

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2012-CP-11-0561

State of South Carolina,

Respondent,

v.

Jerome W. Rainey,

Appellant.

RECEIVED

MAR 17 2014

NOTICE OF APPEAL

S.C. SUPREME COURT

Jerome W. Rainey appeals the order of the Honorable Robin B. Stillwell, dated March 5, 2014, which denied appellant's application for post-conviction relief. Appellant received written notice of entry of this order on Thursday, March 10, 2014.

March 11, 2014

Harrison, White, Smith & Coggins

By: 

Thomas A. Killoren, Jr., Esq.
178 West Main Street
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(864) 585-5100
Attorney for Appellant

Other Counsel of Record:
Suzanne H. White
Assistant Attorney General
PCR Division
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737
Attorney for Respondent

cc: Suzanne H. White
Assistance Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent

The Honorable Brandy McGee
Cherokee County Clerk of Court
P.O. Box 2289
Gaffney, SC 29342

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Robin B. Stillwell, Circuit Court Judge

Case No. 2011-CP-11-0148

State of South Carolina,

Respondent,

v.

Jerome W. Rainey,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the South Carolina Attorney General's Office, as Attorney for Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on March 11, 2014, addressed to the Attorney of Record, Assistant Attorney General, Suzanne H. White, PRC Division, Post Office Box 11549, Columbia, South Carolina 29211-1549.



Thomas A. Killoren, Jr. (S.C. Bar No. 69490)
Harrison, White, Smith & Coggins
178 West Main Street
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Spartanburg, SC 29304
(864)-585-5100
Attorney for Appellant

March 11, 2014
Spartanburg, S.C.

cc: South Carolina Office of Appellate Defense
P.O. Box 11433
Columbia, South Carolina 29211

Mr. Jerome Rainey
600 N. Limestone St. Apt. 136
Gaffney, SC 29340

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHEROKEE

CASE NO: 2012CP1100561

IN THE COURT OF COMMON PLEAS

Jerome W Rainey #293814 vs. State of South Carolina

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, SC
2014 MAR 7 AM 9:33
BRANDY W. MCBEE

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 Gaffney, South Carolina, this the 6th day of March, 2014.

Court Reporter:

s/ Robin B. Stilwell

PRESIDING JUDGE - Robin B. Stilwell

This judgment was entered on the the 5th day of March, 2014, and a copy mailed first class this the 7th day of March, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Thomas A. Killoren Jr. PO Box 3547 Spartanburg, SC 29304

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee - Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Jerome W. Rainey, #293814,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-11-0561

ORDER OF DISMISSAL

CLERK OF COURT
 COUNTY OF CHEROKEE
 SEP 11 2013 6 11 19

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 3, 2012, and amendment filed September 26, 2013. The Respondent made its Return on or about August 20, 2013. An evidentiary hearing into the matter was convened on November 13, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Thomas A. Killoren, Jr., Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the pre-trial motion hearing transcripts, trial transcript, and Exhibits.

PROCEDURAL HISTORY

The Applicant is presently on probation pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted by the Cherokee County Grand Jury in August 2011 for eavesdropping or peeping tom (2011-GS-11-0493). He represented himself at trial *pro se*. On March 15, 2012, the Applicant was convicted of the charge was

sentenced by the Honorable J. Derham Cole to a sentence of three years and fine of \$500 provided that upon the service of eighteen months and fine of \$250 the balance is suspended with probation for five years for peeping tom, eavesdropping, peeping. The Applicant failed to file a timely Notice of Appeal.

ALLEGATIONS

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

1. Violation of Fourteenth Amendment right of due process; and
2. Violation of Eighth Amendment right against cruel and unusual punishment, in that;
 - a. Trial court sentenced Applicant in violation of the required statutory punishment.
3. Violation of Fifth Amendment right against double jeopardy, in that;
 - a. The conviction for eavesdropping or peeping tom is for the same offense that Applicant pled guilty to in Municipal Court on December 9, 2011.

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).

Violations of Fifth Amendment

The Applicant alleged his Fifth Amendment rights were violated when he was convicted and sentenced to a crime which had already been resolved via his guilty plea in municipal court. The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect

against multiple punishments for the same offense and second prosecutions for the same offense after an acquittal, a conviction, or an improvidently-granted mistrial. The Applicant testified that he received two tickets from Gaffney City Police for charges of indecent exposure and eavesdropping/peeping tom. Applicant introduced into evidence a copy of the ticket for the indecent exposure charge to which Applicant pled guilty in December 2011 and was sentenced to pay a fine as Applicant's Exhibit #1. Applicant then testified that he proceeded to trial on the eavesdropping/peeping tom charge and was found guilty on March 15, 2012. The Applicant testified that he believed his conviction violated the double jeopardy clause because the Assistant Solicitor used the indecent exposure incident against him at trial. The record reflects that the eavesdropping charge resulted from the same event that led to the indecent exposure charge. Applicant testified that he objected to witness testimony at trial regarding the event when he was alleged to have had his penis exposed while he looked through the victim's window. However, Applicant testified that the court overruled his objection and stated that the issue was one of credibility for the jury.

