

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Larry B. Hyman, Circuit Court Judge

CHRISTOPHER HAMPTON,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002374

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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ORIGINAL

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APPELLANT
S.C. SUPREME COURT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in accepting appellant's guilty plea because it was given involuntarily.

STATEMENT OF THE CASE

Appellant pled guilty to murder on April 3, 2006, at the Spartanburg County General Sessions Court before Judge John C. Few and was sentenced to life imprisonment. App. 1-44. Inasmuch as trial counsel passed away two days after the guilty plea proceeding, the filing of a notice of appeal out of time was submitted, but the South Carolina Court of Appeals denied and dismissed it on May 17, 2006.

On September 15, 2006, appellant filed a PCR application with the Spartanburg County Office of the Clerk of Court. In response to the PCR action, a PCR hearing was convened on September 17, 2007, at the Spartanburg County Courthouse before Judge Roger L. Couch. On November 2, 2007, Judge Couch signed an Order of Dismissal, which was filed on November 5, 2007, denying appellant's allegations of ineffective assistance of counsel in the case, but granting him a belated direct appeal under White v. State, 263 S.C. 110, 208 S.E.2d (1974). App. 46 – 59. However, because PCR counsel failed to appeal Judge Couch's Order of Dismissal per the first PCR action, appellant did not enjoy the benefit of an appeal of his first PCR action or his belated direct appeal that was granted to him by the first PCR judge.

On April 15, 2014, appellant filed a PCR application, requesting a belated appeal of his first PCR action. App. 60 – 79. A Return was filed by the Respondent on May 8, 2015. App. 80-85. A second PCR hearing was held on November 9, 2015 before Judge Larry B. Hyman, Junior. App 87-89. At the second PCR hearing, appellant was present and represented by J. Brandt Rucker, and Assistant Attorney General Alicia A. Olive appeared on behalf of the State. On October 4, 2017, Judge Hyman granted appellant's order for a belated appeal of his first PCR action per Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 91-99.

Thereafter, appellant's first PCR hearing was successfully reconstructed via a hearing held on November 26, 2018, at the Spartanburg County Courthouse before Judge Couch. App. 101-170. The undersigned counsel was present and represented appellant at the reconstruction hearing and Assistant Attorney General Jordan Cox appeared on behalf of the state.

Appellant appealed. This petition follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Nesbitt, 411 S.C. 194, 768 S.E.2d 67 (2015), quoting State v. Jacobs 393 SC 584, 713 S.E.2d 621 (2011).

ARGUMENT

The lower court erred in accepting appellant's guilty plea because it was given involuntarily.

Appellant pled guilty to murder. During the plea proceeding, the trial judge advised as follows:

THE COURT: When you plead guilty, you give up very important Constitutional Rights, including your right to a trial by jury. You also have the right to remain silent, the right against self-incrimination.

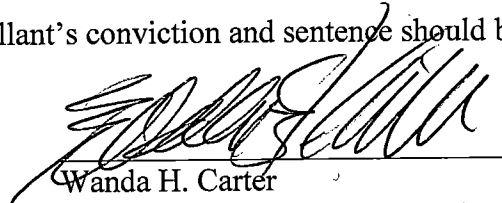
You're entitled to the presumption of innocence, and that means that, if you were to stand trial on this charge, then, you would be presumed innocent. And, in order to convict you, the State would have to prove you guilty beyond a reasonable doubt.

And, at trial, you would have the right to confront witnesses called by the State to testify against you. Do you understand all of those rights? App. 7, lines 2-13.

Missing from the trial judge's warning was the fact that a guilty plea would waive appellant's right to cross-examine witnesses as well as confront them. A plea cannot be voluntarily given if the requirements set forth in Boykin v. Alabama, 395 U.S. 238 (1969) are not met, which would include the advice that the Sixth Amendment right to confront **and cross-examine** witnesses would be waived upon entering a guilty plea. The lower court erred in accepting appellant's guilty plea because it was given involuntarily.

CONCLUSION

Based on the forgoing argument, appellant's conviction and sentence should be reversed.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of May, 2019.

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IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Larry B. Hyman, Circuit Court Judge

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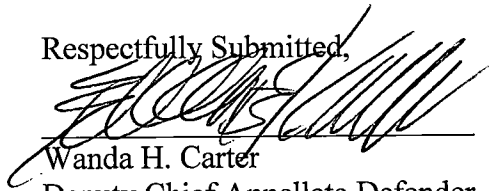
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Hampton states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Larry B. Hyman, which was held on April 3, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Christopher Hampton.

Respectfully Submitted,



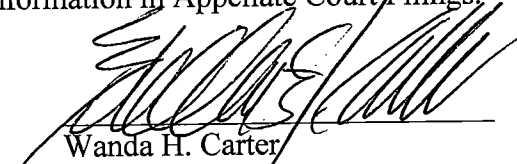
Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 31st day of May, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant Pursuant to White v. State 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."

May 31, 2019.



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Deputy Chief Appellate Defender

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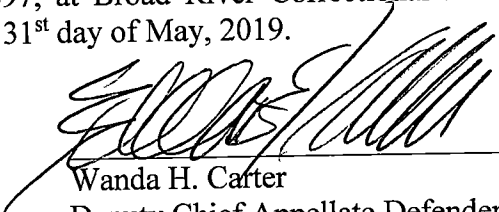
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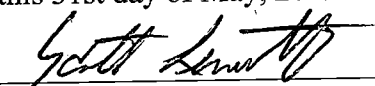
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant Pursuant to White v. State 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 Anders Brief of Appellant Pursuant to White v. State has been served on Christopher Hampton, 314697, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 31st day of May, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of May, 2019.



Notary Public for South Carolina

My Commission Expires: September 27, 2028.