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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**S.C. SUPREME COURT**

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

---

Appellate Case 2017-002544

Eric Ancrum,

Petitioner,

v.

State of South Carolina,

Respondent.

---

APPENDIX VOLUME III

---

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P.O. Box 11549  
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
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<sup>1</sup> The original Appendix filed in this case contained an verbatim copy of the Appendix filed in the appeal of 2008-CP-10-1670. The 2008 case Appendix was missing trial transcript pages 348-351. The Petition for Writ of Certiorari and Brief of Petitioner pursuant to *White v. State* were numbered base on the original Appendix filed in this case. After receiving the Court's order date November 8, 2018, Petitioner received the original transcript from Respondent. In order to preserve the numbering in the Petition for Writ of Certiorari and Brief of Petitioner pursuant to *White v. State*, Petitioner added Trial Transcript pages 348-351 to Volume III of the Appendix.

<sup>2</sup> Added for Spacing.

<sup>3</sup> See Footnote 1.

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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Kristi L. Harrington, Judge

Case No. 2008-CP-10-01670

Eric Kimberly Ancrum, ..... Petitioner,

v.

State of South Carolina, ..... Respondent

PETITION FOR A WRIT OF CERTIORARI

ORIGINAL

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Other Counsel of Record:  
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P.O. Box 11549  
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Attorney for Respondent

Petition for Writ of Certiorari Denied  
..... e. J.  
FOR THE COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Kristi L. Harrington, Judge

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## QUESTIONS PRESENTED

1. Did the PCR court err in denying Petitioner's request for a new trial based upon his claims of ineffective assistance of counsel?

## STATEMENT OF THE CASE

On October 12, 2007, Petitioner was convicted of trafficking cocaine, possession of drugs with intent to distribute within the proximity of a school, possession of cocaine base with intent to distribute, and manufacturing cocaine base, and was sentenced to life imprisonment without the opportunity for parole.

Petitioner then filed an action for post-conviction relief, which was heard on November 18, 2009. There, Petitioner alleged that the conduct of his counsel so undermined his defense so as to produce an unjust result at trial. Petitioner alleged that during the nearly two years that he was incarcerated while awaiting trial and facing a life sentence, his counsel met with him on only four occasions and never more than fifteen (15) minutes each occasion, most of which time was spent by counsel attempting to convince Petitioner to agree to a plea offer. (R. p. 925, lines 4-23.) At no time, Petitioner alleged, did his counsel review evidence, investigate the case, or prepare a defense. At no time, Petitioner alleged, did his counsel even call or investigate the lengthy list of exculpatory witnesses and evidence despite his repeated requests to do so. (R. p. 926, lines 4-13.) Further, at trial, Petitioner's counsel ignored his request for a continuance, such request based on Petitioner's belief that his counsel was not adequately prepared (R. p. 928, lines 15-23; p. 929, lines 7-21; p. 930, lines 2-12) and, after trial, failed to file an appeal of the trial result in a timely fashion. (R. p. 912, lines 2-25.) But for the inferior conduct of his counsel, Petitioner alleged, the outcome of the trial would have been substantially different, and therefore Petitioner's constitutional right to counsel and a fair trial was irrevocably compromised. Petitioner's application for post-conviction relief was denied. Petitioner now seeks a Writ of Certiorari to review this denial.

## ARGUMENT

## I. THE PCR COURT ERRED IN DENYING PETITIONER'S REQUEST FOR A NEW TRIAL BASED UPON HIS CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL

The PCR court's decision should be overturned because the ineffectiveness of the Petitioner's trial counsel prevented the Petitioner from receiving a fair trial as guaranteed by the Sixth Amendment of the United States Constitution. The test for determining whether 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--the benchmark for establishing ineffectiveness of counsel as defined by this Court--requires that the defendant (1) show that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment, and (2) that the deficient performance prejudiced the defense to the extent that, but for the ineffectiveness of counsel, a different result would have been produced at trial. Strickland v. Washington, 466 U.S. 668, 686-87 (U.S. 1984).

