

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 09 2021

S.C. SUPREME COURT

Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge

JASON BARNHILL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000404

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ISSUE PRESENTED

The PCR judge erred in denying petitioner's claim that he did not voluntarily waive his right to a direct appeal in the case.

STATEMENT OF FACTS

Petitioner Jason Barnhill pled guilty to robbery during the April 2018 term of the Florence County General Sessions Court before Judge Thomas A. Russo. Petitioner was present at the plea proceeding and represented by Scott P. Floyd, Esquire, and Assistant Solicitor Ryan White appeared on behalf of the state. Judge Russo sentenced petitioner to imprisonment for a period of twelve years. App. 1-19. Petitioner did not enjoy the benefit of a direct appeal in the case.

On November 16, 2018, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 21-28. The respondent filed a return dated March 6, 2019, requesting that a hearing be held in response to petitioner's PCR action. App. 29-32.

A PCR hearing was convened on September 4, 2019, at the Florence County Courthouse before Judge William H. Seals, Junior. App. 34-73. Petitioner was present at the PCR hearing, and represented by Jonathan D. Waller, and Assistant Attorney General Samuel L. Key appeared on behalf of the state at that time.

On March 24, 2021, Judge Seals signed an Order of Dismissal denying petitioner's application for post conviction relief in his case. App. 75-87.

Petitioner appealed. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's claim that he did not voluntarily waive his right to a direct appeal in the case.

Petitioner was accused of taking the wallet of a female who gave him a lift/ride to the fire station in Florence County on December 28, 2017. Apparently, a struggle between them ensued after the arrival at the fire station, and the allegation made was that petitioner ended up in possession of her wallet. App. 10, l. 15 – p. 11, l. 21.

During the PCR hearing, petitioner testified that he heard Judge Russo mention an appeal, but he did not ask counsel to appeal because he “assum[ed] that [counsel] would ask for the appeal.” App. 54, l.6-17; App. 55, l.14-23. Trial counsel testified at the PCR hearing and explained that he informed petitioner of his right to appeal, but petitioner did not request an appeal. App. 68, l.20-24.

According to petitioner's testimony, he believed counsel had an automatic duty to file an appeal on his behalf either with or without any request from him to do so. Clearly, petitioner misunderstood the procedure to invoke an appeal in his case; and had he known that such a request for an appeal was needed, then he would have acted accordingly and requested an appeal of his case.

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 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). 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 rights 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. 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, 3030 S.C. 306, 400 S.E. 483 (1991).

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of August, 2021.

STATEMENT OF ISSUE ON DIRECT APPEAL

The trial judge erred in failing to explain sentencing consequences to appellant prior to his plea.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jason Barnhill 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 William H. Seals, which was held on September 4, 2019, 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 Jason Barnhill.

Respectfully Submitted,


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of August, 2021.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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."



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This 9th day of August, 2021.