearing.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of August, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Union County

Honorable Roger L. Couch, Circuit Court Judge

---

SAMUEL EARL JETER,

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 Justin J. Hunter, 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 have been served on Samuel Earl Jeter, #344686, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 18th day of August, 2017.



---

David Alexander  
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER  
this 18th day of August, 2017.

Kevin Mendez (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023