

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Berkeley County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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ARTHUR RAY CHAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002050

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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**ISSUE PRESENTED**

Whether plea counsel's failure to file an appeal of petitioner's guilty plea after petitioner wrote him a letter requesting an appeal constitutes ineffective assistance of counsel?

## STATEMENT

On October 17, 2012, a Berkeley County grand jury indicted petitioner for two counts of murder, one count of armed robbery, and two weapons charges. App. 90-91. App. 103-08. On April 21, 2015, the Honorable Kristi L. Harrington accepted petitioner's negotiated guilty plea. App. 1. App. 3, ll. 17 – 23. App. 19, l. 24 – 20, l. 6. Bryan A. Alfaro represented the State and Grover C. Seaton, IV, represented petitioner. App. 1. Pursuant to the terms of the negotiated plea, Judge Harrington sentenced petitioner to concurrent terms of imprisonment totaling twenty-five years. App. 21, l. 22 – 22, l. 5. Petitioner did not appeal. App. 73, l. 21 – 75, l. 23.

On January 6, 2016, petitioner filed a PCR application. App. 24. On April 17, 2017, the Honorable Brooks P. Goldsmith held a hearing on petitioner's PCR application. App. 39. Lance S. Boozer represented petitioner and Alicia Olive represented the State. App. 39. Judge Goldsmith denied petitioner's application and this appeal follows. App. 87, ll. 2 – 18. App. 90.

## ARGUMENT

Plea counsel's failure to file an appeal of petitioner's guilty plea after petitioner wrote him a letter requesting an appeal constitutes ineffective assistance of counsel.

It was undisputed that petitioner sent plea counsel a letter asking him to file an appeal of his guilty plea. App. 52, l. 8 – 54, l. 4. App. 73, l. 21 – 75, l. 10. App. 81, l. 14 – 83, l. 6. Petitioner pled guilty on April 21, 2015, and arrived at the prison on April 25, 2015. App. 52, l. 8 – 54, l. 4. Petitioner specifically recalled that he mailed the letter to plea counsel the day he got to prison, which would have been April 25, 2015—well within the ten-day deadline to file the notice of appeal. App. 52, l. 8 – 54, l. 4.

Plea counsel admitted getting a letter asking him to appeal, but claimed he did not receive it until “long after the right of appeal had run.” App. 73, l. 21 – 75, l. 10. Plea counsel considered filing an untimely notice of appeal, but, defying his client's wishes, decided not to file because he “didn't have any grounds for an appeal other than just some blanket appeal that would not have had any description of what it was we were appealing.” App. 73, l. 21 – 74, l. 8.

On cross-examination, plea counsel stated he did not have a copy of petitioner's letter in the courtroom. App. 81, ll. 14 - 23. Plea counsel “only brought a small part” of his file and had “boxes” at his office. App. 81, ll. 19 – 23. He admitted he did not know the date of petitioner's letter. App. 81, ll. 19 – 23. Plea counsel would have filed an appeal had he “received it timely.” App. 82, ll. 19 – 23. Plea counsel candidly admitted having mail delayed from his clients in prison. App. 82, ll. 1 – 18. Petitioner argued at the hearing it was “uncontroverted” that he requested an appeal. App. 84, ll. 7 – 13.

The PCR court erred in denying petitioner a belated appeal. See White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). “Any party aggrieved may appeal. . . .” S.C. Code Ann. § 18-1-30.

“Only a party aggrieved by an order, judgment, sentence or decision may appeal.” Rule 201(b), SCACR. “Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.” Rule 201(a), SCACR. “After a plea or trial resulting in conviction . . . a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed.” Rule 203(b)(2), SCACR.

When a criminal defendant appeals a guilty plea, the notice of appeal must contain “a written explanation showing that there is an issue which can be reviewed on appeal.” Rule 203(d)(1)(B)(iv), SCACR. The written explanation must identify the issue, its factual basis, and the ruling of the lower court on the issue. Rule 203(d)(1)(B)(iv), SCACR.

“Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal.” Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). “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, 386 U.S. 738 (1967).” Id. (internal quotations and citations omitted). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) (citation omitted).

