

Applicant

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JAN 24 2014

v.
State of South Carolina
County of Lee

S.C. SUPREME COURT
January 20, 2014

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JAN 21 2014

P.C.I. MAILROOM

Dear Honorable Chief Justice Toal,

Please be advised that im writing to you for assistance in regards to my appeal from denial of my PCR proceeding.

Statement of Facts:

On my behalf, a post conviction relief matter came before the court for an Evidentiary Hearing on Dec. 13, 2012. Thereafter, the Court issued an Order of Dismissal with prejudice filed on February 21, 2013. (A notice of Appeal was filed by my PCR attorney, Kenneth R. Young, Jr. in March of 2013). In the order of dismissal, the PCR Judge, The Honorable R. Ferrell Cothran, Jr., ruled on my specific issues as follows:

Trial Counsel was ineffective for:

- a) "failing to request a jury charge of Assault and Battery with Intent to Kill"...
- b) "failing to object to the trial judges proximate cause charge of the victims death"...
- c) "failing to object to the trial judges admission of my prior weapon charge to impeach my credibility"...
- d) "failing to object to the solicitor's comments on my post-arrest silence"...
- e) "failing to object to the solicitor's comments on my lack of remorse"...
- f) "failing to move for dismissal of my indictment, based on solicitor's non-compliance with constitutional and statutory laws, jurisdictional in nature, in obtaining my indictment"...
- g) "failing to move for severance of my trial from my co-defendants"...

Ms. Toal, In September of 2013, I was notified via mail, by a Ms. Lara Caudy, of the South Carolina Commission of Indigent Defense, that she will be the lawyer handling my Supreme Court case. On December 20, 2013, Ms. Caudy submitted a petition for writ of certiorari brief on my behalf, on which I received the brief on Dec. 31, 2013. The issue presented was as follows:

"Whether Petitioner's Sixth and Fourteenth Amendment right to effective assistance of counsel were violated when trial counsel failed to object to the Solicitor's improper comment on Petitioner's lack of remorse during closing argument. Since Solicitor's comments were unduly prejudicial and denied Petitioner a fair trial?"...

ISSUE:

Ms. Toal, as you know, the S.C. Supreme Court held that "PCR cases are treated differently from traditional civil cases, requiring, for example, that appellate counsel brief all arguable issues, despite counsel's belief the appeal is frivolous, and requiring, by statute, court appointed counsel for an indigent applicant who is granted a hearing", Bray v. State, 620 S.E. 2d 743 (S.C. 2005), citing Wade v. State, 559 S.E. 2d 843 (S.C. 2002)... According to Bray, I have a right to have all of my PCR grounds raised for review by the S.C. Supreme Court. My appellate attorney, Ms. Caudy, only raised one (1) arguable claim, neglecting to brief my 6 remaining meritorious claims I presented in PCR. In a letter dated January 1, 2014 I wrote to Ms. Caudy, requesting that she would please amend my petition for writ of certiorari, to include all of my grounds that were ruled upon by the PCR court pursuant to Bray v. State, supra, to afford me a "full bite at the apple" in accordance with the PCR statute, and to vindicate my cause as noted in Rule 1.3: Diligence of Rule 407, Professional Conduct of the South Carolina Appellate Court Rules. (Attached hitherto is the letter.)

On January 2, 2014, I communicated via telephone with Ms. Caudy, concerning my 6 additional grounds she refused to brief, in which she informed me that she has no intentions of amending my petition for writ of certiorari, let alone briefing my additional issues that were ruled upon by the PCR judge.

In response to her refusal to comply with the Court's ruling in Bray, I've prepared a letter to Chief Appellate Defender, Robert Dudek, of the Division of Appellate Defense, requesting that he get Ms. Caudy to raise all of my PCR grounds, or appoint me another appellate counsel who will raise all of my issues to afford me a "full bite at the apple"... I have yet to receive a response from Mr. Dudek.

Ms. Toal, if appellate counsel fails to do so, or to brief all issues, then counsel is in fact ineffective and not properly representing me. Although I do not wish to proceed pro se, I do wish to have all of my issues heard, even if counsel does not feel issues are meritorious, in accordance to the Bray principle.

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Ms. Toal, I'm seeking your assistance, because in the event that this one issue alone is not enough to warrant me a reversal, I should not have to file another PCR, alleging an ineffective assistance of appellate counsel claim to obtain review of my PCR grounds by the S.C. Supreme Court, when my grounds are available for review by the court on my current appeal, which would prevent procedural default on Federal habeas review. Ms. Toal, if you would, please notify Ms. Caudy to raise all of my issues from my PCR in my petition for writ of certiorari?

I'm sincerely thanking you in advance for your time and assistance concerning this pertinent matter.

Respectfully Submitted,

Efrain Thomas

Efrain Thomas # 314836

Perry Correctional Institution (Q4B-III)

430 Oaklawn Rd.

Pelzer, S.C. 29669

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P.C.I. MAILROOM

Perry Correctional Inst. (QUB-111)
430 Oaklawn Rd.
Pelzer, S.C. 29669

January 1, 2014

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JAN 02 2014

P.C.I. MAILROOM

Ms. Laura Caudy (Appellate Defender)
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, S.C., 29211

RE: Efrain Thomas v. State of South Carolina
Appellate Case No. 2013-000591

Dear Ms. Caudy:

I received mail from you today, Tuesday, Dec. 31, 2013, containing a copy of the petition for writ of certiorari that you filed with the South Carolina Supreme Court on my behalf. The issue presented was: "whether Petitioner's Sixth and Fourteenth Amendment right to effective assistance of counsel were violated when trial counsel failed to object to the solicitor's improper comment on Petitioner's lack of remorse during closing arguments since solicitor's comments were unduly prejudicial and denied Petitioner a fair trial?"...

