

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Paul M. Burch, Circuit Court Judge

EDDIE BLASH, JR.,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001839

PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ORIGINAL

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S.C. SUPREME COURT
PETITIONER

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The PCR court correctly granted a belated direct appeal review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because Petitioner Blash did not knowingly and voluntarily waive his appellate right to a direct appeal because his trial counsel failed to file a notice of appeal..... 6

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ISSUE PRESENTED

Did the PCR court correctly grant a belated direct appeal review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because Petitioner Blash did not knowingly and voluntarily waive his appellate right to a direct appeal because his trial counsel failed to file a notice of appeal?

STATEMENT

On April 10, 2000 around ten o'clock p.m., the police received a tip that three black males, one in a green car with a California plate, and two in a SUV with a Florida plate had a large amount of cocaine and were looking for someone to cook it for them to make crack. App. 5, ll. 9 – App. 6, ll. 5. The officers were able to track down the cars and found under the white SUV a large quantity of powder cocaine. The cocaine was sent to SLED where it was determined that the amount was 997.22 grams. App. 6, ll. 6 – App. 7, ll. 14.

Petitioner Eddie Blash was arrested and charged with trafficking cocaine. In June 2000, the Florence Grand Jury indicted Blash for trafficking cocaine. App. 82- App. 83. On August 13, 2001, Blash and his co-defendant, Michael George Monfries, proceeded to trial before the Honorable B. Hicks Harwell and a jury. His co-defendant Monfries did not appear for the trial. App. 75; App. 3, ll. 1 – App. 4, ll. 5. The jury found Petitioner Blash guilty of trafficking in powder cocaine more than 400 grams. App. 4, ll. 21 – App. 6, ll. 8.

At sentencing, the trial judge began yelling at Blash and asked why should the judge not give him the maximum sentence. The judge said that Blash had never accepted responsibility for his behavior and that Blash had chosen to go to trial and the jury convicted him. The judge said he agreed with the jury. App. 11, ll. 2 – App. 12, ll. 14; App. 100 – App. 101. The judge then sentenced Blash to the maximum of thirty years. App. 88; App. 12, l. 1 – 5.

Blash's attorney did not file a notice of appeal. On August 16, 2002, Blash filed a *pro se* post-conviction relief (PCR)) application alleging that his trial counsel was ineffective for not filing a timely notice of appeal. App. 75. An evidentiary hearing was held on October 14, 2004 before the Honorable James E. Brogdon, Jr. On December 15, 2004, Judge Brogdon issued an order granting Blash a belated appeal. Blash filed an amended PCR after the PCR judge gave

him thirty days to file an amended PCR application. In this amended PCR application, Blash again alleged trial counsel's failure to file a notice of appeal. Blash also alleged ineffective assistance of counsel for failing to object to the testimony of a witness. App. 51, ll. 1 - 24; App. 75.

An evidentiary hearing was held on December 12, 2007, before the Honorable Thomas Russo. Judge Russo denied the application with prejudice except granted Blash's right to a belated appeal. App. 51, ll. -25 – App. 52, ll. 2. This appeal was perfected by the Division of Appellate Defense. On March 28, 2012, the Supreme Court reversed Blash's case and remanded for resentencing. App. 106-App. 107.

On May 8, 2012, Petitioner Blash appeared before the Honorable Thomas Russo for a re-sentencing hearing. Blash was represented again by his trial counsel, Hank Anderson. The state was represented by Patricia S. Parr. App. 1.

During this hearing, the state told the judge that Blash had a prior conviction in Florida for trafficking cocaine on February 5, 2000. The date of conviction was February 26, 2002. App. 7, ll. 15 – App. 8, ll. 10. Trial counsel Anderson told the court that the co-defendant failed to appear for the trial while Blash appeared every day although the trial judge had allowed him to stay out on bond. Counsel said that everything belonged to the co-defendant which included the car, the room, the keys. App. 9, ll. 1 – App. 11, ll. 6.

Counsel also told the court that the trial judge, Judge Harwell, got "carried away" at sentencing and began yelling at Blash and asked Blash about other incidents. Counsel thought Judge Harwell may have said that he was going to punish Blash for going to trial. The judge then gave Blash the maximum of thirty years. Counsel argued that Blash came to court although he was working during this time. Counsel said that Blash was a good client to work with. Counsel

asked the judge to give Blash the minimum of twenty-five years. Judge Russo then sentenced Blash to twenty-eight years. App. 11, ll. 7 – App. 14, ll. 6.

Counsel did not file a notice of appeal. App. 50, ll.1-25. Blash attempted to file a notice of appeal but it was ultimately dismissed by the Court of Appeals in April of 2013 for being untimely. App. 52, ll. 1 – 11. Blash then filed a federal habeas petition on July 12, 2013 which was eventually dismissed. App. 52, ll. 12 – 13.

