

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Marion County

Honorable D. Craig Brown, Circuit Court Judge

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**RECEIVED**

**May 19 2021**

S.C. SUPREME COURT

LARRY ANTHONY WHITE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001607

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PETITION FOR WRIT OF CERTIORARI

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## **ISSUES PRESENTED**

- 1.) The PCR judge ruled properly in granting petitioner's request for a belated direct appeal per White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).
  
- 2.) The PRC judge erred in denying petitioner's allegation that trial counsel erred in coercing him to plead guilty in the case.

## STATEMENT OF THE CASE

Petitioner Larry Anthony White pled guilty to first degree burglary and attempted murder during the July 2018 term of the Marion County General Sessions Court before Judge William H. Seals, Jr. via a negotiated plea agreement. Petitioner was sentenced to two concurrent fifteen-year sentences and his remaining charges were dismissed.<sup>1</sup> App. 1-11. Petitioner was represented at the hearing by Brad C. Richardson, and Assistant Solicitor Fitzlee McEachin appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On April 22, 2019, petitioner filed a PCR application with the Marion County Office of the Clerk of Court. App. 13-19. The respondent filed a Return dated July 1, 2019, requesting that a hearing be held in the case. App. 20-23.

A PCR hearing was convened on December 17, 2019, at the Marion County Courthouse before Judge D. Craig Brown. App. 26-64. Petitioner was present at the hearing and represented by Jonathan D. Waller and Assistant Attorney General Samuel L. Key appeared on behalf of the state. On October 26, 2020, Judge Brown filed an Order of Dismissal therein granting petitioner's request for a direct appeal per White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), but denied petitioner's remaining questions regarding counsel's performance and the voluntariness of his plea. App. 66-81.

Petitioner appealed Judge Brown's Order. This Petition for Writ of Certiorari follows.

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<sup>1</sup> The dismissed charges were armed robbery, conspiracy, possession of a weapon during the commission of a violent crime, and two counts of kidnapping.

## QUESTION I

The PCR judge ruled properly in granting petitioner's request for a belated direct appeal per *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

During the PCR hearing held in the case, petitioner testified that he desired a direct appeal in the case, but subsequently learned in effect that the appeal paperwork submitted by counsel was not properly filed in his case. App. 41, lines 16-25.

Trial counsel testified at the PCR hearing in reference to the notice of appeal papers that he filed in the case; and admitted that he filed the appeal documents incorrectly by not serving the lower court in addition to the appellate court. App. 57, lines 19-25.

The Assistant Attorney General conceded at the PCR hearing that counsel erred with respect to the improper filing of the notice of appeal documents and did not oppose petitioner's request for a belated appeal. App. 63, lines 5-7.

In the PCR judge's Order, the ruling on the belated appeal matter follows:

Applicant alleged counsel failed to file an appeal of his guilty plea after [petitioner] requested counsel to do so. Counsel testified he attempted to file an appeal, but failed to perfect the appeal on [petitioner's] behalf. Further, the State consented to [petitioner] receiving a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35, (1974). Therefore, based on the forgoing, this Court finds [petitioner] is entitled to a belated direct appeal pursuant to [State v] *White*, and grants relief in the form of a belated appeal only. App.80.

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 to 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). If after so advising an indigent 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). Here, trial counsel did not properly 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.

## **QUESTION II**

The PRC judge erred in denying petitioner's allegation that trial counsel erred in coercing him to plead guilty in the case.

During the plea proceeding, the solicitor apprised the plea judge of the facts in the case. Apparently, according to the state's case, petitioner and two co-defendants entered a particular residence in Marion County and shot the owner of the residence who was inside at the time. The solicitor stated that petitioner allegedly shot the male inside and that a female who was also in the house at that time was taken from the residence to a secure location away from the residence. One of the codefendants (the lone female) gave a statement implicating petitioner in the incident. Petitioner pled guilty to the burglary and gun charges. App. 7, l.13 - p. 8, l.11.

During the PCR hearing held in the case, petitioner testified that counsel told him that if he went to trial, he would get a life sentence plain and simple and that if he wanted to see his daughter graduate he should plead because there was "no doubt" he would get a life sentence. Petitioner stated that it "brought chills to me not being able to see my daughter graduate." App. 38, l.22-p. 39, l.20 App. 41, l.6-16.

Trial counsel testified at the hearing and explained his advice with respect to petitioner seeing his daughter by informing petitioner that it was not his experience that someone who goes

to trial receives the minimum sentence, particularly if they have a prior record. App. 55, lines 6-25. App. 56, 1.2-18. The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty pleas were voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). In the case at bar, it was trial counsel who pushed for petitioner's acceptance of a plea deal in order to avoid a life sentence and be able to see his daughter graduate. It's well established that due process prohibits convicting a defendant on the basis of a coerced guilty plea. Commonwealth of Pennsylvania ex. Steven J. Rel Herman v. Claudy, 350 U.S. 116 (1956). A plea must be voluntarily and intelligently given. Boykin v. Alabama, 395 U.S. 238 (1969). Clearly, petitioner was coerced into pleading guilty to the state's charges in the case and as a result, his pleas were involuntarily given.

### **CONCLUSION**

Based on the foregoing arguments, counsel for petitioner would request that this Court would grant the petition and allow full briefing on the above-raised issues.

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of May, 2021.