

In Re: Gardner v State
C/A# 2019-000192

Dear Clerk,

I would like to know the status of the petition for Writ of Certiorari that was filed on my behalf by Robert Dudek on Oct. 28th 2019.

I was wanting to know if a decision has been made. It seem's that the State filed a response on the 18th day of May 2023. It concern's me on why it took them so long to respond with that brief.

I would like to know if my case is still in the S.C. Supreme Court, S.C. Court of Appeals or back in the P.C.R. Court as requested by Mr Dudek?

Thank you very much for your time and consideration in this matter.

Please Respond.

Date: ~~9-24-23~~. S. James Allen Gardner,

James Gardner - 177263

T.C.I. E A 211

1578 Clarence Coker Hwy.

Turbeville S.C. 29162

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SEP 15 2023

SC Court of Appeals

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SEP 14 2023

S.C. SUPREME COURT

FALK LAW FIRM, LLC.

James K. Falk

(843) 606-6007

(843) 972-9005 Fax

Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

September 19, 2017

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SEP 14 2023

S.C. SUPREME COURT

James Gardner 177263 -

~~505 S. Stone~~ A-31

~~McCormick Correctional~~

I'm at Lieber Corr. Inst.

~~386 Redemption Way~~

~~156 Williams Street~~ P.O. Box 205

~~McCormick, SC 29899~~

Ridgeville, S.C. 29472

Dear Mr. Gardner:

I just received notice that I was appointed to your PCR application. I handle several PCR applications each year in addition to my criminal defense practice. As of now your case is scheduled for Wednesday October 11th in the Beaufort County Courthouse.

I enclosed a copy of the State's Return to your PCR application. I believe that that your application raises meritorious issues. I am particularly interested to find out why the court did not instruct on Aggravated Assault and Battery and or First Degree Assault and Battery. There is no record whether your trial requested the Court to instruct on the lesser included offenses. This could be a trial strategy decision on his part. Or, he may have requested the charge in chambers, and he failed to have the denial of the charges preserved in the record.

I am recovering from surgery for the last eight weeks. Because of my recovery and because of the short length of time that I have had your case, I may request a continuance. I will discuss the matter with you when I see you in Beaufort.

I will continue to work on your case.

Regards

James Falk

this conspiracy. Apparently, he wanted to drug you to get you to shoot his own mother so you would get in trouble. Mr. Gardner, there is simply NO evidence to support this illogical theory.

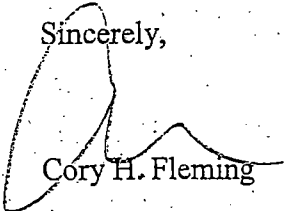
You have resolved to believe that your case will be thrown out because the police did not give you a breathalyzer or blood test following the shooting. You are simply wrong. I told you that while this information could be addressed during cross examination of the police, there was no requirement that they test you. Again, you may not like my opinion but it has not changed. You need to understand that you are misreading the law.

I then informed you that I was able to persuade the Solicitor to again offer a plea to a nine year sentence. I informed you that the decision to plead guilty was yours alone. I stated that if you were guilty of these charges then it was an exceptionally good plea offer. Of course if you did not commit these crimes then any offer is bad. You flatly rejected any plea offer.

Because of your "memory loss" we could not talk about the events surrounding the shooting. You claim to have no memory of the events or confession. When I returned to my office, I pulled my notes from my first couple of visits with you. My notes reflect that you certainly could remember the shooting incident in detail. In fact, you told me the shooting was an accident. You detailed the people involved, their movements and locations, and the confrontation with the police. This is certainly inconsistent with your current "memory loss" theory. Please be advised that I cannot knowingly offer evidence at trial that I reasonably believe to be false. This does not mean that you are prevented from testifying but I must advise you that if you testify, your testimony must be truthful.

Although you have again fired me, I am still your lawyer. I will be in Hampton Thursday the 30th to attempt to meet with you.

Sincerely,



Cory H. Fleming

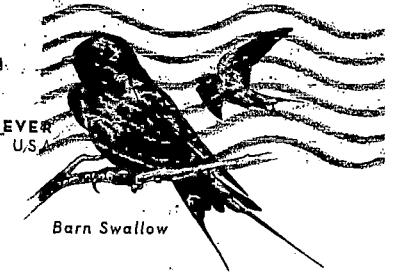
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TK

James Garner - 177263
T.C.I. E A 211
1528 Clarence Coker Hwy.
Turbeville SC, 29162

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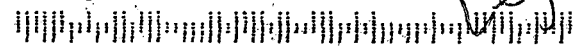
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S.C. SUPREME COURT

Columbia S.C. 29201

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