

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Horry County

Honorable Larry B. Hyman, Circuit Court Judge

JAMES A. WILSON,

RECEIVED

MAR 15 2019

PETITIONER

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001432

PETITION FOR WRIT OF CERTIORARI

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court correctly grant 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, and where the State conceded to allow a belated direct appeal for Petitioner?

STATEMENT

James Wilson was indicted by an Horry County grand jury for possession of a weapon during the commission of a violent crime and murder on September 17, 2015. App. 528 – 531. He proceeded to trial before the Honorable Steven John and a jury on June 27, 2016. App. 1. George DeBusk and Seth Oskins appeared on behalf of the State, and Ralph Wilson, Sr. represented Petitioner. Following a three-day trial, the jury found Petitioner guilty of the possession of a weapon charge and guilty of the lesser-included offense of voluntary manslaughter. App. 424 l. 17 – App. 425 l. 5.

Judge John sentenced Petitioner to twenty-seven years' incarceration on the voluntary manslaughter charge and five years concurrent on the possession of a firearm charge. App. 438 ll. 6 – 24.

On February 1, 2017, Petitioner filed a timely application for post-conviction relief. App. 441 – 450. It contained allegations of ineffective assistance of counsel, including the claim that counsel failed to file the notice of appeal after it was requested “and when counsel knew [Petitioner] wanted to appeal.” App. 443. The State made its Return on December 15, 2017. App. 451 – 459.

An evidentiary hearing was held before the Honorable Larry B. Hyman, Jr. on May 21, 2018. App. 460. James K. Falk represented Petitioner, and Johnny E. James, Jr. appeared on behalf of the State. Petitioner, Counsel, and Petitioner's father testified at the hearing.

An Order of Dismissal and Grant of Relief Pursuant to White v. State¹ was filed on July 20, 2018. App. 515 – 527. The PCR court granted Petitioner 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, and where the State conceded to allow a belated direct appeal for Petitioner.

Petitioner's parents hired counsel, who met with Petitioner between three and four times while Petitioner was in custody. App. 463 l. 21 – App. 464 l. 8. Petitioner evidenced his desire for a direct appeal should the trial outcome not be ideal. App. 466 l. 19 – App. 467 l. 22. Counsel advised Petitioner to ask his parents get in touch with Counsel, but Petitioner's mother was only able to reach Counsel's secretary. Id. Petitioner never told Counsel that he did not want an appeal. Id. One of the remedies sought by Petitioner was a belated direct appeal. App. 467 l. 23 – App. 468 l. 8.

Counsel testified that he told Petitioner “if he wanted me to file an appeal [then] all he had to do was let me know, I would file the appeal. I never got a response from him about filing an appeal.” App. 484 l. 23 – App. 485 l. 3. Although Counsel repeatedly offered his opinions on the merits of an appeal, he never offered any testimony regarding a knowing and voluntary waiver of Petitioner regarding his right to a direct appeal. App. 485 l. 4 – App. 488 l. 4. Counsel was unsure whether Petitioner knew of the potential opportunity to have another attorney handle the appeal. App. 493 l. 23 – App. 494 l. 1.

The Order of Dismissal found that Respondent, “subsequent to the [evidentiary] hearing indicated to this Court its intent to concede the White claim.” App. 521. The PCR Court found “the concession well taken,” and the Court found there was sufficient evidence to show Petitioner did not knowingly and intelligently waive his right to a direct appeal. Id.

“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 each witness at the evidentiary hearing. Petitioner testified to a brief conversation with Counsel following sentencing wherein Counsel advised Petitioner to “get with” his parents who would in turn “get with” him. App. 499 ll. 18 – 24. When Petitioner’s parents attempted to call Counsel within the limited ten-day timeframe, they were only able to reach Counsel’s assistant. As a result, Petitioner never voluntarily or knowingly waived his right to a direct appeal.

As Judge Hyman found, there was no evidence of an intelligent and voluntary waiver of Wilson’s 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 15th day of March, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Larry B. Hyman, Circuit Court Judge

JAMES A. WILSON,

PETITIONER

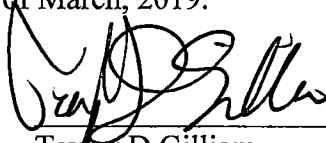
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

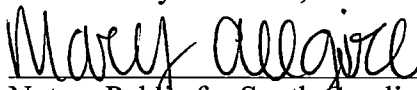
CERTIFICATE OF SERVICE

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 Johnny Ellis James, Jr., 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 James Abdula Wilson, #339674, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 15th day of March, 2019.



Taylor D Gilliam
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 15th day of March, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires. 5/12/2027