First, the right to counsel guaranteed by the Sixth Amendment is the right to the effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 711, n. 14 (1970). The guarantee of effective assistance of counsel preserved by the Sixth Amendment is neither a referendum on counsel performance nor a mechanism designed to improve the quality of legal representation, but is rather a means to ensure that criminal defendants receive a fair trial; the Amendment itself does not offer specific requirements of effective assistance, but instead relies upon standards set forth by the legal profession. See Trapnell v. United States, 725 F.2d 149, 151-52 (CA2 1983). For a defendant to attack an adverse judgment on the basis of ineffectiveness of counsel, the defendant must show that

counsel's representation fell below an objective standard of reasonableness considering all the circumstances. Strickland v. Washington, 466 U.S. at 688.

Second, for a showing that the deficient performance of counsel prejudiced the defense to the extent that but for the ineffectiveness of counsel a different result would have been produced at trial, a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case, but rather only must show that there is a reasonable probability that said ineffectiveness was sufficient to undermine confidence in the outcome. Id. at 693-94. Further, for an assessment of prejudice to be proper, the focus of judicial inquiry should center neither on the idiosyncrasies of a particular judge or jury nor on any strategic adjustments made by counsel in response to such idiosyncrasies, but rather should remain on whether there is a reasonable probability that, absent the errors of ineffective counsel, the reasonable, conscientious and objective decisionmaker would have had a reasonable doubt respecting guilt. Id. at 695. The Court must be concerned with whether, in spite of the presumption of reliability, the result of the particular proceeding is nonetheless unreliable due to a breakdown in the adversarial process counted upon by the American judicial system to foment fairness and justice. Id. at 696.

In the case before this Court, the Petitioner was denied the fair trial due to the ineffectiveness of his trial counsel. Leading up to trial, for the nearly twenty (20) months the Petitioner remained incarcerated while awaiting the commencement of proceedings, he only met with trial counsel on four separate occasions, despite the daunting reality that he was facing a life sentence without opportunity for parole. (R. p. 925, lines 4-23.) On each of those four occasions, trial counsel spent no more than fifteen (15) minutes with

the Petitioner and refused to devote even a portion of that limited time to trial preparation or a discussion of a defense to the case at hand, instead choosing to spend the brief meetings attempting through various means to convince the Petitioner to advance a guilty plea. (R. p. 925, lines 4-23.) Furthermore, the Petitioner's trial counsel chose to ignore a long list of alibi witnesses and exculpatory evidence provided by the Petitioner (R. p. 926, lines 4-13), declining to place a single telephone call to contact a witness or invest even a short amount of time in investigating the evidence presented, despite the Petitioner's continuous requests that they do so. (R. p. 926, lines 24-25; p. 907, lines 1-11.) Immediately prior to trial, the Petitioner's asked that the proceeding be continued out of concerns that, due to the reasons stated above, his trial counsel were unprepared to provide an adequate defense (R. p. 928, lines 15-23; p. 929, lines 7-21; p. 930, lines 2-12; p. 931, lines 5-13), but the Petitioner's trial counsel ignored his request and proceeded with the trial. Finally, following the trial and its adverse result, the Petitioner's trial counsel failed to file an appeal of the trial in a timely manner, therefore forcing the Petitioner to sit on his rights in prison without hope for legal remedy. (R. p. 912, lines 2-25.)

In Strickland, the Supreme Court referenced Cuyler v. Sullivan, 446 U.S. 335, 346 (U.S. 1980), and noted that the function of counsel is "to assist the defendant, and hence counsel owes the client a duty of loyalty" and also made reference to Powell v. Alabama, 287 U.S. 45, 68-69 (U.S. 1932), stating that "[f]rom counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution"

and maintaining that “[c]ounsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.” Strickland v. Washington, 446 U.S. at 688. In the instant case, four meetings totaling less than one hour over a nearly two-year period hardly satisfies the duties to consult and inform highlighted by the Court in Powell and Strickland, just as pressuring a defendant into agreeing a plea offer at the expense of trial and defense preparation and refusing his requests to continue the proceedings hardly satisfies the overarching duty to advocate the defendant’s cause, and just as failing to contact alibi witnesses, investigate exculpatory evidence, and timely file an appeal hardly satisfies the counsel’s function as assistant to the defendant. For the aforementioned reasons, the conduct of the Petitioner’s trial counsel and failure of trial counsel to honor its duties to the Petitioner as ascribed by this Court shows that counsel’s representation of the Petitioner fell below an objective standard of reasonableness considering the circumstances and that the Petitioner’s trial counsel was not functioning as the “counsel” guaranteed by the Sixth Amendment.

