

2010-170030

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge

FRANK FURTICK, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR Court properly ruled that petitioner did not voluntarily and intelligently waive his right to a direct appeal in the case.

STATEMENT

Petitioner Frank Furtick was found guilty of murder, one count of kidnapping, two counts of armed robbery, and two counts of assault and battery of a high and aggravated nature during the October 2007 term of the Richland County General Sessions Court before the Honorable G. Thomas Cooper, Judge. Petitioner was sentenced to life imprisonment on the murder conviction, thirty years imprisonment on each armed robbery conviction, and ten years on each aggravated assault conviction. App. 1-841. Petitioner was represented at trial by Danielle Payne and Lauren Mobley. Petitioner did not enjoy the benefit of a direct appeal in the case.

On July 7, 2008, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 843-848. A hearing was convened on April 1, 2009, at the Richland County General Sessions Court before Judge L. Casey Manning. App. 849-856. During the hearing, the issue of petitioner's request for a belated direct appeal was addressed. App. 849-856. On April 26, 2009, Judge Manning issued a consent order granting petitioner a belated direct appeal per White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). App. 858-861. Petitioner filed a Rule 59(e) motion, but Judge Manning denied that motion. App. 862-865. Petitioner was represented at the PCR hearing by Tara Dawn Shurling.

Petitioner appealed Judge Manning's order. This petition follows.

ARGUMENT

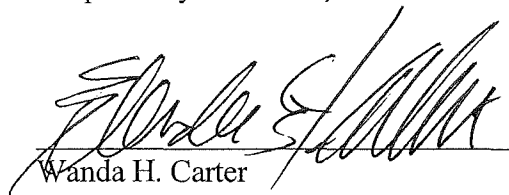
The PCR Court properly ruled that petitioner did not voluntarily and intelligently waive his right to a direct appeal in the case.

It was clear from the PCR hearing that PCR counsel erred in failing to appeal petitioner's first PCR action. App 849-856. If after advising an indigent client requesting an appeal the client wishes to appeal, then trial counsel must serve and file a notice of appeal as required by Rule 203, SCACR. In Re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991). See also Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), where counsel was found ineffective in failing to appeal where the defendant desired an appeal, but counsel took no action to secure an appeal on his behalf with state appellate counsel due to his indigent status. 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 (1974). After a client is convicted, trial counsel in all cases has a duty to make certain that the client is fully aware of the right to appeal. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Since petitioner clearly expressed his desire to appeal his case, trial counsel erred in failing to file a notice of appeal in the case.

CONCLUSION

Based on the foregoing argument, petitioner requests that his petition be granted and a full briefing allowed on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wanda H. Carter", is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of June, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
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FRANK FURTICK, JR.,

PETITIONER,

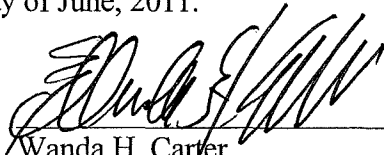
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

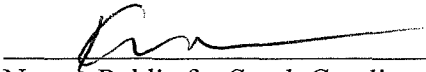
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Brian Petrano, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of June, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of June, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.