

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

Brooks P. Goldsmith, Circuit Court Judge

CHRISTOPHER J. FRANCIS,

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
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR court properly ruled that PCR counsel erred in failing to appeal petitioner's first PCR action.

STATEMENT

Petitioner Christopher Francis pled guilty to armed robbery and possession of a weapon during the commission of a violent crime during the October 2002 term of the Lancaster County General Sessions Court before Judge Kenneth Goode. Petitioner was sentenced to imprisonment for an aggregate period of ten years. App. 1-37. Petitioner was represented by Ross Burton at the plea proceeding.

On May 22, 2003, petitioner filed a PCR application with the Lancaster County Office of the Clerk of Court. App. 39-56. The respondent filed a return requesting that a hearing be held in the case. App. 57-60. A hearing was convened on February 28, 2007, at the Lancaster Courthouse before Judge Brooks Goldsmith. App. 62-116. Petitioner was represented by William R. Sims at the PCR hearing. On April 20, 2007, Judge Goldsmith issued an order of dismissal denying petitioner's first PCR action. App. 118-127.

On August 25, 2008, petitioner requested a belated PCR appeal by filing a second PCR action with the Lancaster County Office of the Clerk of Court. App. 129-145. A return and motion to dismiss and conditional order of dismissal were subsequently filed on January 23, 2009, and April 3, 2009, respectively. App. 146-155.

On February 9, 2010, a hearing was held at the Lancaster County Courthouse before Judge Goldsmith. Petitioner was represented by Charles Brooks at that hearing. App. 156-171. On March 9, 2010, Judge Goldsmith issued an order granting petitioner an Austin appeal as requested. App. 172-177.

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

ARGUMENT

The PCR court properly ruled that PCR counsel erred in failing to appeal petitioner's first PCR action.

Petitioner filed his own pro se notice of appeal to appeal his first PCR action, but the notice was not properly completed and the appellate court dismissed the PCR appeal thereafter. App. 168, ll. 6-14; App. 168, ll. 15-23. Petitioner desired an appeal of his first PCR action, but PCR counsel failed to file the PCR notice of appeal.

The respondent conceded at the second PCR hearing that petitioner's "PCR attorney did not file the [PCR] appeal." App. 168, ll. 1-8; App. 168, ll. 12-14; App. 168, l. 24 – p. 169, l. 3. A consent order granting petitioner's request for a belated PCR appeal per Austin¹ followed. App. 172-176.

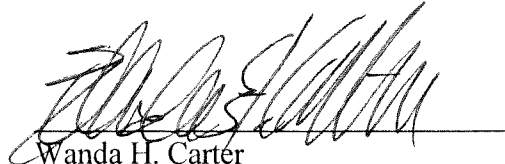
Clearly, petitioner did not voluntarily waive his right to PCR appellate review. Petitioner has a right to appellate review of the denial of his PCR action where PCR counsel fails to appeal the same. Austin v. State, 305 S.C. 453, 409 S.E.2d 395; and S.C. Code Ann § 17-27-100. The PCR court properly ruled that PCR counsel erred in failing to petitioner's first PCR action.

¹ 305 S.C. 453, 409 S.E.2d 395 (1991)

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant this petition in order to allow full briefing 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 27th day of June, 2011.

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IN THE SUPREME COURT

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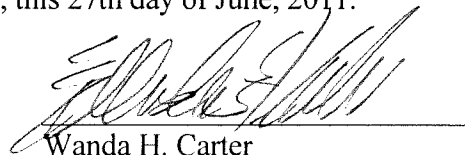
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

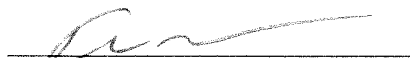
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of June, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of June, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.