Furthermore, in the case at hand, there is a reasonable probability that the deficient performance of Petitioner’s trial counsel was sufficient to undermine confidence in the outcome of the trial. The Court in Strickland, 466 U.S. at 694, held that the appropriate test for prejudice is rooted in the test for materiality of exculpatory information not disclosed to the defense by the prosecution set forth in United States v. Agurs, in which the Supreme Court in 1976 held that “if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed.” 427 U.S. 97, 112-13. Prior to trial and in spite of repeated requests by the Petitioner, the Petitioner’s trial counsel refused to investigate alibi witnesses and exculpatory evidence

presented to them. At trial, the Petitioner's trial counsel failed to present those witnesses and evidence, and failed to object to evidence presented against the Petitioner. In Strickland, a death penalty case, the Court held that when a defendant challenges a conviction "the question is whether there is reasonable probability that, absent the errors, the sentence -- including an appellate court, to the extent it independently reweighs the evidence -- would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." 466 U.S. at 695. In the Petitioner's case, due to the failure of Petitioner's trial counsel to function as the "counsel" guaranteed by the Sixth Amendment, neither the trial nor PCR court were provided with omitted evidence which could have created a reasonable doubt that otherwise did not exist and were therefore denied the opportunity to properly balance the aggravating and mitigating circumstances. For that reason, because there is a reasonable probability that the failures of Petitioner's trial counsel was sufficient to undermine confidence in the outcome of the trial, the deficient performance prejudiced the defense to the extent that, but for the ineffectiveness of counsel, a different result would have been produced at trial.

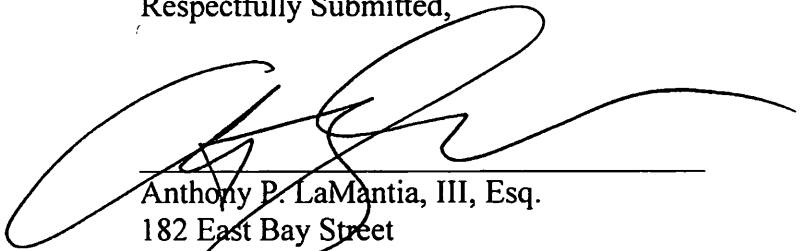
For the reasons stated above, this Honorable Court should overturn the PCR court's decision and remand this matter for a new trial. The Petitioner's trial counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Further, said errors prejudiced the defense to the extent that, but for the ineffectiveness of counsel, a different result would have been produced at trial. Therefore, this Court should hold that the conduct of Petitioner's trial counsel so undermined the proper functioning of the adversarial process and thus produced an unjust

result, preventing the Petitioner from receiving a fair trial guaranteed by the Sixth Amendment to the United States Constitution.

CONCLUSION

For the reasons stated herein, Petitioner asks this Honorable Court to grant the Petition for a Writ of Certiorari.

Respectfully Submitted,



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Attorney for Petitioner

Charleston, South Carolina  
1-17, 2011

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Kristi L. Harrington, Judge

Case No. 2008-CP-10-01670

Eric Kimberly Ancrum, ..... Petitioner,

v.

State of South Carolina, ..... Respondent

PROOF OF SERVICE

I, Anthony P. LaMantia III, Esq., certify that I have this 18<sup>th</sup> day of January, 2011, served the within Writ of Certiorari and Appendix upon the Respondent's attorney of record, Matthew Friedman, and all other parties required by Rule to be served, by hand delivery:

Matthew Friedman, Asst. Solicitor  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211



Anthony P. LaMantia, III  
Attorney for Appellant Ancrum  
182 East Bay Street, Suite 302  
Charleston, South Carolina 29401  
(843) 724-6363  
(843) 724-6380 Fax

Charleston, South Carolina  
1/18, 2011

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 ERIC ANCRUM #265645, )  
 Applicant, )  
 vs. )  
 THE STATE OF SOUTH CAROLINA, )  
 Respondent. )

) IN THE COURT OF COMMON PLEAS  
 ) THE NINTH JUDICIAL CIRCUIT  
 ) Case No.: 2017-CP-10-3021  
 ) APPLICATION FOR POST-CONVICTION  
 ) RELIEF

2017 JUL 12 PM 4:30

1. Place of detention: Broad River Correctional Institution
2. Name and location of Court which imposed sentence: Charleston County Court of General Sessions, Kristi Lea Harrington presiding.
3. Name(s) of co-defendant(s) (if any): None.
4. ~~The indictment number or numbers (if known) upon which and the offenses for which~~  
 sentence was imposed:
  - i. (Crack Distribution)-15 years
  - ~~ii. (PWID Crack)-Life~~
  - iii. (PWID Cocaine)-Life
  - iv. (Trafficking in Crack Cocaine)-Life
  - v. (Trafficking in Cocaine)-Life
5. The date upon which sentence was imposed and the terms of the sentence: October 12, 2007.
6. A finding of guilty was made: after a plea of not guilty.

