

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

January 20, 2014

RECEIVED

JAN 23 2014

S.C. Supreme Court

Via US Mail

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: *Notice of Intent to Appeal from Kent R. Clayton (SCDC #331402) v. State of South Carolina, C.A. No.: 2012-CP-39-0001*

Notice of Intent to Appeal from Monica Yazid (SCDC #352121) v. State of South Carolina, C.A. No.: 2012-CP-23-6443

Notice of Intent to Appeal from Jason Turmon (SCDC #285665) v. State of South Carolina, C.A. No.: 2012-CP-39-1159

Notice of Intent to Appeal from Roger Eugene Shephard (SCDC #344029) v. State of South Carolina, C.A. No.: 2012-CP-39-1100

Notice of Intent to Appeal from Billy Deon-Andre Hodge v. State of South Carolina, C.A. No.: 2012-CP-39-0885

Dear Mr. Shearouse:

Please find attached two copies of the appeals that were filed in the above referenced cases. Apparently, these were sent to the South Carolina Court of Appeals instead of the Supreme Court. These were previously sent to the Court of Appeals within the designated time. Please file these with the Supreme Court and return a copy to me in the envelope provided for your convenience. I have copied the Attorney General's Office and the Office of Indigent Defense with this letter.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,

LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law

A handwritten signature in black ink that reads "R. Mills Ariail". The signature is written in a cursive, slightly slanted style.

R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

cc:

Karen Ratigan (without enclosures)
SC Commission on Indigent Defense (without enclosures)

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

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October 28, 2013

RECEIVED

JAN 23 2014

Via US Mail

Jenny Abbott Kitchings
Clerk of Court
Court of Appeals of South Carolina
P.O. Box 11629
Columbia, SC 29211

S.C. Supreme Court

Re: Notice of Intent to Appeal from Kent R. Clayton v. State of South Carolina
C.A. No.: 2012-CP-39-0001

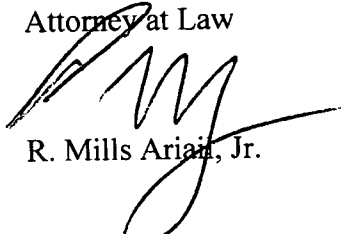
Dear Ms. Kitchings:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I have also enclosed a copy of Judge Stillwell's order for your reference. By copy of this letter, I am also serving counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,

LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law


R. Mills Ariail, Jr.

RMAjr/dcd
Enclosures (as stated)

cc: Karen C. Ratigan
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-11549

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

SC Commission of Indigent Defense
Division of Appellate Defense
1122 Lady Street
Columbia, SC 29201-3218

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stillwell, Circuit Court Judge

Case No. 2012-CP-39-0001

RECEIVED

JAN 23 2014

S.C. Supreme Court

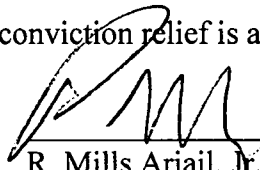
Kent R. Clayton Appellant,
S.C.D.C. No. 331402

v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Kent R. Clayton appeals the order of the Honorable Robin B. Stillwell dated October 22, 2013. Appellant received written notice of entry of this order on October 28, 2013. A copy of Judge Stillwell's Order of Dismissal denying post-conviction relief is attached.



R. Mills Ariail, Jr.
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Greenville, SC 29601
Telephone (864) 232-9390
Facsimile (864) 232-9392
Attorney for Kent R. Clayton

Greenville, South Carolina
October 28, 2013

Other Counsel of Record and Interested Parties:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
803-734-3970
Attorney for the State of South Carolina

Kent R. Clayton Inmate #331402
136 Wilborn Avenue
Ridgeville, SC 29472

Greenville County Clerk's Office
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305 East North Street
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SC Commission of Indigent Defense
Division of Appellate Defense
1122 Lady Street
Columbia, SC 29201-3218

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Robin B. Stillwell, Circuit Court Judge

Case No. 2012-CP-39-0001

RECEIVED

JAN 23 2014

S.C. Supreme Court

Kent R. Clayton Appellant,
S.C.D.C. No. 331402

v.

State of South Carolina Respondent.

