

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Letitia H. Verdin, Circuit Court Judge

JONATHAN W. DUNCAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000279

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge correctly find that Petitioner did not freely and voluntarily waive his appellate rights and is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)?

STATEMENT

In September of 2016, the Oconee County Grand Jury indicted Appellant, Jonathan W. Duncan, for attempted murder, possession of a weapon during the commission of a violent crime, and domestic violence second degree, indictments #2016-GS-37-00911, 912, 913. (App. pp. 36-41). On October 15, 2018, Appellant appeared before the Honorable R. Scott Sprouse and pled guilty as indicted without negotiation or recommendation as to sentencing. Gordon Senerius represented Appellant at the plea. Bethany Blundy represented the State. Judge Sprouse sentenced Appellant to twenty-seven (27) years for attempted murder, five (5) years concurrent for the weapon charge and three (3) years concurrent for domestic violence. (App. pp. 42-44). Appellant did not appeal the convictions and sentences.

On February 11, 2020, Appellant filed an application for post-conviction relief [PCR]. (App. pp. 45-49). The State filed a return and partial motion to dismiss, as outside the statute of limitations, on all grounds except for the request for a belated appeal. (App. pp. 50-57). On February 1, 2021, an evidentiary hearing was held before the Honorable Letitia H. Verdin. Don A. Thompson represented Appellant at the PCR hearing. Lillian L. Meadows represented the State. The hearing was held virtually via Cisco WebEx Meetings. In a written order signed February 2, 2021, Judge Verdin granted the belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) but found that all other claims were voluntarily waived and abandoned. (App. pp. 80-85). A timely notice of intent to appeal was served on February 11, 2021. This petition for writ of certiorari and a separately filed brief pursuant to White v. State follow.

ARGUMENT

The PCR judge correctly found that Petitioner did not freely and voluntarily waive his appellate rights and is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

In the return to the PCR application the State moved to dismiss as untimely all of the allegations except the assertion that Petitioner is entitled to a belated direct appeal. (App. pp. 50-57). Petitioner entered a guilty plea on October 15, 2018, and the notice of intent to appeal was not filed. The PCR application was filed on February 11, 2020. During the evidentiary hearing PCR counsel did not attempt to argue that the statute of limitations should not apply because Petitioner had mental health issues. Instead, Petitioner proceeded only on the belated appeal issue. (App. p. 61, line 24 – p. 62, lines 1-8). At the start of the PCR hearing Petitioner asked the PCR judge, “What - - exactly is an appeal?” (App. p. 62, lines 10-11). Petitioner was not evaluated prior to the PCR hearing. PCR counsel advised the PCR judge about the mental health evaluations that had been done prior to the guilty plea but then told the judge, “He’s – I think he understands what he and I have talked about, but given that question he just asked, I’m not sure he does.” (App. p. 63, lines 5-7).

The PCR judge then asked PCR counsel if he was requesting an evaluation for Petitioner to which PCR counsel responded, “No, ma’am. I don’t – quite honestly, I don’t think I’m entitled to an evaluation on a PCR. I believe I’ve gone through that once before. I think we need to do is simply go forward, let Mr. Duncan testify, then see if Mr. Senerius agrees or disagrees with that testimony. And I think that would actually cover the issue.” (App. p. 63, lines 16-22). The State told the PCR judge, “I’ve never actually dealt with anyone asking to be evaluated in a PCR, but I certainly would not object to it. But I’m fine with going forward today and seeing

what Mr. Senerius and Mr. Duncan say.” (App. p. 63, line 25 – p. 64, lines 1-4). The judge then heard testimony from Petitioner Duncan and Mr. Senerius.

In the order of dismissal the PCR judge wrote:


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 the South Carolina Supreme Court for belated review of direct appeal issues pursuant to *White*.

(App. p. 84).

The PCR judge correctly found that Petitioner did not freely and voluntarily waive his appellate rights and is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

CONCLUSION

Based on the above argument this Court should grant the petition for writ of certiorari to review the belated appeal issue and remand for a competency determination.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of June, 2021.