

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2020-CP-37-0118

Jonathan W. Duncan, SCDC #377959,

Applicant,

vs.

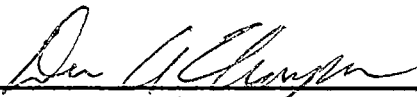
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Jonathan W. Duncan appeals the order of the Honorable Letitia H. Verdin, dated February 2, 2021, arising from this post-conviction relief action, wherein he was granted belated appellate review of direct appeal issues pursuant to *White v. State*. Appellant received written notice of entry of this order on February 11, 2021.

March 4, 2021



Don A. Thompson
(S.C. Bar No. 5545)
2131 Woodruff Road
Suite 2100, #292
Greenville, S.C. 29607
(864) 270-2831
Attorney for Appellant

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S.C. SUPREME COURT

Other Counsel of Record:
Lillian L. Meadows
Assistant Attorney General
S.C. Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent
(803) 734-0964

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
))
Jonathan W. Duncan, SCDC #377959,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2020-CP-37-0118

**ORDER DENYING PCR BUT GRANTING
BELATED APPELLATE REVIEW
PURSUANT TO *WHITE V. STATE***

FILED OCONEE COUNTY SC
MELISSA C. BURTON
CLERK OF COURT
2021 FEB - 8 P 1:57

I. INTRODUCTION

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Jonathan W. Duncan (Applicant) on February 11, 2020. The State made its return and motion to dismiss on August 5, 2020, requesting a hearing only on Applicant’s claim of ineffective assistance of counsel for failing to file an appeal. A hearing into the matter convened before the undersigned on February 1, 2021, via Cisco WebEx Meetings in accordance with the Chief Justice’s administrative memorandum, *Court Operations*, dated September 14, 2020.¹

Applicant was present and represented by Don Thompson, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his plea counsel, Gordon Senerius, Esquire. In addition to the pleadings in this action, the Court had before it a copy of the Oconee County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the

¹ See S.C. Sup. Ct. Memorandum dated September 14, 2020 (“Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. Consent of the parties or counsel is not required. Please use WebEx, the conferencing platform supported by the Judicial Branch.”).

plea transcript, and the records of the current PCR action.

After hearing the testimony at the PCR hearing and a full review of the record, this Court finds Applicant is entitled to relief in the form of belated appellate review of direct appeal issues pursuant to *White v. State*.²

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its September 2016 term, the Oconee County grand jury indicted Applicant for attempted murder (2016-GS-37-00911); possession of a weapon during the commission of a violent crime (2016-GS-37-00912); and second-degree domestic violence (2016-GS-37-00913).

On October 15, 2018, Applicant appeared before the Honorable R. Scott Sprouse and pleaded guilty as indicted. Gordon Senerius, Esquire (Counsel) represented Applicant. Assistant Solicitor Bethany Blundy of the Tenth Circuit Solicitor's Office prosecuted the case, with the State recommending the maximum sentence on all charges. Judge Sprouse accepted Applicant's plea and sentenced him to concurrent terms of twenty-seven years' imprisonment for attempted murder, five years for the weapons charge, and three years for the domestic violence charge.³ Applicant did not appeal his guilty pleas or sentences.

III. STATEMENT OF FACTS

On June 5, 2016, Applicant; his wife, Margaret Duncan; and his friend, Justin Stazney, were using methamphetamine together. (Plea Tr. 7). There was sexual relationship between Justin and Margaret that Applicant was aware of. (Plea Tr. 7).

² 263 S.C. 110, 208 S.E.2d 35 (1974).

³ Applicant was serving a one-year probationary sentence on an unrelated possession of methamphetamine charge at the time he committed the crimes which are the subject of this action. At the time of the plea, Applicant had been incarcerated for over a year. Judge Sprouse sentenced Applicant to time served on the possession of methamphetamine conviction.

The following morning, on June 6, 2016, Applicant attacked Margaret and grabbed her by the throat, choking her until she could not breathe. (Plea Tr. 7). Applicant threw Margaret up against the wall, causing multiple bruises all over her body. (Plea Tr. 7). Justin then stepped in, trying to protect Margaret. (Plea Tr. 7-8).

Justin was sitting on the corner of his own bed when Applicant approached him from behind, slashing his neck from ear to ear. (Plea Tr. 8). Justin held his throat, knowing he had to get out of the house, and he ran into the woods, with Applicant chasing him. (Plea Tr. 8). Justin tried to make it to the neighbor's house, but Applicant caught him in the woods. (Plea Tr. 8). A struggle ensued between Applicant and Justin. (Plea Tr. 8). Justin ultimately decided to play dead, hoping Applicant would go away. (Plea Tr. 8). While Applicant was about fifty yards away, Justin attempted to call out for the neighbor. (Plea Tr. 8). Applicant ran back to Justin, stabbing him in the eye and back. (Plea Tr. 8). Justin was hospitalized for twenty days following the attack due to the extensive injuries sustained. (Plea Tr. 8-9).