7. Did you appeal from the judgment of conviction or the imposition of sentence? No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
  - (b) the result in each such Court to which you appealed:
  - (c) the date of each such result:
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
9. If you answered "no" to (7), state your reasons for not so appealing: Trial Counsel failed to file a timely appeal and then Collateral Appellate Counsel failed to file a White v. State appeal.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: I did not knowingly and intelligently waive my right to my belated direct appeal which was granted by my first PCR. After the PCR Court granted a belated appeal, Collateral Appellate Counsel failed to pursue the Applicant's belated appeal by not filing a White v. State brief.
- 
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Applicant previously filed PCR action 2008-CP-10-1670. In that case, the PCR granted Applicant a belated direct appeal pursuant White v. State and denied my other grounds for PCR. While Applicant's PCR counsel appealed the denial of some of Applicant's PCR issues, Collateral Appellate Counsel failed to file a White v. State brief pursuant to Rule 243(i), SCACR. The failure to file the White v. State brief was done without Applicant's knowledge. Therefore, Applicant has been denied his right to direct review of his case.
- 
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes.

- (b) any petition in State or Federal Courts for habeas corpus or post-conviction relief?  
No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any already specified in (8)? No.
- (d) any other petitions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or Application:
- (a) 2008-CP-10-1670- This PCR resulted in the grant of White v. State review but the denial of all other grounds raised.
- (b) Collateral Appellate Counsel sought certiorari for the denial of Applicant's First PCR; however, Collateral Appellate Counsel did not pursue Applicant's belated appeal.
14. Has any ground set forth in (10) been previously presented to this or any other State or Federal Court, in any petition, motion or application which you have filed? No.
15. If you answered "yes" to (14) identify: Not Applicable.
- 
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: Collateral Appellate Counsel failed to pursue Applicant's right to a belated direct appeal pursuant to White v. State.
- 
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
- (b) your trial, if any? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. John Delgado- 1614 Taylor St., Columbia, SC 29201
- ii. William N. Nettles- 2008 Lincoln St., Columbia, SC 29201
- iii. J. Stephen Schmutz- 24 Broad St., Charleston, SC 29401
- iv. Anthony LaMantia- 81 Vincent Dr., Mt. Pleasant, SC 29464

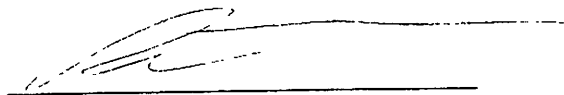
(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Trial
- iii. 2008-CP-10-1670 (PCR)- At the Circuit Court and Supreme Court
- iv. 2008-CP-10-1670 (PCR)- At the Supreme Court

19. State clearly the relief you seek in filing this application: the belated appeal that was previously ordered. The belated direct appeal that was not perfected by my previous PCR counsel.

20. Are you now under sentence from any other court that you have not challenged? No.

RESPECTFULLY SUBMITTED,



Tristan M. Shaffer (SC Bar 77565)  
 225 Columbia Ave.  
 Chapin, SC 29036  
 (803) 941-7514  
 tristan@shafferlawsc.com

Attorney for Applicant

Date: 6/8/17

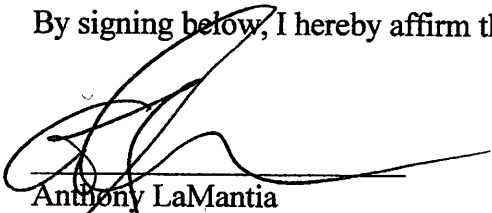
STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 \_\_\_\_\_ )

**AFFIDAVIT OF ANTHONY LAMANTIA**

I, Anthony LaMantia, after having been duly sworn hereby attests that the following is true:

1. I was Eric Ancrum’s attorney for the appeal of his post-conviction relief (PCR) case 2008-CP-10-1670.
2. Stephen Schmutz, esq. was also counsel of record for the appeal. However, I was primarily responsible for the appeal, and I personally prepared the Petition for Writ of Certiorari in this case.
3. I do not recall preparing a separate *White v. State* brief pursuant to Rule 243(i), SCACR.
4. I do not recall why a *White v. State* brief was not filed, and I do not recall any discussions with Mr. Ancrum about the *White v. State* brief.