Just like in this case, counsel in Simuel substituted his own judgment about the merits of the case and an appeal for that of his client. In Simuel, the defendant asked his attorney to appeal. Simuel at 269-70, 701 S.E.2d at 738-39. The attorney said he would speak to the defendant’s mother about it and file the appeal. Id. At PCR, the attorney admitted discussing an appeal with the defendant’s mother, but told her that the defendant received a good sentence and did not think there were any grounds for appeal. Id.

This Court reversed, holding that even in the face of adverse credibility findings by the PCR judge, no probative evidence existed that the defendant knowingly waived his right to a direct appeal. Id. at 271, 701 S.E.2d at 740. Just like in Simuel, the evidence before the PCR judge was uncontroverted that petitioner wanted to appeal, but the court improperly credited plea counsel's testimony that his request was untimely and he had no grounds. App. 100-01. Whether petitioner had no grounds is not a valid legal reason to deny a client his appeal. The proper recourse is to file the appeal and follow the Anders procedure.

Plea counsel admitted getting a letter, but left it at his office along with "boxes" of petitioner's file. Plea counsel had within his means the ability to substantiate his claim that petitioner's request to appeal was untimely, but simply failed to do so. The PCR court should have viewed the failure to bring petitioner's letter—that plea counsel admitted existed—as reflecting adversely on plea counsel's claim that the request to appeal was untimely. Therefore, this Court should reverse the decision of the PCR court and grant petitioner a belated appeal.

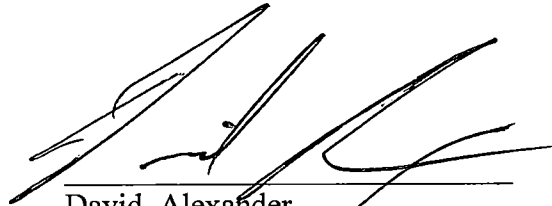
**STATEMENT OF ISSUE TO BE REVIEWED ON APPEAL PURSUANT TO**

**RULE 243(D)(2)**

Whether petitioner's conviction for voluntary manslaughter should be reversed because nothing in the record at the plea hearing demonstrates that petitioner acted in the heat of passion?

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari, reverse petitioner's convictions, and grant him a new trial.



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David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of February, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Berkeley County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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ARTHUR RAY CHAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

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PETITION TO BE RELIEVED AS COUNSEL

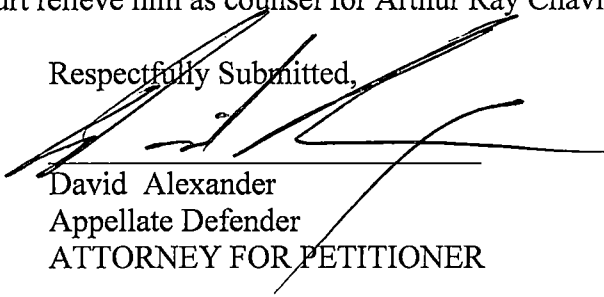
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Counsel for Arthur Ray Chavis states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's trial before Judge Brooks P. Goldsmith, which was held on April 17, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Arthur Ray Chavis.

Respectfully Submitted,



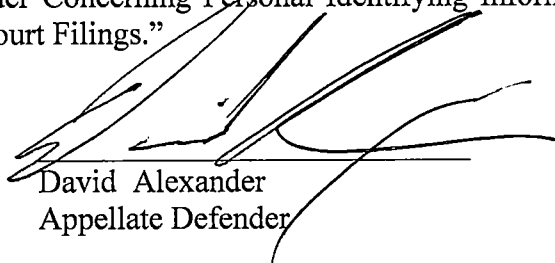
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David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 26th day of February, 2018.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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This 26th day of February, 2018.

STATE OF SOUTH CAROLINA

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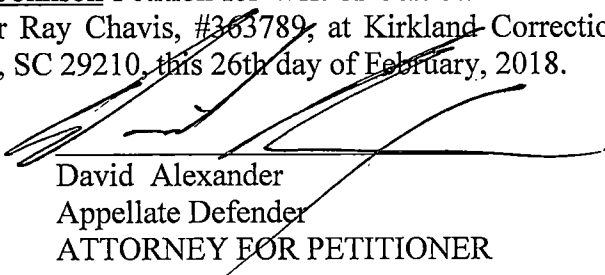
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Rasheeda Cleveland, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Arthur Ray Chavis, #363789, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 26th day of February, 2018.

  
\_\_\_\_\_  
David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 26th day of February, 2018.

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