

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )  
 )  
Stephen Corley, # 347938 )  
Applicant, )  
 )  
VS. )  
 )  
STATE OF SOUTH CAROLINA )  
Respondent. )  
 )

THE SOUTH CAROLINA COURT OF APPEALS  
Case No. 2020-0017  
**RECEIVED**  
FEB 16 2021  
SC Court of Appeals  
MOTION TO ALTER OR AMEND THE  
JUDGMENT

Pursuant to Rule 59(e), SCRCPC, Applicant Stephen Corley (Applicant), by and through pro se representation hereby moves this court for reconsideration of its order of Dismissal filed January 11, 2021, (order) and received by Applicant on February 5, 2021, on the grounds this court; (1) did not consider Applicant's argument about allowing him to have the opportunity to have a belated appeal review under the state law. After Applicant's trial his counsel did not file the direct appeal from the conviction during a critical stage of his case. After Applicant advised his counsel he wished to appeal from the conviction. Now the Applicant is precluded from exhausting all available state remedies, state remedies are not deemed exhausted until the Applicant utilized all procedures available under state Law to raise his claim. See Id. § 2254(c).

Applicant satisfies the exhaustion requirement by properly pursuing a claim throughout the entire appellate process of the state. The proceedings to be an extraordinary circumstance warranting defense counsel to advise Applicant of his right to appeal and to pursue an appeal.

#### DISCUSSION

Plea not Freely and voluntarily made

The plea proceedings were inherently coercive because they were initiated by counsel coercive action from attorney Fred Wallace Woods, Jr., On September 21, 2011, Applicant appeared before

the Honorable William H. Seals, Jr., the state informed judge Seals that as part of the plea, the state would be dismissing the two indictments for reckless homicide. Applicant plea guilty to two counts of felony DUI resulting in death without recommendation by the state. App. 3. 1. 9-8, 1. 6; 37, 11. 1-4.

The two counts of felony DUI resulting in death was the high sentencing of the two counts of reckless homicide with the plea the Applicant were looking for the less included offense of the charged. The state inadequate sentenced Applicant. The charge of reckless homicide carries a maximum imprisonment term of ten (10) years. The charge DUI resulting in death carries a maximum term of twenty-five (25) years.

Now I bring to the awareness of other issues that Applicant should have received; that is the fact of direct appeal of the subject matter pertaining to the case the Applicant sixth Amendment entitles him to effective assistance of counsel on direct appeal. The sixth Amendment. As applied to the states through the fourteenth Amendment, guarantees a criminal defendant the right to counsel on his first appeal as of right and also guarantees him the effective assistance of counsel on such an appeal U.S.C.A. const. Amends 6. 14. It appeared that counsel failure to filed direct appeal from the conviction and that the deadline did abridge the Applicant's constitutional right to counsel on appeal.

#### A DIRECT APPEAL WAS WARRANTED

Because the plea was not freely and voluntarily made, defense counsel should have raised an objection and pursued a direct appeal. Failure to do so constitutes deficient performance and Applicant is prejudiced because he was unable to have the appeal. U.S.C.A. const. Amend 6. Since the Applicant advised his counsel Mr. Fred Wallace Woods, to appeal from the conviction and the counsel dropped the ball, then the Applicant has been deprived of counsel, but of any assistance of counsel on direct appeal and abandonment is per se violation of the sixth Amendment U.S.C.A. const. Amend. 6. In fact it would show prejudice to

the Applicant, Hudson v. Hunt, 235 F. 3d 892 (4th cir. 2000).

The court went on to hold that a professionally reasonable attorney should in all cases consult with the defendant regarding an appeal. Id. White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1974). In determining whether an attorney should consult with the criminal defendant concerning an appeal). The totality of the circumstances must be considered Id. In examining the totality of the circumstances courts should consider (1) that a rational defendant would want to appeal for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonable demonstrated to counsel that he was interested in appealing. Id. Where the post-conviction relief judge determines that the Applicant did not freely and voluntarily waive their appellate rights, the Applicant may petition the South Carolina supreme court for review of direct appeal issue pursuant to White v. State, see Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E. 2d 60 (1986).

The Applicant contends due to his illiteracy to the Law he was entitled to rely upon his counsel to make reasonable decision, pursuant to U.S. v. Dewalt, 92 F. 30, 1208 without some authoritative guidance the defendant did not understand the appeal process, from the conviction counsel failure to advised the Applicant of his appeal rights. The counsel must ensure that a criminal defendant is made fully aware of his appeal rights White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1994). A gross miscarriage of justice see Butler v. State, 297 S.E. 2d 82 (S.C. 1990) in the Applicant case the Applicant has not had the opportunity under judicial circumstances, a full fair bite at the apple. Both Applicant and his plea counsel testified at the hearing. App. 74, lines 9-14, 1. 6. Applicant testified that he met with his counsel only once outside of the courthouse. An that meeting, he and his counsel viewed the scene of the accident otherwise, Applicant only saw his counsel at court hearing, App. 75, 11. 14-22; 84, 11 11-16.