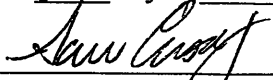
By signing below, I hereby affirm that the statements made in this affidavit are true.



Anthony LaMantia

SWORN TO AND SUBSCRIBED BEFORE ME

This 20<sup>th</sup> day of March, 2017



Notary Public for South Carolina  
 My Commission Expires: 10/31/2026

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 Eric Ancrum, )  
 )  
 Applicant, )  
 )  
 v. )  
 The State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

Case No.: 2017-CP-10-3021

Order Granting Belated Direct Appeal  
 Pursuant to *White v. State*

FILED  
 2017 NOV -8 AM 9:43  
 JULIE M. HARRIS  
 CLERK OF COURT

This matter comes to me by way of Applicant’s Application for Post-Conviction Relief (PCR). Applicant alleges that he did not knowingly and intelligently waive his right to direct appeal. With consent of both parties I hereby grant the PCR Application to the extent that it grant’s Applicant a belated direct appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). To support this request the parties have shown the following:

Findings of Fact and Conclusions of Law

Applicant was indicted at the June 2006 term of the Charleston County Grand Jury for trafficking cocaine (more than 400 grams) (2006-GS-10-4066), possession with intent to distribute cocaine within proximity of a school (2006-GS-10-4069), manufacturing cocaine base crack (2006-GS- 1 0- 4070), possession of a firearm during the commission of a violent crime (2006-GS-10-4071), and manufacturing cocaine base crack within proximity of a school (2006-GS-10-4188). He was also indicted at the October 2006 term for trafficking cocaine base (200-400 grams) (2006-GS- 1 0- 9674) and PWID - cocaine base within proximity of a school (2006-GS-10-9675). John D. Delgado, Esquire and William N. Nettles (hereinafter collectively referred to as “Trial Counsel”), represented the Applicant. On October 8, 2007, the Applicant proceeded

1  
 10/5  
 [Signature]

to trial, after which the jury found him guilty of each charge except possession of a firearm. The Honorable George C. James sentenced him to confinement for fifteen (15) years for manufacturing cocaine base and life without parole (LWOP) for each of the other five offenses. The sentences were to run concurrently.

Due to a clerical error, Trial Counsel did not file a timely notice of Appeal. Trial Counsel filed an untimely notice of appeal on behalf of Applicant. Due to the failure of Trial Counsel to timely file the notice of appeal, the Court of Appeals dismissed Applicant's direct appeal on October 24, 2007.

On March 25, 2008, Applicant filed his first PCR application, case number 2008-CP-10-1670. For his first PCR Applicant was represent by J. Stephen Schmutz, Esq. and Anthony P. LaMantia, III, Esq (hereinafter collectively referred to as (First PCR Counsel).

On November 18, 2009, an evidentiary hearing was convened on Applicant's First PCR before the honorable Kristi L. Harrington. At the hearing, Applicant alleged that he had not knowingly and intelligently waived his right to a direct appeal (hereinafter referred to as "*White v. State*<sup>1</sup> claim") and various other ineffective assistance of counsel grounds. The State agreed that Applicant had not knowingly and intelligently waived right to a direct appeal, but disputed Applicant's other PCR allegations.

On November 18, 2009, Judge Harrington issued a form order granting Applicant's belated direct appeal, but denying all other grounds alleged by Applicant. On the form order Judge Harrington wrote in the following:

"Applicants counsel is hereby directed to file a belated appeal under *White v. State* procedure."

