

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

GERALD EDWARDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000439

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Did the PCR court correctly granted Petitioner a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), where the undisputed evidence showed he never knowingly and voluntarily waived his right to a direct appeal, where an administrative error caused his appeal to be dismissed?

STATEMENT

Gerald Edwards was indicted by a Charleston County grand jury for armed robbery and possession of a weapon during the commission of a violent crime during its April 2014 term of court. App. 451 – 455. After his first trial resulted in a hung jury, Edwards proceeded to trial before the Honorable R. Markley Dennis and a jury on February 9, 2015, following a hearing regarding his desire to have trial counsel relieved before the Honorable Kristi Harrington the previous week. App. 1 – 10.

The jury found Edwards guilty as indicted, and Judge Dennis sentenced him to twenty years on the armed robbery charge and five years concurrent on the possession of a weapon charge. App. 401 ll. 4 – 23; App. 412 ll. 2 – 25.

On May 13, 2016, Edwards filed an application for post-conviction relief. App. 415 – 423. He alleged ineffective assistance of counsel at the trial and appellate levels, claimed that he was denied his direct appeal, and asserted that his convictions and sentence were obtained in violation of the Constitution and state law. App. 422 – 423.

The State made its Return and moved to dismiss Edwards' claims of ineffective assistance of counsel on or about May 15, 2017. App. 424 – 431. An evidentiary hearing was held before the Honorable Michael Nettles on December 5, 2017. App. 432. Edwards was represented by Rodney Davis, and Justin Hunter appeared on behalf of the State.

An Order of Dismissal and Grant of Appeal Pursuant to White v. State¹ was filed on February 1, 2018. App. 445 – 450. The PCR court granted Edwards a belated direct appeal and

¹ 263 S.C. 110, 108 S.E.2d 35 (1974).

dismissed his remaining post-conviction relief allegations, including his claims of ineffective assistance of counsel.

Petitioner now files this petition simultaneously with a brief addressing the direct appeal issue(s), as required by Rule 243, SCACR.

ARGUMENT

The PCR court correctly granted Petitioner a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), where the undisputed evidence showed he never knowingly and voluntarily waived his right to a direct appeal, where an administrative error caused his appeal to be dismissed.

At the evidentiary hearing in Petitioner's case, counsel for the State offered the following procedural history regarding Edwards' direct appeal matter:

Now, Your Honor, I know that during the trial [Edwards] went *pro se*. He did not have stand-by counsel. Ms. Hansotia was in no way involved with the trial. He then filed a *pro se* notice of appeal. Your Honor has all the appellate documents. I know they're pretty dense because the Court of Appeals sent a letter to Ms. Hansotia notifying her that she was counsel of record and ... sent her a deficiency letter based on the appeal. The Court then dismissed his appeal as a failure to serve the opposing party timely.

Your Honor, he then made a motion to reinstate the appeal, a *pro se* motion. The Court of Appeals denied that motion. Your Honor, I will point out that at this stage the Court of Appeals sent him a letter saying that they understood Ms. Hansotia was not his counsel of record. Eventually it was dismissed and the remittitur issued October 22nd.

...

As far as the appeal goes, Your Honor, the State does recognize that the Court of Appeals sent contradictory letters. The Court of Appeals sent a letter to Ms. Hansotia saying that you are the attorney, then the Court of Appeals sent a letter to the applicant here saying she's not your attorney. Your Honor, based on those facts and just the contradictory information from the Court of Appeals, **the State would agree that through no fault of his own was the applicant's appeal dismissed... The State would consent to a belated appeal.**

App. 435 l. 6 – 437 l. 1. (emphasis added). The State simultaneously moved to dismiss all allegations of ineffective assistance of counsel because Edwards proceeded *pro se*. Id. Ms. Hansotia was present at the evidentiary hearing but not called as a witness. App. 437 l. 3 – 438 l. 22. In fact, no witnesses took the stand.

PCR counsel responded to the motion to dismiss by requesting that the PCR court hear testimony regarding Edwards' allegations. App. 437 l. 3 – 438 l. 22. The PCR court requested input from the parties regarding the Faretta issue wherein Edwards asked that Ms. Hansotia be relieved the week before his trial. App. 439 ll. 1 – 4. The State indicated that its position was that this matter “would be a direct appeal issue.” App. 439 ll. 16 – 24.

The PCR court granted Petitioner a belated direct appeal. App. 442 ll. 10 – 15. Rather than sign a consent order as requested, Edwards requested, through counsel, that the order be a ruling of the Court, not by consent. App. 442 l. 16 – App. 443 l. 18. The signed Order indicated that “Applicant did not waive his right to a direct appeal.” App. 449.

“To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-740 (2010). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in [Anders].” Id. (quoting Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008)).

“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).

The PCR judge’s ruling is supported by commentary from the State at the evidentiary hearing as well as Edwards’ direct appeal at the South Carolina Court of Appeals, Appellate Case No. 2015-000389. As Judge Nettles found, there was no evidence of an intelligent and voluntary waiver of Edwards’ right to an appeal. The evidence supports the PCR judge’s conclusion that Petitioner is entitled to a belated appeal pursuant to White, supra.

CONCLUSION

Petitioner respectfully requests this Court affirm the PCR court's decision that he is entitled to a belated direct appeal. Petitioner likewise requests that this Court grant his petition for writ of certiorari and allow full briefing on this issue, reverse the charges against him, and remand the case for a new trial.

A handwritten signature in black ink, appearing to read 'Taylor D Gilliam', written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of September, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

GERALD EDWARDS,

PETITIONER

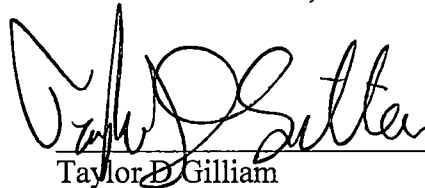
V.

STATE OF SOUTH CAROLINA,

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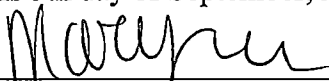
CERTIFICATE OF SERVICE

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 Benjamin Limbaugh, 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 Gerald Edwards, #173780, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 5th day of September, 2018.



Taylor D. Gilliam
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 5th day of September, 2018.

 (L.S)

Notary Public for South Carolina
My Commission Expires: 5/12/2027