CERTIFICATE OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this 28th day of October, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, in an envelope addressed as set forth herein below:

Karen C. Ratigan, Esq.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Greenville County Clerk's Office
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

SC Commission of Indigent Defense
Division of Appellate Defense
1122 Lady Street
Columbia, SC 29201-3218

Denise Tanner LaBeck
Denise Tanner LaBeck
Paralegal to R. Mills Ariail, Jr.
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law

Oct 28, 2013
Greenville, SC

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF PICKENS

2013 OCT 24 PM 1:29 CASE NO: 2012CP3900001

IN THE COURT OF COMMON PLEAS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Kent R Clayton vs State of South Carolina

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC; Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed; Reversed; Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Order of Dismissal

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

w mail
✓ Kent R Clayton ,
R. Mills Ariail Jr. 11 North Irvine St., Ste., 11
Greenville, SC 29601
NB

emailed
Karen Christine Ratigan PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

NB
emailed
Harold P Welborn
Harold P Welborn, Clerk of Court
NB

STATE OF SOUTH CAROLINA)
2013 OCT 24 PM 4:05)
C.A. No. 2012-CP-39-0001)

COUNTY OF PICKENS)
CLERK OF COURT)
PICKENS COUNTY)
SOUTH CAROLINA)

Kent R. Clayton,
S.C.D.C. No. 331402,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 4, 2012. The Respondent made its return on July 31, 2012. An evidentiary hearing into the matter was convened on August 26, 2013 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, John W. DeJong, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the March 2008 term of the Pickens County Grand Jury for assault with intent to commit first-degree criminal sexual conduct (2008-GS-39-0499). He was represented by John W. DeJong,

Esquire.¹

After the State brought the case to trial, the Applicant was found guilty. On October 23, 2008, the Honorable G. Edward Welmaker sentenced the Applicant to twenty-three years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Clayton, Op. No. 2011-UP-003 (S.C. Ct. App. filed Jan. 20, 2011).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to represent defendant at preliminary hearing and bond hearing.
 - b. Unduly harsh sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

¹ The Applicant testified at the PCR hearing that Dallas D. Ball, Esquire had been retained solely to request a continuance in this case.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he should have been allowed to testify in his own defense at trial. Though the Applicant did admit he was advised that he had the right to testify. The Applicant, however, argued he should have testified because he would have been able to show he lacked intent at the time of the act and that he was remorseful.

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified they reviewed the impact that the witness’s statement – that the Applicant had confessed to him – would have upon their case. Trial counsel testified he reviewed the elements of assault with intent to commit first-degree criminal sexual conduct with the Applicant and stated it was a goal to have the trial judge charge the lesser-

included offense of assault and battery of a high and aggravated nature (ABHAN) to the jury. Trial counsel testified they discussed the Applicant's right to testify at trial and stated that he never tells his clients whether or not they should testify.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have advised him or allowed him to testify because his trial testimony would have supported trial counsel's request for the trial judge to charge the lesser-included offense of ABHAN. Both the Applicant and trial counsel testified the Applicant had been advised of his right to testify. The trial judge also advised the Applicant of this right and informed him that whether to testify was his decision. (Trial transcript, p.331). The Applicant failed to present any credible evidence either that trial counsel misadvised him about this right or pressured him not to testify. Regardless, this Court finds the Applicant did not prove he was prejudiced because he did not testify at his trial. Trial counsel strongly argued for the ABHAN charge. (Trial transcript, pp.355-59). This Court finds, however, that it is unlikely the Applicant's trial testimony would have changed the trial judge's decision not to issue an ABHAN charge.²

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met

² The Applicant testified at the PCR hearing that he wanted to be able to explain his intent to the jury. In explaining how he would have testified at trial, however, the Applicant made several statements that would have been damaging to the defense, such as that "when I saw what I did, it scared me and I let her go" and after throwing the victim to the ground more than once he "finally let her go."

his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

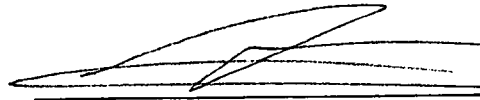
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

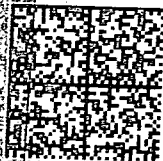
AND IT IS SO ORDERED this 22 day of OCT, 2013.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

O'VILLE, South Carolina.

2013 OCT 24 PM 4 09
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA



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 Supreme Court of South Carolina
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 Columbia, SC 29211