

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Oconee County

Honorable Edgar W. Dickson, Circuit Court Judge

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S.C. SUPREME COURT

GREGORY LEE MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002445

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PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the court correctly grant Petitioner a belated direct appeal pursuant to White v. State,  
236 S.C. 110, 108 S.E.2d 35 (1974)?

## STATEMENT OF THE CASE

An Oconee County Grand Jury indicted Petitioner on March 11, 2013 for distribution of methamphetamine. App. 328-329. His case was called to trial on June 24, 2013 before the Honorable Alexander S. Macaulay, and a jury. App. 1. Deputy Solicitor Blair Stoudemire represented the state, and Daniel Day represented Petitioner. App. 1.

On June 26, 2013, the jury found Petitioner guilty as indicted. App. 250, ll. 15-24. He was sentenced by Judge Macaulay to twenty five years suspended upon the service of ninety months imprisonment and five years of probation. App. 264, l. 22 – 265, l. 10. He did not appeal.

On November 8, 2013, Petitioner filed an application for post-conviction relief (PCR) seeking, *inter alia*, a belated direct appeal because his trial attorney failed to file a notice of appeal. App. 267-273. The state filed a return to this application dated July 8, 2014. App. 276-282. An evidentiary hearing was convened on July 28, 2014 before the Honorable Edgar W. Dickson. Assistant Attorney General J. Walt Whitmire represented the state, and Hugh Welborn represented Petitioner. App. 283. By order filed November 28, 2014, Judge Dickson granted Petitioner a belated direct appeal. However, Judge Dickson denied Petitioner relief on his remaining PCR allegations. App. 319-327.

This petition for writ of certiorari follows.

## ARGUMENT

The court correctly granted Petitioner a belated direct appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974).

The PCR court correctly granted Petitioner a belated direct appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974). Judge Dickson found Petitioner “did not knowingly and intelligently waive his right to appeal and is therefore entitled to a belated appeal.” App. 325-326. This finding is supported by both trial counsel and Petitioner’s testimony at the evidentiary hearing.

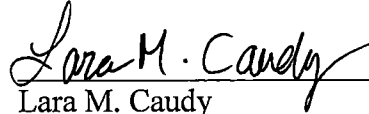
“The appropriate scope of review of this Court is that any evidence of probative value is sufficient to uphold the PCR judge’s findings.” Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). This case meets that standard. The PCR judge’s ruling is supported by Petitioner’s testimony at the evidentiary hearing that he both requested an appeal and intended to appeal his conviction. App. 288, ll. 7-19; App. 299, ll. 7-19. Moreover, trial counsel admitted at the hearing that he could have missed Petitioner’s request for an appeal. App. 305, l. 4 – 306, l. 14. This evidence supports the PCR judge’s conclusion that Petitioner is entitled to a belated direct appeal pursuant to White v. State. App. 325-326.

Respectfully, this Court should grant the petition for writ of certiorari and consider Petitioner’s belated direct appeal.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and consider Petitioner's belated direct appeal.

Respectfully submitted,



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Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of September, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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GREGORY LEE MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

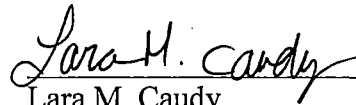
RESPONDENT

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CERTIFICATE OF SERVICE

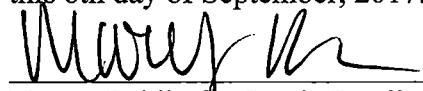
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The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case have been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served upon Gregory Lee Murphy, at 225 Skyline Drive, Walhalla, SC 29691, this 8th day of September, 2017.

  
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Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 8th day of September, 2017.

 (L.S)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027.