

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

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DEMICHAEL SHEAVON RAZOR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000155

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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**Sep 11 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

Petitioner DeMichael Sheavon Razor pled guilty to voluntary manslaughter during the February 2017 term of the Richland County General Sessions Court before Judge Paul M. Birch, who sentenced him to imprisonment for a period of thirty years, App. 1-8. Public Defenders Ann Walker and Tray Pinnock represented petitioner at the plea proceeding, and Assistant Lamar Fyall appeared on behalf of the state. Petitioner did not appeal his conviction and sentence.

On June 20, 2017, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 20-26. The respondent filed a Return on May 14, 2018. App. 27-33. A PCR hearing was convened on December 3, 2018, at the Spartanburg County Courthouse before Judge Jocelyn J. Newman. App. 35-87. Petitioner was present at the PCR hearing and represented by Jonathan D. Waller, Esquire, and Assistant Attorney General Lindsey A. McCallister appeared on behalf of the state.

On January 16, 2020, Judge Newman issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of counsel in his case. App. 94-105.

Petitioner appealed the Order of Dismissal. 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.

At the plea proceeding, the solicitor apprised the trial judge of the facts in the case. Apparently, the allegation was that petitioner was inside Tony's Lounge in Eastover, South Carolina, and attempted to shoot Calvin Myers, but missed, and fatally shot Stuart Wilson instead; and that the incident arose over numerous individuals' concern over a stolen marijuana plant. App. 8, 1.4-p.10, 1.8. Note that at the plea proceeding, petitioner maintained that he was not the shooter and that there were four other individuals at the scene, and that accomplice liability was inapplicable in his case. App. 11, 1.1-8. See petitioner's PCR testimony where he stated that eyewitnesses Dove placed the weapon in a co-defendant's hands. App. 50, 1. 20 – p. 51, 1.4

During the PCR hearing held in the case, petitioner testified that even though he understood the sentence, he believed that he could (direct) appeal his case, but his attorney advised that he could not appeal. App. 52, lines 3-12. Clearly, petitioner had questions about whether his sentence was day for day, and whether he was parole eligible, and whether his conviction under accomplice liability was legal as he was not the shooter in the case. Petitioner believed he could address these issues on appeal. App. 52, lines 13-25. Note also that petitioner testified that he desired a trial. App. 55 lines 3-15.

The PCR judge in effect dismissed the appeal allegation. App. 94-105.

Counsel erred in failing to advise petitioner that a guilty plea waives non-jurisdictional defects and defenses in a case. Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975). However, nonetheless, trial counsel had a duty to make certain that petitioner was fully aware of his right to appeal and to ascertain whether petitioner desired an appeal, and then to file an

appeal if an appeal was desired. 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 order briefing pursuant to White v. State, 263 S.C. 110, 208 S.E 2d 35 (1974).

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender  
  
ATTORNEY FOR PETITIONER

This 11th day of September, 2020.

**STATEMENT OF ISSUE ON DIRECT APPEAL**

The plea judge erred in accepting appellant’s guilty plea before hearing the facts in the case to test whether there was a factual basis for the plea.

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Counsel for Demichael Sheavon Razor 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 Jocelyn J. Newman, which was held on December 3, 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 Demichael Sheavon Razor.

Respectfully Submitted,

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR PETITIONER

This 11th day of September, 2020.

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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.”

s/Wanda H. Carter  
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This 11th day of September, 2020.