

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Beaufort County

Honorable Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

DARRELL HEYWARD,

APR 04 2018

PETITIONER
S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001564

PETITION FOR WRIT OF CERTIORARI

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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 The PCR court correctly granted Petitioner a belated direct appeal
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ISSUE PRESENTED

Whether 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) where the notice of appeal filed was untimely served by counsel, and the state consented to allow Petitioner to file a belated appeal?

STATEMENT

A Beaufort County Grand Jury indicted Petitioner on December 13, 2012, for burglary (violent) in the second degree based on the nighttime entry and theft of landscaping equipment from a landscaping business. App. 227-228. Petitioner was tried May 28 – 29, 2015, before the Honorable Perry H. Gravely and a jury. App. 1. Jeffrey Stephens represented Petitioner; Patrick Hall and Julie Sweeney appeared on behalf of the state. App. 2. The court sentenced Petitioner to confinement for nine years. App. 202, ll. 7-9.

Trial counsel filed a notice of appeal, but the South Carolina Court of Appeals dismissed the appeal for failure to timely serve the notice. *State v. Heyward*, Appellate Case No. 2015-001680 (S.C. Ct. App., Filed October 19, 2015).

Petitioner filed an application for post-conviction relief (PCR) on September 9, 2016, alleging trial counsel was untimely in filing an appeal. App. 205-211. The state filed a return to this application dated April 17, 2017. App. 212-217. Petitioner filed an amended return dated May 23, 2017. App. 218-219. An evidentiary hearing was held before the Honorable Diane Schafer Goodstein on June 9, 2017; Ashley McMahan represented Petitioner and Ruston Neely appeared on behalf of the state. App. 220. At that hearing, Petitioner withdrew his PCR allegations, with the exception of his allegation that trial counsel was ineffective by failing to file a timely appeal. App. 221, ll. 4-7. The state consented to Petitioner's receipt of a belated appeal, agreeing that notice of appeal was not timely served. App. 221, ll. 7-8.

On July 5, 2017, Judge Goodstein issued an order of dismissal and the grant of belated appeal. App. 224-226. Judge Goodstein found that trial counsel filed a notice of appeal, but it was not timely served, and thus the South Carolina Court of Appeals dismissed Petitioner's appeal. App. 224-225. The PCR court found Petitioner's allegation he was denied a direct

appeal was meritorious, as he did not knowingly and intelligently waive his right to a direct appeal. App. 225. The court noted that the state consented to allow Petitioner to file a belated appeal pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), and that Petitioner had withdrawn all other claims raised in his PCR allegation. App. 225. The court granted Petitioner a belated direct appeal. App. 226.

ARGUMENT

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) where the notice of appeal filed was untimely served by counsel, and the state consented to allow Petitioner to file a belated appeal.

“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). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” *Wilson v. State*, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002). “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).” *Smith v. State*, 309 S.C. 413, 424 S.E.2d 480 (1992).

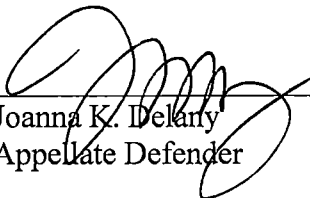
Rule 203(b)(2), SCACR provides the time for service requirements for notice of appeal from the court of general sessions. “After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(2), SCACR.

Judge Goodstein correctly granted Petitioner a belated direct appeal. Petitioner did not make a knowing and intelligent waiver of his right to appeal, and the Assistant Attorney General consented to Petitioner receiving a belated appeal. A notice of appeal was filed by counsel, but service was not timely under Rule 203(b)(2), SCACR. The South Carolina Court of Appeals dismissed Petitioner’s appeal due to this deficiency. This evidence supports the PCR judge’s

conclusion that Petitioner is entitled to a belated appeal pursuant to *White*, 236 S.C. 110, 108 S.E.2d 35.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari, permit full briefing on the issues presented, and consider Petitioner's belated direct appeal.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of April, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Diane Schafer Goodstein, Circuit Court Judge

DARRELL HEYWARD,

PETITIONER

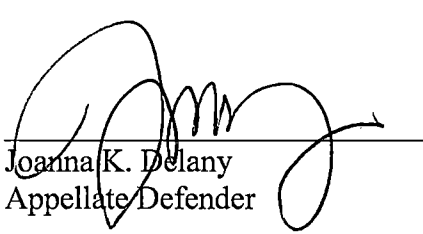
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

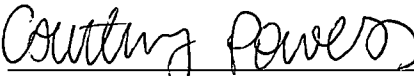
The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Christian Saville, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Darrell Heyward, #170239, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 4th day of April, 2018.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 4th day of April, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.