

The Law Office of Tristan M. Shaffer

Litigation • Injury Law • Criminal Defense

December 13, 2017

Daniel Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED
DEC 14 2017
S.C. SUPREME COURT

Re: Eric Ancrum v. State 2017-CP-10-3021

Dear Mr. Shearouse,

Please find the enclosed Notice of Appeal, Certificate of Service, and Order Granting a Belated Appeal in the above referenced case.

Sincerely,



Tristan M. Shaffer

CC: Charleston County Clerk of Court
Megan Jameson

SUPREME COURT OF SOUTH CAROLINA

RECEIVED

APPEAL FROM CHARLESTON COUNTY
In The Court of Common Pleas

DEC 14 2017

S.C. SUPREME COURT

Honorable Deadra Jefferson,
Common Pleas Judge of the Ninth Judicial Circuit

Case No.: 2017-CP-10-3021

Eric Ancrum #265645,

Petitioner,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the Order Granting a Belated Direct Appeal of the Honorable Deadra Jefferson filed November 8, 2017 and received by Petitioner on November 13, 2017.

December 13, 2017



Tristan M. Shaffer (SC Bar 77565)
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Attorney for Petitioner

Respondent's Attorney:
Megan Jameson
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Post Office Box 11549
Columbia, SC 29211

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM CHARLESTON COUNTY
In The Court of Common Pleas

Honorable Deadra Jefferson,
Common Pleas Judge of the Ninth Judicial Circuit

Case No.: 2017-CP-10-3021

Eric Ancrum #265645,

Petitioner,

v.


State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I certify that on this day, I have served a copy of the Notice of Appeal in the above captioned case on Respondent by depositing it in the United States mail with postage prepaid and addressed to the Attorney for Respondent as listed below.

December 13, 2017


Tristan M. Shaffer (SC Bar 77565)
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Attorney for Petitioner

Respondent's Attorney:
Megan Jameson
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eric Ancrum,

Applicant,

v.

The State of South Carolina,

Respondent.

IN THE COURT OF COMMONPLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2017-CP-10-3021

Order Granting Belated Direct Appeal
Pursuant to *White v. State*

FILED
2017 NOV -8 AM 9:43
JULIE HARRINGTON
CLERK OF COURT

This matter comes to me by way of Applicant's Application for Post-Conviction Relief (PCR). Applicant alleges that he did not knowingly and intelligently waive his right to direct appeal. With consent of both parties I hereby grant the PCR Application to the extent that it grant's Applicant a belated direct appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). To support this request the parties have shown the following:

Findings of Fact and Conclusions of Law

Applicant was indicted at the June 2006 term of the Charleston County Grand Jury for trafficking cocaine (more than 400 grams) (2006-GS-10-4066), possession with intent to distribute cocaine within proximity of a school (2006-GS-10-4069), manufacturing cocaine base crack (2006-GS-10-4070), possession of a firearm during the commission of a violent crime (2006-GS-10-4071), and manufacturing cocaine base crack within proximity of a school (2006-GS-10-4188). He was also indicted at the October 2006 term for trafficking cocaine base (200-400 grams) (2006-GS-10-9674) and PWID - cocaine base within proximity of a school (2006-GS-10-9675). John D. Delgado, Esquire and William N. Nettles (hereinafter collectively referred to as "Trial Counsel"), represented the Applicant. On October 8, 2007, the Applicant proceeded

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to trial, after which the jury found him guilty of each charge except possession of a firearm. The Honorable George C. James sentenced him to confinement for fifteen (15) years for manufacturing cocaine base and life without parole (LWOP) for each of the other five offenses. The sentences were to run concurrently.

Due to a clerical error, Trial Counsel did not file a timely notice of Appeal. Trial Counsel filed an untimely notice of appeal on behalf of Applicant. Due to the failure of Trial Counsel to timely file the notice of appeal, the Court of Appeals dismissed Applicant's direct appeal on October 24, 2007.

On March 25, 2008, Applicant filed his first PCR application, case number 2008-CP-10-1670. For his first PCR Applicant was represent by J. Stephen Schmutz, Esq. and Anthony P. LaMantia, III, Esq (hereinafter collectively referred to as (First PCR Counsel).

On November 18, 2009, an evidentiary hearing was convened on Applicant's First PCR before the honorable Kristi L. Harrington. At the hearing, Applicant alleged that he had not knowingly and intelligently waived his right to a direct appeal (hereinafter referred to as "*White v. State*¹ claim") and various other ineffective assistance of counsel grounds. The State agreed that Applicant had not knowingly and intelligently waived right to a direct appeal, but disputed Applicant's other PCR allegations.

On November 18, 2009, Judge Harrington issued a form order granting Applicant's belated direct appeal, but denying all other grounds alleged by Applicant. On the form order Judge Harrington wrote in the following:

"Applicants counsel is hereby directed to file a belated appeal under *White v. State* procedure."

