

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Aiken County
The Honorable Doyet A. Early, III, Circuit Court Judge

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JAN 17 2019
SC Court of Appeals

William McCladdie,

Petitioner,

vs.

State of South Carolina,

Respondent.

Appellate Case No. 2016-001979

**RESPONDENT'S MOTION FOR REMAND FOR SPECIFIC FINDINGS AS TO
WHETHER PETITIONER KNOWINGLY, INTELLIGENTLY, AND
VOLUNTARILY WAIVED HIS RIGHT TO RAISE POST-CONVICTION
RELIEF CLAIMS INDEPENDENT OF HIS REQUEST FOR A BELATED
APPEAL AND TO HOLD PETITIONER'S APPEAL IN ABEYANCE PENDING
RESOLUTION OF THE REMAND.**

I.

Petitioner was indicted during the July 2015 term of the Aiken County Grand Jury for burglary – first degree (2015-GS-02-01103); possession of tools capable of being used in crime (2015-GS-02-0104); possession of a stolen vehicle (2015-GS-02-01105). Michael B. McMillian, Esquire, represented Petitioner. On July 8, 2015, Petitioner was found guilty on all charges. The Honorable Doyet A. Early, III sentenced Petitioner to a fifteen year term of imprisonment for burglary – first degree, a five year term of imprisonment for possession of tools capable of being

used in a crime, and a ten year term of imprisonment for possession of a stolen vehicle with all sentences running concurrently.

Petitioner subsequently filed a notice of appeal. On August 19, 2015, the South Carolina Court of Appeals dismissed the notice of appeal for untimely service. The remittitur was returned to the circuit court on September 28, 2015.

The current matter stems from an application for post-conviction relief filed on October 19, 2015, alleging the following grounds for relief:

1. Ineffective assistance of counsel
 - a. Failed to file appeal in time.
2. Subject matter jurisdiction
 - a. Sham indictments
3. Illegal sentence
 - a. Sentence exceeds and or does not coincide with charge.

The State made its Return on December 18, 2015 and requested that an evidentiary hearing be held. The State subsequently consented to Petitioner's request for a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The State, represented by Assistant Attorney General Julie A. Coleman, Petitioner, Petitioner's counsel, and Judge Early, acting in his capacity as Chief Administrative Judge of the Second Judicial Circuit, subsequently signed an Order of Dismissal and Grant of Appeal Pursuant to White v. State filed on August 22, 2016. In the Order, Judge early ordered, "That this current Application for Post-Conviction Relief be dismissed with prejudice." App. p. 284. Judge Early also found, "That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). No hearing was held.

Petitioner subsequently filed a petition for writ of certiorari addressing the issue of the

waiver of his direct appeal as well as an additional post-conviction relief issue.¹ Petitioner's first issue raised in his Petitioner was, "Did the PCR court correctly grant Petitioner a belated direct appeal pursuant to State v. White, 263 S.C. 110, 208 S.E.2d 35 (1974), where the State consented to the request and the undisputed evidence showed that although trial counsel filed and served a notice of appeal, he failed to do so in a timely manner as required by Rule 203(b)(2), SCACR." Pet. p. 1. Petitioner's second issue raised in his petition was, "Is Petitioner entitled to a remand for a determination of whether he knowingly, intelligently, and voluntarily waived his right to post-conviction relief claims independent of his request for a belated direct appeal." Pet. p. 1. The State, represented by Assistant Attorney General Coleman, made its Return to Petition for Writ of Certiorari on July 26, 2017. This Court granted certiorari on September 24, 2018, and Petitioner timely filed a brief on October 5, 2018.

II.

Following Ms. Coleman's departure from the Attorney General's Office, this case has been reassigned to undersigned counsel, who has reviewed the record and the PCR order. Respondent agrees that in the present case, remand is appropriate for detailed findings as to whether Petitioner knowingly, intelligently, and voluntarily waived the post-conviction claims enumerated in his PCR application other than his request for belated appellate review pursuant to White. Therefore, Respondent moves that this case be remanded to enable the PCR court to conduct a hearing as to whether Petitioner waived his other post-conviction relief claims. In the event that the PCR court finds Petitioner did not knowingly, intelligently, and voluntarily waive his PCR claims, Respondent agrees that the PCR court should conduct an evidentiary hearing

¹ Petitioner simultaneously filed a brief addressing his direct appeal issue.

into Petitioner's claims. See Narcisco v. State, 397 S.C. 24, 723 S.E.2d 369 (2012) (finding a remand was necessary to determine whether a defendant's waiver of other post-conviction relief claims was made knowingly and voluntarily where, aside from a consent agreement signed by the defendant, the record was silent on the matter).

III.

Respondent also requests this Court hold the current case, including Petitioner's White appeal, in abeyance pending resolution of the matter on remand. Respondent also agrees with Petitioner that a remand before a judge other than Judge Early is appropriate, as Judge Early presided over Petitioner's trial. See Brief of Petitioner p. 14. Respondent has contacted Susan Hackett, counsel for Petitioner, and she consents to the State's request for a limited remand.

IV.


WHEREFORE, Respondent prays that this Court remand this matter to the court of common pleas so that the PCR court may make a determination as to whether Petitioner knowingly, intelligently, and voluntarily waived his PCR claims independent of his request for a belated appeal and, if necessary, conduct an evidentiary hearing regarding Petitioner's PCR claims if the PCR court determines Petitioner did not waive those claims. Respondent also prays this Court hold the current matter, including Petitioner's White appeal, in abeyance pending the resolution of this matter.

Respectfully submitted,

ALAN WILSON
Attorney General

V. Henry Gunter, Jr.
Assistant Attorney General

Bar # 102259

BY: 
V. Henry Gunter, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT.

January 17, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2016-001979

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WILLIAM H. MCCLADDIE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

I, Kaitlyn Slice, certify that I have served the within Motion to Remand for Specific Findings and Hold Appeal in Abeyance by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served. This 17th day of January, 2019.


KAITLYN S. SLICE
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

January 17, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JAN 17 2019
SC Court of Appeals

Re: William H. McCladdie v. State of South Carolina
Appellate Case No. 2016-001979
Lower Court Case No. 2015-CP-02-2458

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the **Motion to Remand for Specific Findings and Hold Appeal in Abeyance**. By copy of this letter we are serving opposing counsel today.

Sincerely,

V. Henry Gunter, Jr.
Assistant Attorney General
SC Bar No. 102259

VHG/ks
Enclosures

cc: Susan B. Hackett, Esquire (2 copies)