

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO BEAUFORT COUNTY
Court of Common Pleas
Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2017-001564

RECEIVED

AUG 20 2018

S.C. SUPREME COURT

DARRELL HEYWARD,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General
S.C. Bar No. 103272

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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RESPONDENT'S ISSUE PRESENTED

Did the PCR court correctly grant 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 was untimely served by counsel and Respondent consented to allow Petitioner to file a belated direct appeal?

STATEMENT OF THE CASE

Procedural History

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Beaufort County Clerk of Court. During its December 2012 term, the Beaufort County Grand Jury indicted Petitioner for second-degree burglary (violent) (2012-GS-07-2390). On May 28, 2015, Petitioner proceeded to a jury trial before the Honorable Perry H. Gravely. Jeffrey S. Stephens, Esquire, represented Petitioner at trial. Assistant Solicitors Patrick Hall and Julie Kate Keeney prosecuted the case. The jury found Petitioner guilty as indicted. On May 29, 2015, Judge Gravely sentenced Petitioner to imprisonment for nine years for second-degree burglary (violent).

Jeffrey S. Stephens, Esquire, was retained to represent Petitioner on appeal. Petitioner filed a notice of appeal. However, on October 19, 2015, the South Carolina Court of Appeals dismissed the appeal after Petitioner failed to timely serve the notice of appeal. State v. Heyward, Appellate Case No. 2015-001680 (Ct. App. 2015). The remittitur was returned on December 7, 2015.

On September 9, 2016, Petitioner filed an application for post-conviction relief. Respondent made its return on April 17, 2017. Petitioner filed an amended application dated May 23, 2017. An evidentiary hearing into the matter was convened on June 9, 2017, before the Honorable Diane Schafer Goodstein. Petitioner was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Ruston W. Neely represented Respondent. Respondent consented to Petitioner's receipt of a belated appeal, agreeing the notice of appeal was not timely served. Furthermore, Petitioner voluntarily withdrew his other allegations.

On July 5, 2017, Judge Goodstein issued an order of dismissal and the grant of belated appeal. Judge Goodstein found 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. The PCR court found Petitioner did not knowingly and intelligently waive his right to a direct appeal. The court noted that Respondent consented to allowing Petitioner 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 application. Accordingly, the court granted Petitioner a belated appeal.

This appeal follows.

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 was untimely served by counsel and Respondent consented to allow Petitioner to file a belated direct appeal.

Pursuant to the Order of Dismissal and stipulation at the PCR hearing, Respondent does not contest that Petitioner is entitled to a belated direct appeal.

[Conclusion and signature on following page]

CONCLUSION

For the foregoing reasons, Respondent agrees Petitioner is entitled to a belated direct appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974).

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

8/20, 2018

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO BEAUFORT COUNTY
Court of Common Pleas
Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2017-001564

DARRELL HEYWARD,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

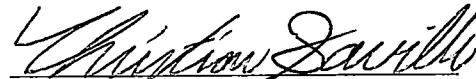
PROOF OF SERVICE

I, Christian Saville, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Joanna K. Delany
South Carolina Commission on Indigent Defense—Division of Appellate Defense
P.O. Box 11433
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 20 day of August, 2018.



CHRISTIAN SAVILLE
Assistant Attorney General
S.C. Bar No. 103272
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari from Beaufort County
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2017-001564

DARRELL HEYWARD, #170239,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Joanna K. Delany, Esquire
SC Commission of Indigent Defense- Appellate Division
Post Office Box 11433
Columbia, South Carolina 29211

This 20th day of August, 2018



Tamieka Russell-Brown
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

August 20, 2018

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AUG 20 2018

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Darrell Heyward, #170239 v. State of South Carolina
Appellate Case No. 2017-001564
Lower Court Case No. 2016-CP-07-1991

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Christian Saville
Assistant Attorney General
SC Bar No. 103272

CS/trb
Enclosures

cc: Joanna K. Delany, Esquire (2 copies)