

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Colleton County

Honorable Diane Schafer Goodstein, Circuit Court Judge

TRAVIS JAVON HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001578

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR judge erred in denying petitioner's claim that he did not voluntarily waive his right to a direct appeal in the case.

STATEMENT

Petitioner Travis Javon Harris pled guilty to murder, second-degree burglary, and four counts of first-degree burglary during the December 2011 term of the Colleton County General Sessions Court and received a sentence of fifteen years on the second-degree burglary conviction and five LWOP (life without parole) sentences on the remaining convictions. App. 1-40. Attorneys Scott Lee and Dudley Ruffalo represented petitioner at the plea proceeding and Assistant Solicitor Duffie Stone appeared on behalf of the state. App. 1- 40. Petitioner filed a PCR application with the Colleton County Office of the Clerk of Court on December 28, 2012. App. 42-56. The respondent filed a Return dated June 24, 2015, requesting that a PCR hearing be held in the case. App. 57-61.

A PCR hearing was convened on June 4, 2018, at the Colleton County Courthouse before Judge Diane Schafer Goodstein. Petitioner was present at the hearing and represented by James K. Falk, and Assistant Attorney General Christian Saville appeared on behalf of the State. App. 63-188. On August 8, 2018, Judge Goodstein issued an Order of Dismissal in the case. App. 197-215.

Petitioner appealed. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's claim that he did not voluntarily waive his right to a direct appeal in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. Apparently, petitioner was involved in the burglary of a Colleton County Sherriff's Office Sub Station, and with the burglaries of homeowners James Moresco, Stephen Reynold Sims, Betty Hurlbutt, and Helen Beach, and with the murder of Police Officer Dennis Compton. App. 1-28.

During the PCR hearing, petitioner testified that he wanted counsel to file for "a timely notice of direct appeal." App. 90, l. 14-24. Trial counsel testified that he did not "remember any conversations with [petitioner] after the plea about any type of appeal." App. 119, lines 8-12.

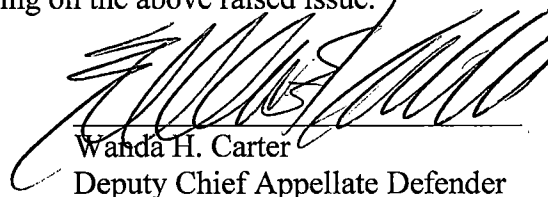
The PCR judge ruled that petitioner failed to establish any constitutional violations that would require PCR relief. App. 215.

Trial counsel has a duty to make certain a client is fully aware of the right to appeal and ascertain whether his client desires an appeal, and then file an appeal if the client wishes to appeal. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Frasier v. State, 306 S.C.158, 410 S.E.2d 572 (1991). Here, trial counsel did not perform his duty with respect to petitioner's appellate rights. A defendant is entitled to an appeal where there has been no intelligent or voluntary waiver of the right to an appeal made by the defendant. White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975). Petitioner desired an appeal of his case and did not voluntarily waive his right to an appeal. Therefore, trial counsel erred in failing to take the appropriate steps to ensure petitioner's right to have his case reviewed on direct appeal. If after an indigent client requesting

an appeal the client wishes to appeal, then trial counsel must serve and file a notice of appeal. In
Re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E. 483 (1991).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant petitioner's petition and allow full briefing on the above raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of May, 2019.

DIRECT APPEAL ISSUE

Petitioner did not receive a fair sentencing.

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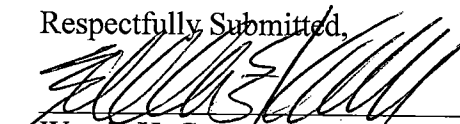
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Javon Harris states that :

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Diane Schafer Goodstein, which was held on June 4, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Travis Javon Harris.

Respectfully Submitted,

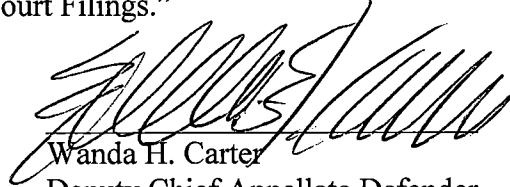


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of May, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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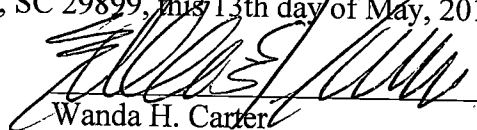
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Benjamin Limbaugh, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Travis Javon Harris, #349116, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 13th day of May, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 13th day of May, 2019.

Mary Allgire (L.S)
Notary Public for South Carolina

My Commission Expires: May 12, 2027.