

**State of South Carolina
In the Court of Appeals**

**CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas**

The Honorable Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No.: 2015-002164

Daniel Hamrick.....Petitioner,

v.

State of South CarolinaRespondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

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QUESTIONS PRESENTED

- I. Whether the PCR court was correct in ruling that Petitioner was entitled to a belated review of direct appeal issues pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974) as trial counsel failed to file an appeal?
- II. Whether the issue that the PCR court erred in not having a full hearing concerning whether Petitioner knowingly and voluntarily waived his PCR rights is preserved? Nonetheless, is there evidence to show that Petitioner voluntarily and knowingly waived his PCR rights?

STATEMENT OF THE CASE

Respondent agrees with Petitioner's Statement of the Case.

ARGUMENTS

I. The PCR court was correct in ruling that Petitioner was entitled to a belated review of direct appeal issues pursuant to White v. State.

Trial Counsel, through his affidavit, admitted that he did not file an appeal on Petitioner's behalf. App. p. 941-41. Respondent agrees that Petitioner should be allowed to petition this Court for belated review of direct appeal issues, since he did not knowingly and voluntarily waive his right to an appeal.

II. The issue that the PCR court erred in not having a full hearing concerning whether Petitioner knowingly and voluntarily waived his PCR rights is not preserved. Nonetheless, there is evidence to show that Petitioner voluntarily and knowingly waived his PCR rights.

Petitioner claims the PCR court erred in not having a full hearing concerning whether Petitioner knowingly and voluntarily waived his PCR rights. This argument is not preserved for appeal.

“To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised but not ruled on, it is not preserved for appeal.” State v. Watts, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996). Only a matter that has been ruled on below can be reviewed, otherwise, the appellate court would be exercising original jurisdiction. State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974).

Therefore, this Court should not review this issue as it was not ruled upon below nor preserved for appellate review.

Notwithstanding, Petitioner's argument is without merit.

Prior to the PCR hearing, Petitioner executed an affidavit, which became part of the PCR court's record, stating that he fully understood he must raise his PCR claims at the evidentiary hearing. App. pp. 943-944. Additionally, by signing this affidavit, Petitioner acknowledged he

was “forever waiving [his] right to have a PCR judge grant [PCR] relief.” App. p. 944. Lastly, Petitioner admitted that he discussed this action fully with PCR counsel and the rights he was waiving. App. p. 944. Clearly, Petitioner knowingly and voluntarily waived his PCR claims. Therefore, this claim should be denied.

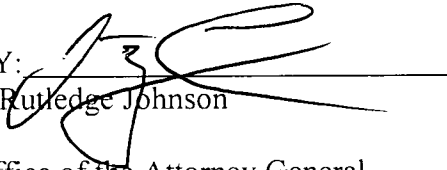
CONCLUSION

For all the foregoing reasons, Respondent respectfully submits that this Court grant the Petition for Writ of Certiorari only to allow a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Further, Respondent respectfully submits that this Court deny the Petition for Writ of Certiorari. Should this Court grant Certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

September 7, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Court of Common Pleas
The Honorable Larry B. Hyman, Jr., Circuit Court Judge

DANIEL HAMRICK,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

John H. Strom, Esquire
SC Commission of Indigent Defense
Post Office Box 11589
Columbia, SC 29201

This 7th day of September, 2016


BRIANNA ARNONE
LEGAL ASSISTANT



RECEIVED

SEP 07 2016

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

September 7, 2016

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

Re: Daniel Hamrick v. State of South Carolina
Appellate Case No. 2015-002164
Lower Court Case No. 2014-CP-10-5221

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Return to Petition for Writ of Certiorari** and fourteen (14) copies of the **Brief of Respondent Pursuant to White v. State**. By copy of this letter we are serving opposing counsel today.

Sincerely,

J. Rutledge Johnson
Assistant Deputy Attorney General
SC Bar No. 78871

JRJ/bea
Enclosures

cc: John H. Strom, Esquire (2 copies)