On April 3, 2014, Blash then filed a second PCR application. The state filed a return and partial motion to dismiss all claims as successive except the belated appeal issue. App. 52, ll. 14 – 23. On March 14, 2017, an evidentiary hearing was held before the Honorable Paul M. Burch. Blash was represented by Johnathan D. Waller, and the state was represented by Lindsey A. McCallister. App. 48.

The state told the PCR court at the beginning that they had filed with their return a motion to dismiss the allegations Petitioner raised in his application except the belated appeal issue. The state argued that the allegations other than the appeal were not issues for PCR as they were successive. PCR counsel argued that the issues had not been heard and asked the judge to deny the state's motion. The judge granted the state's motion and dismissed the allegations except the belated appeal. The judge said he wanted to proceed with the issues of the belated appeal. App. 52, ll. 12 – App. 53, ll. 21.

Petitioner Blash testified at the PCR hearing that his attorney at the re-sentencing hearing told Blash after the hearing that the attorney was not satisfied with the sentence and that he would “try to appeal it.” Blash testified that he told his attorney that was what he wanted to do, and his attorney agreed. Blash said he asked his attorney to file an appeal. The attorney told

Blash that the attorney thought the judge would give Blash the minimum of twenty-five years. App. 55, ll. 22 – App. 57, ll. 12.

Blash filed this second PCR because he believed that his counsel was ineffective for not filing an appeal for him. App. 59, ll. 1 – 7. Blash had tried to file his own appeal but the Court of Appeals said it was not timely filed. App. 58, ll. 11 – 25.

The attorney for the resentencing hearing testified at the PCR hearing. He did not remember Blash asking him to file an appeal although he did remember talking with Blash after resentencing. Counsel told Blash that he was sorry that Blash did not get the minimum of twenty-five. Counsel thought that Judge Harwell would have given Blash the minimum and hoped Judge Russo would also. Blash's co-defendant ran but Blash stayed and faced the trial although he was out on bond. App. 67, ll. 1 – 25.

Counsel did not know that Blash wanted to file an appeal. Counsel admitted that he did not file an appeal following the trial so he was sure he would have remembered if Blash had asked him to file an appeal from the resentencing hearing. Counsel said he did not receive any letters or calls from Blash after the resentencing asking for an appeal. App. 68, ll. 1 – 18.

The PCR judge issued an order on August 17, 2017 denying Petitioner Blash's PCR application and dismissing it with prejudice. App. 74- App. 81. The judge did find that Blash was entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because Blash did not knowingly and voluntarily waive his appellate rights. App. 79 – App. 80.

PCR counsel filed a notice of appeal. This petition follows accompanied by an Anders brief pursuant to White v. State, id.

ARGUMENT

The PCR court correctly granted a belated direct appeal review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because Petitioner Blash did not knowingly and voluntarily waive his appellate right to a direct appeal because his trial counsel failed to file a notice of appeal.

The PCR judge found that Blash did not knowingly and voluntarily waive his right to a direct appeal and granted Blash the right to a belated appeal according to White v. State, 263 S.C. 110, 208, S.E.2d 35 (1974) for the resentencing result. App. 591; App.599.

On review, a PCR judge's findings will be upheld if there is any evidence of probative value to support them. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

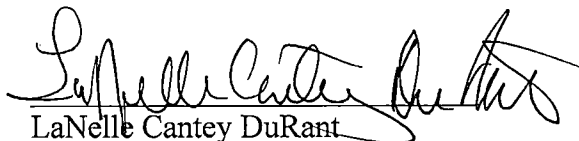
A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624

(1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The order of the PCR court granting the belated appeal should be affirmed.

CONCLUSION

Based on the above, the order of the PCR court granting Petitioner Blash a belated appeal should be affirmed.

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of July, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Florence County

Honorable Paul M. Burch, Circuit Court Judge

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EDDIE BLASH, JR.,

PETITIONER

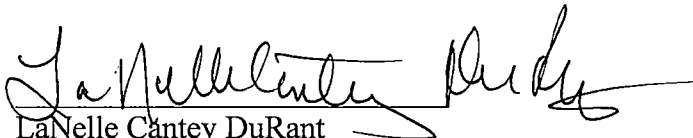
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STATE OF SOUTH CAROLINA,

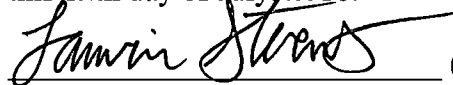
RESPONDENT

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CERTIFICATE OF SERVICE
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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 Lindsey McCallister, 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 Eddie Blash, #277603, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 12th day of July, 2018.


LaNelle Cantey DuRant
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 12th day of July, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.