On December 14, 2009, Judge Harrington issued a formal order granting Applicant's

---

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

belated direct appeal but denying all other allegations. In the formal order, Judge Harrington wrote the following:

Mr. Delgado indicated in his November 15, 2007 letter that Applicant asked him to file a direct appeal and he inadvertently failed to file an appeal with the Office of the Attorney General or the Ninth Circuit Solicitor's Office. The State agreed that the Applicant is entitled to a review of direct appeal issues as permitted by *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974). In *White v. State*, our Supreme Court determined that, where the post-conviction relief judge finds 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. Based upon the agreement of the parties, this Court concludes the Applicant is entitled to a review of his convictions pursuant to *White v. State*. In order to secure this review, however, the Applicant must appeal from this Order... This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227<sup>[2]</sup> of the South

<sup>2</sup> The 2009 version of West's South Carolina Rules of Court, indicates that there was a Rule 227 of the SCACR. However, it appears that at some point in 2009 the numbering system for the rule was changed. As noted by the Supreme Court in footnote 3 of *Jones v. State*, 382 S.C. 589, 677 S.E.2d 20 (2009), Rule 227(i) SCACR is identical to Rule 243(i). Rule 243(i), SCACR states the following:

"(i) Special Procedures Where a *White v. State* Review Is Sought. Where the petition seeks review under *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), the following procedure shall be followed:

(1) When the post-conviction relief judge has affirmatively found that the right to a direct appeal was not knowingly and intelligently waived, the petition shall contain a question raising this issue along with all other post-conviction relief issues petitioner seeks to have reviewed. At the same time the petition is served, petitioner shall serve and file a brief addressing the direct appeal issues. This brief shall, to the extent possible, comply with the requirements of Rule 208(b). Respondent's return to the petition shall address the post-conviction relief issues, including whether the direct appeal was knowingly and intelligently waived. At the same time the return is due, respondent shall also serve and file a brief addressing the direct appeal issues. Within ten (10) days after service of respondent's brief, petitioner may file a reply brief on the direct appeal issues.

(2) When the post-conviction relief judge has found that the applicant is not entitled to a *White v. State* review, the petition shall raise the question of waiver of the right to a direct appeal along with all other post-conviction relief issues petitioner seeks to have reviewed. The petition shall also contain a "Statement of Issues on Appeal" listing the issues to be raised if a *White v. State*

Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

First PCR Counsel filed a timely notice of appeal on Applicant's behalf. On January 18, 2011, First PCR Counsel filed a Petition for Writ of Certiorari. However, First PCR Counsel failed to file a separate *White v. State* brief as was required by Rule 243(i)(1). The Supreme Court did not grant First PCR Counsel's Petition for Writ of Certiorari.

Mr. LaMantia has submitted an Affidavit to the parties. In the affidavit, Mr. LaMantia indicates that he was primarily responsible for the appeal of Applicant's First PCR. Mr. LaMantia does not recall preparing a *White v. State* brief, nor does he recall his reason for not pursuing the belated direct appeal. Additionally, Mr. LaMantia has stated that he does not recall ever discussing the filing a *White v. State* brief with Applicant.

"Trial counsel is required to make certain the defendant is made fully aware of his appeal rights. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*.<sup>3</sup>" *Smith v. State*, 309 S.C. 413, 416, 424 S.E.2d 480, 482 (1992). "To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." *Wilson*, 348 S.C. at 217, 559 S.E.2d at 583 (2002).

The parties agree that Applicant did not knowingly and intelligently waive his right to a direct appeal; therefore, a belated direct appeal should be granted.

IT IS THEREFORE ORDERED:

1. That Applicant is granted belated review of direct appeal issues pursuant to *White v.*

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review is granted; this statement of issues shall comply with the requirements of Rule 208(b)(1)(B). Briefing of the direct appeal issues will not be allowed unless certiorari is granted on the issue."

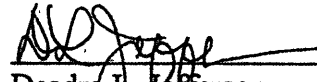
<sup>3</sup> *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1968).

State;

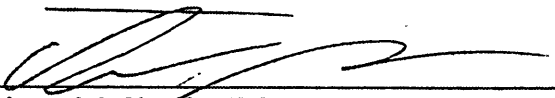
2. That the other allegations in the application for post-conviction relief be denied and dismissed with prejudice; and

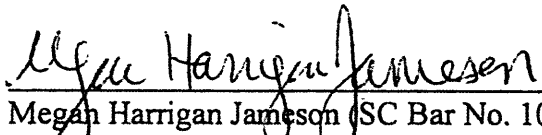
3. Applicant shall remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 7<sup>th</sup> day of November, 2017.

  
Deadra L. Jefferson  
Chief Administrative Judge  
Ninth Judicial Circuit

WE CONSENT:

  
Tristan M. Shaffer (SC Bar No. 77565)  
Attorney for Applicant

  
Megan Harrigan Jameson (SC Bar No. 100108)  
Attorney for Respondent

5015  


1 whether or not those keys fit those apartments?