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. This Court finds that the municipal court had jurisdiction to hear and resolve the indecent exposure charge, but the eavesdropping/peeping tom charge could not be resolved in municipal court once the Applicant was indicted by the Cherokee County Grand Jury because the charge had different elements, although it resulted from the same facts and situation. The South Carolina Supreme Court has found the Blockburger test appropriate to determine if two charges result in violations of the double jeopardy clause. "[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact

RBS

which the other does not.” Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 182, 76 L. Ed. 306 (1932). This Court finds that there was no violation of the Applicant’s rights when he was allowed to plead guilty to indecent exposure, but then was charged and convicted of eavesdropping/peeping tom related to the same incident. Therefore, this claim is denied and dismissed.

Violations of Eighth Amendment

The Applicant alleged that his Eighth Amendment rights were violated when the court sentenced him to a sentence which was beyond the statutory requirement. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). The Applicant was sentenced to three years and a fine of \$500 provided that upon the service of eighteen months and a fine of \$250 the balance would be suspended to probation for five years, which is well within the sentence allowed by statute. S.C. Code Ann. § 16-17-470 (1976). Additionally, the Applicant did not object to the sentence following his conviction, so Applicant waived any allegation that his sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). Therefore, this Court finds that there were no constitutional violations and this claim is denied and dismissed.

Violations of Fourteenth Amendment

The Applicant alleged in his application that his due process rights were violated;



however, he failed to pursue this allegation at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this allegation.

CONCLUSION

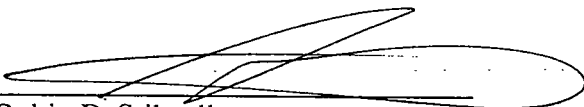
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5 day of MARCH, 2014.


Robin B. Stilwell
Presiding Judge

STATE OF SOUTH CAROLINA)
COUNTY OF Cherokee)
Jerome W. Rainey,)
Plaintiff(s),)
-vs-)
State of SC,)
Defendant(s).)

IN THE COURT OF (Select one.)
 COMMON PLEAS FAMILY COURT
Seventh JUDICIAL CIRCUIT
CASE NO.: 2012-CP-11-561
APPOINTMENT OF COUNSEL OR GAL
(Select one.)
 ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Select one.)

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile |
| <input type="checkbox"/> SVP case | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change | <input type="checkbox"/> Other: | |

It appears that Jerome W. Rainey, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel/guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or GAL based on: _____
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: _____

Therefore, it is ordered that Thomas A. Killoran, Jr. hereby is appointed as (Select only one.)

counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that _____ Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 10 DAY OF October, 2012

Tranahy K. McBee
 Circuit Judge Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details. SCCA/267 (03/07)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
OCT 10 PM 2 17
TRANAHY K. McBEE

HWS&C

HARRISON, WHITE, SMITH & COGGINS, P.C.

Attorneys at Law

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March 11, 2014

Office of Appellate Defense
Attn: Ms. Sharon Graham
PO Box 11433
Columbia, SC 29211-1433

RE: State of South Carolina, Respondent, v. Jerome W. Rainey, Appellant
Case No: 2012-CP-11-0561

Dear Ms. Graham:

Please find enclosed a copy of the Notice of Appeal, Proof of Service, and the Final Order in the above-referenced matter. I was appointed as counsel for Mr. Rainey by Order of Brandy McBee, Clerk of Court, dated October 10, 2012. Due to Mr. Rainey's indigent status, it is my understanding that your office will assume responsibility for Mr. Rainey's appellate case. At this time, Mr. Rainey wishes to appeal the attached order, and to claim indigency in light of his inability to pay for an appeal. If you have any questions, please feel free to call.

Yours very truly,

Harrison, White, Smith & Coggins, P.C.



Tom A. Killoren, Jr.

Tom@spartanlaw.com

Licensed in SC, NC, and GA

TAKJr/snf
Enclosures

cc: Mr. Jerome Rainey
600 N. Limestone St. Apt. 136
Gaffney, SC 29340

The Honorable Daniel Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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March 11, 2014

RECEIVED

MAR 17 2014

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

RE: State of South Carolina, Respondent, v. Jerome W. Rainey, Appellant
Case No: 2012-CP-11-0561

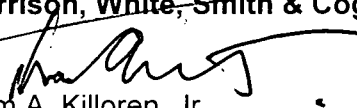
Dear Mr. Shearouse:

Please be advised that I was appointed to represent Mr. Rainey for the above referenced action. Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the Proof of Service of the Notice of Appeal on the Respondent and a copy of the Order that is being appealed. I am enclosing an extra copy of the proof of service and the Notice of Appeal. Please send me copies in the self-addressed envelope enclosed.

The Appellant, Mr. Jerome W. Rainey, hereby has advised the Court that he wishes to appeal the attached order, and to claim indigent status in light of his inability to pay for an appeal. I was appointed as counsel for Mr. Jerome W. Rainey by Order of Brandy McBee, Clerk of Court, dated October 10, 2012. I have attached the order to this letter. Given Mr. Rainey's claim of indigency, I am therefore perfecting the filing of this Notice of Appeal and forwarding a copy of these materials to the South Carolina Appellate Defense as notice of Mr. Rainey's desire to appeal.

In advance, thank you for your attention and cooperation.

Yours very truly,
Harrison, White, Smith & Coggins, P.C.


Tom A. Killoren, Jr.
Tom@spartanlaw.com
Licensed in SC, NC, and GA

TAKJr/snf
Enclosures

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HARRISON, WHITE, SMITH & COGGINS, P.C.

ATTORNEYS AT LAW

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03/11/2014

US POSTAGE

FIRST-CLASS MAIL

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