

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Deadra Jefferson, Circuit Court Judge

RECEIVED

MAY 03 2018

S.C. SUPREME COURT

ERIC ANCRUM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No.: 2017-002544

PETITION FOR WRIT OF CERTIORARI

Tristan M. Shaffer (SC Bar # 77565)
P.O. Box 1027
Chapin, SC 29036
Phone: (803) 941-7514
tristan@shafferlawsc.com

ATTORNEY FOR PETITIONER

INDEX

INDEX.....1

ISSUES PRESENTED.....2

STATEMENT3

ARGUMENT.....7

CONCLUSION8

ISSUES PRESENTED

Did Petitioner knowingly and intelligently waive his right to appeal?

STATEMENT

Petitioner 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). App. 29-75.

John D. Delgado, Esquire and William N. Nettles (hereinafter collectively referred to as “Trial Counsel”), represented the Petitioner. On October 8, 2007, the Petitioner proceeded 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. App. 878, 1.15—App.879, 1. 24.

Due to a clerical error, Trial Counsel did not file a timely Notice of Appeal. App. 81-82. Trial Counsel filed an untimely notice of appeal on behalf of Petitioner. Due to the failure of Trial Counsel to timely file the notice of appeal, the Court of Appeals dismissed Petitioner’s direct appeal on October 24, 2007. App. 7-8.

On March 25, 2008, Petitioner filed his first PCR application, case number 2008-CP-10-1670. App. 22-28. For his first PCR Petitioner was represent by J. Stephen Schmutz, Esq. and Anthony P. LaMantia, III, Esq (hereinafter collectively referred to as (First PCR Counsel). App. 885.

On November 18, 2009, an evidentiary hearing was convened on Petitioner's First PCR before the honorable Kristi L. Harrington. App. 885 At the hearing, Petitioner 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 Petitioner had not knowingly and intelligently waived right to a direct appeal, but disputed Petitioner's other PCR allegations. App. 966, ll. 9-22.

On November 18, 2009, Judge Harrington issued a form order granting Petitioner's belated direct appeal, but denying all other grounds alleged by Petitioner. App. 10. On the form order Judge Harrington wrote in the following:

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

App. 10.

On December 14, 2009, Judge Harrington issued a formal order granting Petitioner's belated direct appeal but denying all other allegations. App. 12-19. In the formal order, Judge Harrington wrote the following:

Mr. Delgado indicated in his November 15, 2007 letter that Petitioner 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 Petitioner 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 Petitioner did not freely and voluntarily waive his appellate rights, the Petitioner may petition the South Carolina Supreme Court for review of direct appeal issues. Based upon the agreement of the parties, this Court concludes the Petitioner is entitled to a review of his convictions pursuant to *White v. State*. In order to secure this review, however, the Petitioner must appeal from this Order...This Court advises the Petitioner 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

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

attention is also directed to Rules 203, 206, and 227^[2] of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

App. 17-18.

First PCR Counsel filed a timely notice of appeal on Petitioner's behalf. On January 18, 2011, First PCR Counsel filed a Petition for Writ of Certiorari. App. 971-983 However, First PCR Counsel failed to file a separate *White v. State* brief as was required by Rule 243(i)(1). App. 988, 992. This Court did not grant First PCR Counsel's Petition for Writ of Certiorari.

On June 12, 2017, Petitioner filed a second PCR application seeking the belated direct appeal that was awarded to him by Judge Harrington in his first PCR, but was abandoned by

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 Petitioner 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* review is granted; this statement of issues shall comply with the requirements of Rule

First PCR Counsel. App. 984-987. By way of a consent order, the circuit court granted Petitioner a belated appeal. App. 989-993.

This appeal follows.

208(b)(1)(B). Briefing of the direct appeal issues will not be allowed unless certiorari is granted on the issue.”

ARGUMENT

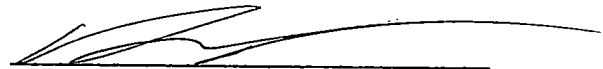
I. Petitioner did not knowingly and intelligently waive his right to a direct appeal

Petitioner alleges that he did not knowingly and intelligently waive his right to a direct appeal. This was affirmatively found by the PCR Court. App. 989-993. Additionally the State concedes that Petitioner is entitled to a belated direct appeal. App. 993. Pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) and Rule 243(i)(1), SCACR, Petitioner respectfully request that this Court review the issues raised in Petitioner's Brief.

CONCLUSION

Petitioner respectfully requests this Court find that Petitioner did not knowingly and intelligently waive his right to appeal.

Respectfully submitted,



Tristan M. Shaffer (SC Bar # 77565)
P.O. Box 1027
Chapin, SC 29036
Phone: (803) 941-7514
tristan@shafferlawsc.com

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 03 2018

S.C. SUPREME COURT

Certiorari to Charleston County

Deadra Jefferson, Circuit Court Judge

ERIC ANCRUM,

PETITIONER,

V.


STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No.: 2017-002544

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for Writ of Certiorari, the Appendix, Petitioner's *White v. State* Brief in this case have been served on Rasheeda Cleveland on the date below.



Tristan M. Shaffer (SC Bar # 77565)
P.O. Box 1027
Chapin, SC 29036
Phone: (803) 941-7514
tristan@shafferlawsc.com

April 30, 2018

The Law Office of Tristan M. Shaffer

Litigation • Injury Law • Criminal Defense

April 18, 2018

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

RECEIVED

MAY 03 2018

S.C. SUPREME COURT

Re: Eric Ancrum v. State 2017-002544

Dear Mr. Shearouse,

Please find the enclosed Petition for Writ of Certiorari, Brief Pursuant to *White v. State* and Certificate of Service in the above referenced case.

Sincerely,


Tristan M. Shaffer

CC: Rasheeda Cleveland

P



\$11.10
PM 1-DAY
29063 0024
Date of sale
04/30/18
06 2500
08282194 SSK

PRIORITY MAIL 1-DAY®

EXPECTED DELIVERY 05/02/2018

6 lb. 0.80 oz.

SHIP
TO:

0024

PO BOX 11330
COLUMBIA SC 29211-1330

USPS TRACKING NUMBER



9505 5000 0231 8120 0001 73

Tristan Shaffer
P.O. Box 1027
Chapin, SC 29036

SC Supreme Lou
P.O. Box 11330
Columbia, SC 292