2 **A** Manor Boulevard was no longer rented to him or  
3 to an individual where he may have occupied it.

4 Grayson Street is his mother's residence. We never  
5 followed him to that residence, there was no need.

6 **Q** The answer to my question is no, you never did?

7 **A** Correct.

8 **Q** Just one thing, when you all entered -- when  
9 you came in, that's the entry, that door, David  
10 Ancrum wasn't sitting playing a video game, was he?

11 **A** No, sir.

12 **Q** He was down here right where all the drugs  
13 were, right?

14 **A** He was in that area, yes.

15 **Q** Let me talk to you just a moment, Ms. Drake.  
16 Let me put this name up. Lawrence, also known on  
17 the street as an individual named Pimp Gatling,  
18 correct?

19 **A** Actually, it's Leonard.

20 **Q** I'm sorry, you're absolutely correct. Not  
21 Lawrence, Leonard Pimp Gatling?

22 **A** I know him as Lenny. He's known on the streets  
23 as Pimp.

24 **Q** You're correct, it wasn't Lawrence. I'll tell  
25 you what we'll do, just so I'm not confused. Why

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1 don't I just put Pimp Gatling because I'll continue  
2 to call him Lawrence. Pimp Gatling is a  
3 confidential informant that you, and before you,  
4 your predecessors in interest, have used to gather  
5 information, correct?

6 **A** Yes, sir.

7 **Q** Mr. Gatling has been giving information to the  
8 Charleston County Sheriff's Department and possibly  
9 other law enforcement officers for a good almost ten  
10 years?

11 **A** According to the dates, yes.

12 **Q** Yes, ma'am. I think your words were he was  
13 passed on to you when one of your -- Mr. --

14 **A** Detective O'Dell.

15 **Q** O'Dell left employment at the sheriff's  
16 department and moved to another area?

17 **A** No longer assigned to the unit, yes.

18 **Q** Mr. Gatling has signed and is required to sign  
19 something called a code of conduct, correct, ma'am?

20 **A** Yes.

21 **Q** That code of conduct is signed by him saying  
22 this is what I say I'm going to do and this is what  
23 I can't do, correct, ma'am?

24 **A** Right.

25 **Q** One of the things that he can't do under that

1 paragraph six is he can't get in trouble with the  
2 law; isn't that right?

3 **A** I'd have to review it again.

4 **Q** Sure.

5 **A** In summary -- you can summarize it by saying  
6 that, yes.

7 **Q** But Mr. Gatling's fallen short on that mark on  
8 numerous occasions in the past ten years, hasn't he?

9 **A** I'd have to review his rap sheet for that.

10 **Q** Well, as you said, he's under charges now;  
11 isn't he?

12 **A** He's incarcerated, yes.

13 **Q** He's incarcerated for what, ma'am?

14 **A** I'm not sure, sir.

15 **Q** Criminal charges pending against him?

16 **A** Okay.

17 **Q** Since 1998 when Charleston County first started  
18 to use him, he's been involved with a whole variety  
19 of other criminal activity?

20 **A** Again, I'd have to review his history, but,  
21 yeah.

22 **Q** But he's always been truthful with you?

23 **A** He's never steered me wrong.

24 **Q** What's that, ma'am?

25 **A** He's never steered me wrong.

1           **Q**     But my question is so he's always been truthful  
2           with you?

3           **A**     Yeah.

4           **Q**     Never lied to you?

5           **A**     Yes, that's correct.

6           **Q**     Did he ever tell you, I haven't gotten in any  
7           more trouble, or you've just not asked him that  
8           question -- let me rephrase. Did he ever tell you,  
9           Lenny Pimp Gatling ever tell you, Ms. Drake, I've  
10          committed another crime?

11          **A**     No, I don't think we've ever had a conversation  
12          like that.

13          **Q**     But truth in fact, he certainly has; hasn't he?

14          **A**     I'm made aware of it as soon as it happens.

15          **Q**     And sometimes in your business, what we do is  
16          we help those individuals who help us with this  
17          voluntary statement -- excuse me -- this is a -- he  
18          is voluntarily cooperating with Charleston County  
19          Sheriff's Department by giving you information  
20          according to this confidential source of conduct,  
21          correct?

22          **A**     Yes, sir.

23          **Q**     Now, when he voluntarily cooperates, he is  
24          looking for something in return; isn't he?

25          **A**     You can say that.