

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Post Conviction Relief

Michael G. Nettles, Circuit Court Judge

Case No.: 2017-002269

Deonte Brown #361477,..... Petitioner,

vs.

State of South Carolina,Respondent.

PETITION FOR WRIT OF CERTIORARI
PURSUANT TO WHITE V. STATE

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S.C. SUPREME COURT

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TABLE OF CASES

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Cherry v. State, 300 S.C. 115, 119, 386 S.E. 2d 624, 626 (1989)

Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)

White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974)

Rule 227 (g) (1), SCACR

QUESTION PRESENTED

Did the Lower Court properly grant Petitioner a belated appeal pursuant to White v. State, 236 S.C. 110, 108 S.E. 2d 35 (1974)?

STATEMENT OF THE CASE

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the February 2013 term of the Charleston County Grand Jury for murder, attempted murder, and possession of a firearm during the commission of a violent crime (2013-GS-10-00535, 00536, 00537). James W. Smiley, Esquire, represented him. Applicant proceeded to a jury trial and was found guilty as indicted. The Honorable Roger M. Young, Sr., sentenced Applicant to incarceration for fifty years for Murder, thirty years for Attempted Murder, and five years for Possession of a Firearm During the Commission of a Violent Crime, each sentence to be served concurrently. Applicant did not appeal his conviction or sentence.

STATEMENT OF FACTS

This matter came before the Lower Court by way of a post-conviction relief (PCR) application filed on July 15, 2015. Respondent submitted its Return on February 18, 2016. An evidentiary hearing was convened on August 3, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's mother, Doris Gregory, and Applicant's trial counsel, James W. Smiley, Esquire ("Trial Counsel") also testified. Accordingly, the Lower Court granted Applicant a belated review.

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel:
 - a. "He never did investigate my case to the best of his ability;"
 - b. "My attorney never had a pre-trial hearing for my case;"
 - c. "My lawyer did not file for the notice of appeal;"
2. "Actual Conflict of Interest:"
 - a. ". . . Detective Lawrence who was investigating the case was in a sexual relationship with my co-defendant(sic) mother who was a possible suspect under investigation of this crime;"

On July 25, 2017, Applicant amended his application to include Defense attorney did not file an Appeal, after he told Applicant that he would.

The Court granted Petitioner a belated appeal.

ARGUMENT

Did the Lower Court properly grant Petitioner a belated appeal pursuant to White v. State, 236 S.C. 110, 108 S.E. 2d 35 (1974)?

Petitioner alleged Trial Counsel failed to file an appeal as requested. The testimony presented at the evidentiary hearing clearly shows that Trial Counsel intended to file and perfect a direct appeal, but the appeal was somehow dismissed before it was perfected. The Lower Court agreed that applicant did not waive his right to a direct appeal.

In the absence of an intelligent waiver by the Petitioner, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738,

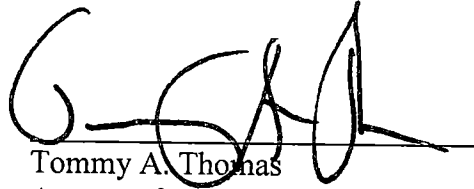
87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, See Rule 227 (g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

The Lower Court affirmatively finds Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to White v. State can remedy Applicant's lack of a direct appeal. Therefore, relief for this allegation was granted.

"The appropriate scope of review of this Court is that any evidence of probative value is sufficient to uphold the PCR Judge's finds." Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). This case meets that standard. The PCR Judge's ruling is supported by Petitioner testimony that it was his understanding that trial counsel was going to file a Direct Appeal. That Petitioner's father spoke with trial counsel regarding filing the Appeal. Once Petitioner got to the Department of Corrections, he found out that there was no history or paperwork regarding his Direct Appeal. It was at that time that he found out that the Appeal had been improperly filed. Therefore, this evidence supports the PCR Judge's conclusion that petitioner is entitled to a belated appeal pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974).

CONCLUSION

Therefore, based upon the foregoing the Court should grant the Petition and consider Petitioner's belated appeal.



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November 3, 2018