

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Circuit Court Judge

BENNIE LEE GRIFFIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000142

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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Aug 12 2020

S.C. SUPREME COURT

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ISSUE PRESENTED

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

STATEMENT OF CASE

Petitioner Bennie Lee Griffin pled guilty to trafficking in cocaine (28-100 grams) during the February 2018 term of the Spartanburg County General Sessions Court before Judge Grace G. Knie and was sentenced to imprisonment for a period of fifteen years. App. 1-14. Larry Crane represented petitioner at the plea proceeding and Assistant Solicitor James Hunter appeared on behalf of the state. Petitioner did not appeal his guilty plea or sentence.

On June 5, 2018, petitioner filed a PCR application with the Spartanburg County office of the Clerk of Court. App. 16-24. The respondent filed a return dated February 28, 2019, requesting that a hearing be held in response to petitioner's PCR action. App. 25-35.

A PCR hearing was convened on October 9, 2019, at the Spartanburg County Courthouse before Judge G. Thomas Cooper. App. 36-75. Petitioner was present at the PCR hearing and represented by Susannah C. Ross, and Jacob A. Isenburg appeared on behalf of the state.

On February 14, 2020, Judge Cooper signed an Order of Dismissal in the case therein denying petitioner's allegations of ineffective assistance of counsel. App. 84-101.

Petitioner appealed Judge Cooper's Order of Dismissal in the case. This petition follows.

ARGUMENT

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

In the case at bar, police officers entered a residence where petitioner was inside on January 24, 2017, and found cocaine in the kitchen area. The solicitor stated that petitioner admitted ownership of the cocaine. App. 9, 1.22-p.10, 1.25.

During the PCR hearing held in the case, petitioner addressed his PCR issue as follows:

Q: ...[Y]ou are alleging that you didn't know you had a right to appeal?

A:...No, I said I wanted a right to appeal.

Q: Okay

A: I wanted to appeal the review.

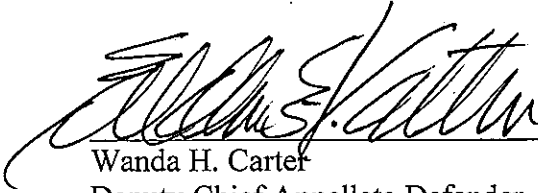
App. 52, 1.6-13.

The PCR judge in effect dismissed the appeal allegation. 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 allow full briefing on the above raised issue and a brief pursuant to White v. State, 263 S.C. 110, 208 S.E 2d 35 (1974).



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of August, 2020

STATEMENT OF DIRECT APPEAL ISSUE

The plea judge erred in accepting appellant's plea prior to hearing the facts in the case because this meant there was no factual basis for the plea.

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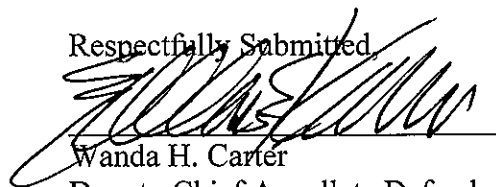
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bennie Lee Griffin 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 G. Thomas Cooper, which was held on October 9, 2019, 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 Bennie Lee Griffin.

Respectfully Submitted,

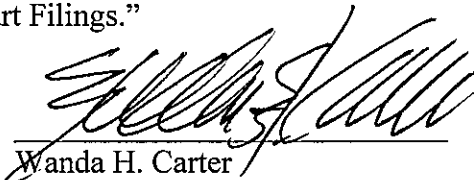


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 12th day of August, 2020.

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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