On December 14, 2009, Judge Harrington issued a formal order granting Applicant's

¹ *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

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belated direct appeal but denying all other allegations. In the formal order, Judge Harrington

wrote the following:

Mr. Delgado indicated in his November 15, 2007 letter that Applicant asked him to file a direct appeal and he inadvertently failed to file an appeal with the Office of the Attorney General or the Ninth Circuit Solicitor's Office. The State agreed that the Applicant is entitled to a review of direct appeal issues as permitted by *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974). In *White v. State*, our Supreme Court determined that, where the post-conviction relief judge finds the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues. Based upon the agreement of the parties, this Court concludes the Applicant is entitled to a review of his convictions pursuant to *White v. State*. In order to secure this review, however, the Applicant must appeal from this Order...This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227^[2] of the South

² The 2009 version of West's South Carolina Rules of Court, indicates that there was a Rule 227 of the SCACR. However, it appears that at some point in 2009 the numbering system for the rule was changed. As noted by the Supreme Court in footnote 3 of *Jones v. State*, 382 S.C. 589, 677 S.E.2d 20 (2009), Rule 227(i) SCACR is identical to Rule 243(i). Rule 243(i), SCACR states the following:

“(i) Special Procedures Where a *White v. State* Review Is Sought. Where the petition seeks review under *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), the following procedure shall be followed:

(1) When the post-conviction relief judge has affirmatively found that the right to a direct appeal was not knowingly and intelligently waived, the petition shall contain a question raising this issue along with all other post-conviction relief issues petitioner seeks to have reviewed. At the same time the petition is served, petitioner shall serve and file a brief addressing the direct appeal issues. This brief shall, to the extent possible, comply with the requirements of Rule 208(b). Respondent's return to the petition shall address the post-conviction relief issues, including whether the direct appeal was knowingly and intelligently waived. At the same time the return is due, respondent shall also serve and file a brief addressing the direct appeal issues. Within ten (10) days after service of respondent's brief, petitioner may file a reply brief on the direct appeal issues.

(2) When the post-conviction relief judge has found that the applicant is not entitled to a *White v. State* review, the petition shall raise the question of waiver of the right to a direct appeal along with all other post-conviction relief issues petitioner seeks to have reviewed. The petition shall also contain a "Statement of Issues on Appeal" listing the issues to be raised if a *White v. State*

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N/A

Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

First PCR Counsel filed a timely notice of appeal on Applicant's behalf. On January 18, 2011, First PCR Counsel filed a Petition for Writ of Certiorari. However, First PCR Counsel failed to file a separate *White v. State* brief as was required by Rule 243(i)(1). The Supreme Court did not grant First PCR Counsel's Petition for Writ of Certiorari.

Mr. LaMantia has submitted an Affidavit to the parties. In the affidavit, Mr. LaMantia indicates that he was primarily responsible for the appeal of Applicant's First PCR. Mr. LaMantia does not recall preparing a *White v. State* brief, nor does he recall his reason for not pursuing the belated direct appeal. Additionally, Mr. LaMantia has stated that he does not recall ever discussing the filing a *White v. State* brief with Applicant.

"Trial counsel is required to make certain the defendant is made fully aware of his appeal rights. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*.³" *Smith v. State*, 309 S.C. 413, 416, 424 S.E.2d 480, 482 (1992). "To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." *Wilson*, 348 S.C. at 217, 559 S.E.2d at 583 (2002).

The parties agree that Applicant did not knowingly and intelligently waive his right to a direct appeal; therefore, a belated direct appeal should be granted.

IT IS THEREFORE ORDERED:

1. That Applicant is granted belated review of direct appeal issues pursuant to *White v.*

review is granted; this statement of issues shall comply with the requirements of Rule 208(b)(1)(B). Briefing of the direct appeal issues will not be allowed unless certiorari is granted on the issue."

³ *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1968).

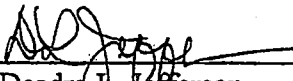
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State;

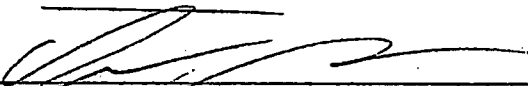
2. That the other allegations in the application for post-conviction relief be denied and dismissed with prejudice; and

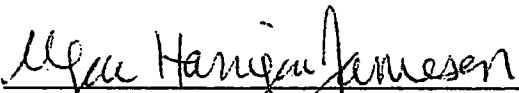
3. Applicant shall remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 7th day of November, 2017.


Deadra L. Jefferson
Chief Administrative Judge
Ninth Judicial Circuit

WE CONSENT:


Tristan M. Shaffer (SC Bar No. 77565)
Attorney for Applicant


Megan Harrigan Jameson (SC Bar No. 100108)
Attorney for Respondent