



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

March 20, 2019

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

ORIGINAL

Re: Demetrius Simmons v. The State  
Appellate Case No. 2017-000057

RECEIVED

Dear Ms. Kitchings:

MAR 20 2019

The South Carolina Supreme Court has issued an opinion (attached) indicating that this Court will handle the direct appeal in this case. I have informed Mr. Simmons (letter attached) of this also.

SC Court of Appeals

At this juncture, there is a question as to whether the above titled case will retain the same appellate case number or if a new case number will be assigned by this Court. Please advise. Note that the remittitur issued in this case has been recalled.

If you have further questions, do not hesitate to contact me.

Sincerely,

Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/lms

Enclosure

cc: Megan Harrigan Jameson, Esquire  
S.C. Supreme Court  
Demetrius Simmons #283195

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Demetrius Simmons, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-000057

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**ON WRIT OF CERTIORARI**

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Appeal From Greenville County  
The Honorable C. Victor Pyle  
The Honorable John C. Hayes, III, Post-Conviction  
Judge

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Opinion No. 2019-MO-012  
Submitted January 8, 2019 – Filed February 27, 2019

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**REVERSED**

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Deputy Chief Appellate Defender Wanda H. Carter, of  
Columbia, for Petitioner.

Attorney General Alan Wilson and Assistant Attorney  
General Megan Harrigan Jameson, both of Columbia, for  
Respondent.

**RECEIVED**  
MAR 20 2019  
SC Court of Appeals

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**PER CURIAM:** Petitioner seeks a writ of certiorari to review the denial of his application for post-conviction relief (PCR). We grant the petition for a writ of certiorari, dispense with further briefing, and reverse the order of the PCR court.

Petitioner contends he did not voluntarily waive his right to an appeal. He argues defense counsel erred in failing to take the appropriate steps to ensure petitioner's right to have his case reviewed on appeal. The State concedes petitioner is entitled to a belated review of his direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), because the record does not support the PCR court's finding that petitioner knowingly and intelligently waived his right to a direct appeal. We agree.

Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. *See White*, 263 S.C. at 118, 208 S.E.2d at 39. 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*, 386 U.S. 738 (1967). *Id.*

We find the record does not support the conclusion that petitioner knowingly and intelligently waived his right to a direct appeal. We, therefore, reverse the denial of petitioner's PCR application. *See Lowry v. State*, 376 S.C. 499, 504, 657 S.E.2d 760, 763 (2008) ("If no probative evidence exists to support the PCR court's findings, this Court will reverse."). We transfer the direct appeal issues to the court of appeals to review pursuant to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).

**REVERSED.**

**BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.**



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Wanda H. Carter, Deputy Chief Appellate Defender

March 01, 2019

Demetrius Simmons, #283195  
Trenton Correctional Institution  
84 Greenhouse Road  
Trenton, SC 29847

Re: Your Case

Dear Mr. Simmons:

Attached is a copy of the opinion of the South Carolina Supreme Court agreeing with our position that you did not waive your right to a direct appeal. Now the Court of Appeals will review your White v. State case in direct appeal and make a decision in your case. I will contact you when a decision is made by the Court of Appeals.

Sincerely,

Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/lc