IV. ISSUES BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

1. "Mental illness causes daily challenges to understand my surroundings"
2. "I am academically challenged, unaware of researching the law alone"
3. "Whether or not appointed public defender and/or judge investigated and took into consideration all of my mental illnesses at time of crime and sentencing, which can be addressed as ineffective assistance of council[sic]"
4. "Whether public defender and/or judge should of[sic] required as to the criminal responsibility of defendant, also ineffective assistance of council[sic]"
5. "Was not made aware and/or given opportunity to consider

- negotiated or recommended plea agreement”
6. “Obligation to consider mitigating factors, mental illness that include guilty but mentally ill or not guilty by reason of insanity test for ‘criminal responsibility’ by the public defend[er] or judge”
 7. “Public defend[er] never advised me of my option to consider negotiated plea agreements
 8. “ ‘NC vs Alp’ I was made to believe that if I didn’t plea, I’d be found guilty and serve more time, scaring and coercing me to plea guilty”

On August 5, 2020, the State made its return and motion to dismiss, requesting a hearing only on Applicant’s claim of ineffective assistance of counsel for failing to file an appeal. Prior to the commencement of the hearing, the State renewed its motion to dismiss all allegations as untimely⁴ except Applicant’s claim he is entitled to belated appellate review pursuant to *White*. PCR counsel agreed that Applicant’s remaining claims are time-barred, and that Applicant was proceeding only on the *White* claim. To the extent the allegations set forth in Applicant’s original application can be construed as separate grounds for relief from the grounds stated at the hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

V. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, evaluated their credibility, and weighed their testimony accordingly. This Court finds both Counsel’s testimony and Applicant’s testimony credible. Pursuant to section 17-27-80 of the South Carolina Code, this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

⁴ “An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur . . .” S.C. Code Ann. § 17-27-45(A).

White v. State

Applicant alleges he was denied his right to a direct appeal based on ineffective assistance of trial counsel. *See generally White*, 263 S.C. 110, 208 S.E.2d 35 (finding that a defendant who did not knowingly and voluntarily waive his right to direct appeal of his conviction is entitled to petition the South Carolina Supreme Court for belated review of direct appeal issues). The one-year limitations period in which to file an application for post-conviction relief does not apply where the defendant alleges he was denied a direct appeal due to ineffective assistance of counsel. *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

Where the post-conviction relief judge determines the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to *White v. State*. *See Davis v. State*, 288 S.C. 290, 291 n.1, 342 S.E.2d 60, 60 n.1 (1986) (“Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a *White v. State* review.”). Upon an appeal of the post-conviction relief decision, the Court will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. *White*, 263 S.C. at 119, 108 S.E.2d at 39–40.

At the hearing, Applicant testified Counsel never discussed an appeal with him nor explained to him he had a right to appeal. Counsel testified it is his general practice to discuss with his clients that they have a right to appeal, although he could not specifically recall having this conversation with Applicant. This Court noted there was nothing in the transcript indicating Applicant had been advised of his right to appeal. Therefore, out of an abundance of caution, this Court finds Applicant is entitled to petition to the South Carolina Supreme Court for belated review of direct appeal issues pursuant to *White*.

VI. CONCLUSION

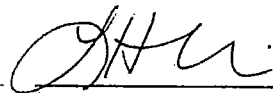
Based on all the foregoing, this Court finds Applicant did not knowingly and intelligently waive his right to a direct appeal and, as such, he may petition the Supreme Court of South Carolina pursuant to *White v. State*. See generally Rule 243(i), SCACR; *Davis*, 388 S.C. 390, 342 S.E.2d 60 (setting forth procedures for a *White* appeal, prohibiting other forms of relief on this basis). This Court further finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application on the remaining issues.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant is granted belated appellate review of direct appeal issues pursuant to *White v. State*;
2. All other allegations for post-conviction relief are denied and dismissed with prejudice;
3. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 2 day of Feb, 2021.



LETITIA H. VERDIN
Presiding Judge
Tenth Judicial Circuit

FILED DEBORAH CHERRY, SC
MOLLY S. C. BURTON
CLERK OF COURT
2021 FEB -9 P 1:37

Greenville, South Carolina

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CLERK OF COURT
OF GREEN COUNTY, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE TENTH JUDICIAL
COUNTY OF OCONEE)	CIRCUIT
)	
JONATHAN W. DUNCAN, #377959)	
)	Case No.: 2020-CP-37-0118
Applicant,)	
)	
v.)	Certificate of Service
)	
State of South Carolina)	
)	
Respondent,)	
)	

1. Undersigned is counsel of record for Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020), "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Order Denying PCR but Granting Belated Appellate Review Pursuant to *White v. State*** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Don A. Thompson, Esquire
thompson_legal@aol.com

DATED this 11th Day of February, 2021.

s/LillianMeadows
LILLIAN L. MEADOWS
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
LillyMeadows@scag.gov

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MAR 16 2021
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