

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Union County

Honorable Alison Renee Lee, Circuit Court Judge  
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ANTHONY DERONE RICHARDSON,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO 2017-002385  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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**ISSUE PRESENTED**

The PCR judge ruled properly in granting a belated direct appeal to petitioner on the ground that he did not voluntarily and intelligently waive his right to a direct appeal.

## STATEMENT

Petitioner Anthony Derone Richardson pled guilty to three counts of illegal distribution of recordings during the December 2011 term of the Union County General Sessions Court before John C. Hayes, III, and was sentenced to imprisonment for a period of one year, suspended to one year of probation. Joseph St. Pierre represented petitioner at the plea proceeding and Deputy Solicitor John Anthony appeared on behalf of the State. App. 1-8. Petitioner appealed, but his appeal was dismissed due to trial counsel's failure to properly serve opposing counsel. See PCR Exhibits #1 at App. 57.

On March 6, 2013, petitioner filed a PCR application with the Union County Office of the Clerk of Court. App. 10-16. The respondent filed a Return and Motion to Dismiss dated April 18, 2013, moving to dismiss alleging petitioner failed to state a PCR claim. App. 17-20.

On April 22, 2013, Judge Lee S. Alford filed a Conditional Order of Dismissal echoing the ground outlined in the Return and Motion to Dismiss filed by the respondent. App. 22 -25. Nonetheless, a PCR hearing was convened in the case on November 18, 2014, at the Union County Courthouse before Judge Allison Renee Lee. Petitioner was present at the hearing and represented by Leah B. Moody, and Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state. App. 27-55.

On September 22, 2017, Judge Letitia Verdin issued an Order granting petitioner's belated appeal request per White v. State,<sup>1</sup> but dismissed the remaining allegations of ineffective assistance of counsel raised by petitioner in his PCR action. App. 60-65. Petitioner appealed Judge Verdin's Order of Dismissal. This petition follows.

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<sup>1</sup> 263 S.C. 110, 208 S.E.2d 35 (1974).

## ARGUMENT

The PCR judge ruled properly in granting a belated direct appeal to petitioner on the ground that he did not voluntarily and intelligently waive his right to a direct appeal.

Trial counsel filed a notice of appeal in the case, but it was dismissed because of trial counsel's failure to properly serve opposing counsel with the appeal notice. During the PCR hearing, petitioner testified that the plea agreement was set to include a \$600.00 fine and no probation in the case, but since he received probation counsel vowed to appeal, which he did; however, the appeal was dismissed for failure to serve opposing counsel with the appeal notice. App. 34, l. 5 – p. 43, l. 8.

Trial counsel testified at the PCR hearing and explained that this was a PTUP case (probation terminated upon payment), and counsel admitted that he appealed the case, but the case was dismissed because he did not properly serve opposing counsel with the appeal notice. App. 46, l. 2- p. 50, l. 15. Counsel explained that petitioner wanted to appeal his sentence. App. 51, l. 9-11.

In the White v. State<sup>2</sup> Order, the PCR judge ruled that “[petitioner] did not knowingly and intelligently waive his right to a direct appeal,” as “counsel did not properly serve the notice of appeal on the State and the appeal was dismissed because of counsel's error.” The PCR judge ruled that since the appeal was dismissed because of counsel's error, then petitioner was entitled to a belated appeal and granted the same. App. 64.

Trial counsel has a duty to make certain a client is fully aware of the right to appeal and ascertain whether his client desires an appeal, and then file an appeal if the client wishes to

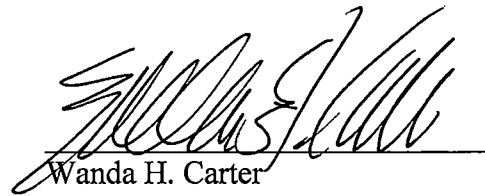
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<sup>2</sup> 263 S.C. 110, 208 S.E.2d 35 (1975).

appeal. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991). Here, trial counsel did not perform his duty with respect to petitioner's appellate rights. A defendant is entitled to an appeal where there has been no intelligent or voluntary waiver of the right to an appeal made by the defendant. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975). Petitioner desired an appeal of his case and did not voluntarily waive his right to an appeal. Therefore, trial counsel erred in failing to take the appropriate steps, i.e., serve the appeal notice on opposing counsel properly, to ensure petitioner's right to have his case reviewed on direct appeal. If after an indigent client requesting an appeal the client wishes to appeal, then trial counsel must serve and file a notice of appeal. In Re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E. 483 (1991).

### **CONCLUSION**

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above raised issue.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of September, 2018.

STATE OF SOUTH CAROLINA

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ANTHONY DERONE RICHARDSON,

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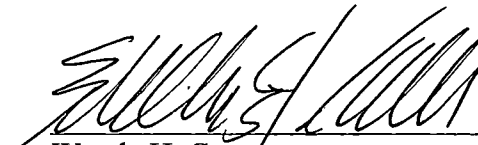
RESPONDENT

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CERTIFICATE OF SERVICE

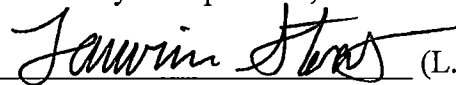
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The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Janell Gregory, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Anthony Derone Richardson, at 521 Brantley St, Newberry, SC 29108, this 6th day of September, 2018.



Wanda H. Carter  
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me    ATTORNEY FOR PETITIONER  
this 6th day of September, 2018.

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