In Bray v. State, 620 S.E.2d 743 (S.C. 2005), the S.C. Supreme Court held that "PCR cases are treated differently from traditional civil cases, requiring, for example, that appellate counsel brief all arguable issues despite counsel's belief the appeal is frivolous and requiring, by statute, court appointed counsel for an indigent applicant who is granted a hearing"...


Ms. Caudy, the PCR Judge, The Honorable R. Ferrell Cothran, Jr., ruled on my specific PCR claims as follows:

- a) "Trial counsel was ineffective for failing to request a jury charge on Assault and Battery with Intent to Kill"...
- b) "Trial counsel was ineffective for failing to object to the trial court's instruction on the proximate cause of victim's death,"

- c) "Trial counsel was ineffective for failing to object to the trial court's admission of his prior weapon charge to impeach his credibility";
- d) "Trial counsel was ineffective for failing to object to the solicitor's comments on applicant's post-arrest silence";
- e) "Trial counsel was ineffective for failing to object to the solicitor's comments on applicants lack of remorse";
- f) "Trial counsel was ineffective for failing to move for dismissal of applicant's indictment based on solicitor's non-compliance with constitutional and statutory laws, jurisdictional in nature, in obtaining my indictment";
- g) "Trial counsel was ineffective for failing to move for severance of applicant's trial from his co-defendants", . . .

Ms. Caudy, since you failed to brief all of my arguable claims, I am writing you to request that you amend my petition for writ of certiorari to include all of my grounds / issues that were ruled upon by the PCR court pursuant to Bray v. State, supra, to afford me a "full bite at the apple" in accordance with the PCR statute.

With all due respect to you, I'm anticipating a reply from you concerning this matter at your earliest convenience.

Respectfully Submitted,


Perry Correctional Inst. (Q4B-111)

430 Oaklawn Rd.

Pelzer, S.C. 29669

January 2, 2014

Robert M. Dudek (Chief Appellate Defender)

Division of Appellate Defense

1330 Lady St., Suite 401

Columbia, S.C. 29201

RE: Efrain Thomas v. State of South Carolina
Appellate Case No. 2013-000591

Dear Mr. Dudek,

Please be advised that I am writing you for assistance on my appeal from denial of my PCR proceeding. Specifically, I raised 7 (seven) grounds in my PCR proceeding, and all grounds were ruled upon by the PCR Judge, R. Ferrell Cothran, Jr.. I am being represented on appeal by Ms. Laura Caudy from your appellate office. Consequently, she has only raised one of my PCR issues on appeal.

As you know, in Bray v. State, 620 S.E. 2d 743 (S.C. 2005), our Supreme Court held that I have a right to have all of my PCR grounds raised for review by the Supreme Court...

Therefore, to comply with the Court's ruling in Bray, I am seeking your assistance in either getting Ms. Caudy to raise all of my PCR grounds, or, appointment of another appellate counsel who will raise all of my issues to afford me "one complete bite at the apple"... I should not have to allege an ineffective assistance of appellate counsel claim to obtain review of my PCR grounds by the S.C. Supreme Court, when my grounds are available for review by the court on my current appeal...

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P.C.I. MAILROOM

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Finally, I would greatly appreciate your assistance in this matter and any legal advice on how I could raise all of my PCR grounds for appellate review to obtain relief from my unjust conviction.

Respectfully Submitted,

BT Efani Jh

NOTE: Mr. Dudek, if you read the order of dismissal by the PCR Judge, and my PCR Memorandum of Law, you will understand why I'm upset about the omission of my other PCR grounds.

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P.C.I. MAILROOM

S.C. Supreme Court

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IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

MAR 22 2013

S.C. Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No.: 2009-CP-31-0184

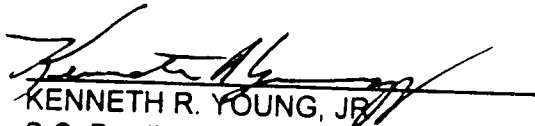
Efrain Thomas Appellant

v.

State of South Carolina Respondent

**AMENDED
NOTICE OF APPEAL**

Efrain Thomas appeals his application for Post Conviction Relief. The Applicant was convicted of the offenses he challenges in his Application on September 11, 2009. The post-conviction relief matter came before the court for an Evidentiary Hearing on December 13, 2012. Thereafter, the Court issued an Order of Dismissal with prejudice filed on February 21, 2013. This appeal is taken from the Order of Dismissal by the Honorable R. Ferrell Cothran, Jr., dated February 21, 2013, in which post trial motions were summarily denied.


KENNETH R. YOUNG, JR.
S.C. Bar # 5741
Young, Keffer & Associates, P.A.
23 West Calhoun Street
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Telephone: 803-773-4371
Attorney for the Appellant

March 10, 2013

Other Counsel of Record:
Megan E. Harrigan
Assistant Attorney General
Post Office Box 11549

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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MAR 20 2013

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

S.C. Supreme Court

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No.: 2009-CP-31-0184

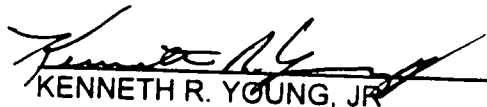
Efrain Thomas Appellant

v.

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KENNETH R. YOUNG, JR.
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Attorney for the Appellant

March 19, 2013

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