The court has ruled in Odom v. State, 337 S.C. 256, 523 S.E. 2d 753 (1991), that the one year statute of limitations required by S.C. code ANN. § 17-27-45(A), does not apply to Austin appeals because they are considered as belated appeals. Austin appeals do not have to be filed within the one year statute of limitation because they are belated appeals intended to correct unjust procedural defects. A petitioner is entitled to an Austin appeal if PCR judge affirmatively finds either that (1) the applicant requested and appeal and it was denied an opportunity to seek appellate review or (2) the right to appellate review of a previous direct appeal from conviction was not knowingly and intelligent waived. Odom, 337 S.C. at 262, 523 S.E. 2d at 756.

Please take notice I understand that it had been a while since my sentencing was imposed on September 21, 2011, I have been awaiting on my previous lawyers to inform me so I could move to the next step of my case. I see State v. Devore, 416 S.C. 115, 119, 784 S.E. 2d 690, 692 (Ct. App. 2016).

Since there is no right to "hybrid representation" that is partially pro se and partially by counsel, Applicant could not file the notice of intent to appeal on his own back on September 21, 2011, because he was represented by counsel in this case. Following a criminal trial a defendant's trial counsel" must make certain the defendant is made fully aware of the right to appeal. Simuel v. State, 390 S.C. 267, 270, 701 S.E. 2d 738, 739 (2010). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with procedure in [Anders]. Id. (quoting Turner v. State, 380 S.C. 223, 224, 670 S.E. 2d 373, 374 (2008)). After the client is convicted and sentenced, trial counsel in all cases has a duty to make certain that the client is fully aware of the right to appeal and if the client is indigent assist the client in filing an appeal. Wilson v. State, 348 S.C. 215, 218 n. 3, 559 S.E. 2d 581, 583 n. 3 (2002). Even though an attorney is retained for purposes of trial only. "[t]he requirement [that he] take reasonable steps to protect the client requires counsel to serve and file the notice of appeal and to continue to represent the client until relieved by [the appellate court

under Rule 235, SCACR. In re Anonymous member of the Bar, 303 S.C. 306, 308, 400 S.E. 2d 483, 484 (1991). Rule 264 of our appellate court rules, formerly Rule 235, provides for continued representation by a party's trial counsel at the appellate level until proper withdrawal is approved and notice is given as provided in this Rule. "Rule 264 (a), SCACR (emphasis added). As well, Rule 602 (e)(1), SCACR stipulates, except as otherwise provided, [t]rial counsel whether retained appointed, or Public Defender, shall continue representation of an accused until final judgment including any proceeding on direct appeal. See also comment 4 to Rule 1.3, RPC, Rule 407, SCACR ("unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. [I]f a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal the lawyer should consult with the client about the possibility of appeal before relinquishing responsibility for matter); Rule 1.16 (c), RPC, Rule 407, SCACR (" A lawyer must comply with applicable Law requiring notice to or permission of a tribunal when terminating a representation.

#### CONCLUSION

For the reasons set forth above, Applicant respectfully requests this court reconsider its order and amend its order to grant Applicant a belated appeal review of direct appeal of the guilty plea because the sixth Amendment entitles a criminal defendant to effective assistance of counsel on direct appeal. See Restrepo v. Kelly, 178 F. 3d 634, 639 (2d cir. 1999)(citing Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 83 L.Ed. 2d 821 (1985)). The adequacy of counsel's performance and direct appeal is judged according to the test set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984).

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Case No. 2020-001716

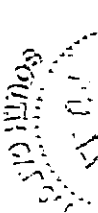
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CERTIFICATE OF SERVICE

I, Stephen Corley, # 347938, being duty sworn upon my oath, depose and say I have subscribed to the foregoing order that I know the contents thereof, it includes every grounds known to me for vacating, setting aside or correcting the conviction and sentence in the above order attacked in this request and that the matter and allegations therein set forth are true. I do hereby under oath and penalty of perjury certify that I have served copies of the documents upon the below party upon this exact date.

South Carolina Court of Appeals  
Jenny Abbott Kitchings, Clerk  
Post Office Box 11629  
Columbia, South Carolina 29211

s/ Stephen Corley  
Stephen Corley, # 347938



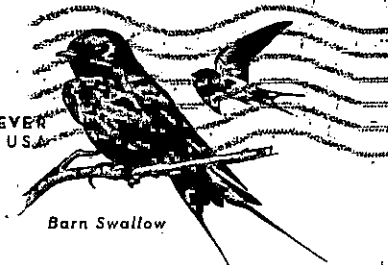
Sworn to and subscribed before me  
this 10<sup>th</sup> day of Feb 2021

A. Maggett  
Notary Public for South Carolina  
My Commission Expires: 7-27-2024,

Mr. Stephen Corley, # 347938  
Broad River Correctional Institution  
Marion Unit B - 240  
4460 Broad River Rd.  
Columbia, SC 29210

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