

# The South Carolina Court of Appeals

Ashante Ishmael Wright, #326386,

Appellant,

v.

State of South Carolina,

Respondent.

The Honorable R. Markley Dennis  
Charleston County  
Trial Court Case No. 2010-CP-10-08286

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APR 23 2012

S.C. Supreme Court

ORDER

The appeal in the above captioned matter is transferred to the South Carolina Supreme Court under the filing provisions of Rule 243 of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE  
For The Court

BY Jenny A. Kitching  
CLERK

Columbia, South Carolina

cc: Demal I. Mattson, Jr., Esq.  
Chief Appellate Defender Robert M. Dudek  
Assistant Attorney General Matthew J. Friedman  
The Honorable Daniel Shearouse

FILED  
4/20/12

DEMAL I. MATTSON, JR.

ATTORNEY AT LAW

PHONE  
(843) 881-2334

FAX  
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April 13, 2012

Clerk of Court  
Court of Appeals  
1015 Sumter St.  
PO Box 11629  
Columbia, SC 29211

Re: Ashante Ishmael Wright, Appellant vs.  
State of South Carolina, Respondent  
Court of Common Pleas  
2010-CP-10-8286

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APR 23 2012

S.C. Supreme Court

Dear Ladies:

Please find enclosed the original and two copies of my Notice of Intent to Appeal in the above referenced matter and I would appreciate you filing the original and returning the two copies to me in the enclosed, stamped, self-addressed envelope.

I am also enclosing a copy of the Order of Dismissal by the Honorable R. Markley Dennis, Jr. along with my Certificate of Service by mail on opposing counsel and my filing with Julie Armstrong as the Charleston County Clerk of Court.

Very truly yours

  
Demal I. Mattson, Jr.

DIMjr:lt

Enclosure

CC: Henry McMaster, Attorney  
Matthew J. Friedman, Assistant Attorney  
Julie Armstrong, Clerk of Court, Charleston County  
Ashante Ishmael Wright

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APR 16 2012

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
HONORABLE R. MARKLEY DENNIS, JR., JUDGE

ASHANTE ISHMAEL WRIGHT,  
APPELLANT,

VS.

THE STATE OF SOUTH CAROLINA,  
RESPONDENT

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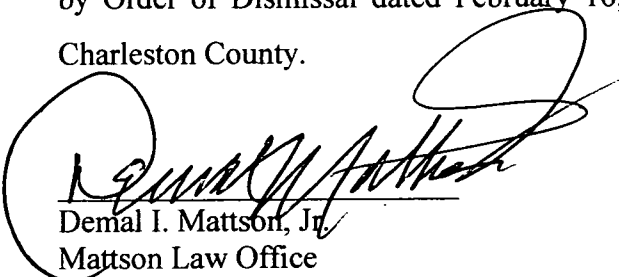
APR 23 2012

COURT OF COMMON PLEAS  
2010-CP-10-8286

S.C. Supreme Court

NOTICE OF INTENT TO APPEAL

Appellant, Ashante Ishmael Wright, hereby appeals his denial of Post-Conviction Relief by Order of Dismissal dated February 16, 2012 by the Honorable R. Markley Dennis, Jr. in Charleston County.

  
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Mattson Law Office  
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Opposing Counsel  
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Assistant Attorney General  
SC Attorney General's Office  
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Columbia, SC 29211  
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SC COURT OF APPEALS  
APR 23 2012  
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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
HONORABLE R. MARKLEY DENNIS, JR., JUDGE

ASHANTE ISHMAEL WRIGHT,  
APPELLANT,  
VS.

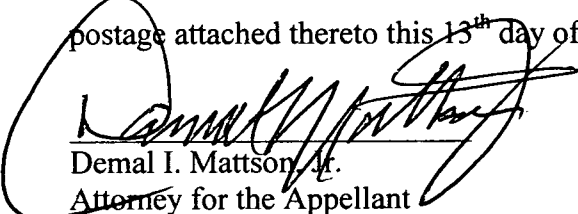
THE STATE OF SOUTH CAROLINA, S.C. Supreme Court  
RESPONDENT

COURT OF COMMON PLEAS  
2010-CP-10-8286


CERTIFICATE OF SERVICE

Personally appeared before me, Demal I. Mattson, Jr., the attorney for the Appellant who upon being duly sworn deposes and says:

That I have simultaneously herewith filed the original Notice of Intent to Appeal with the Clerk of Court for the South Carolina Court of Appeals, and served a copy of said Notice of Intent to Appeal on Henry McMaster, Attorney General, and Matthew J. Friedman, Assistant Attorney General and filed a copy of said Notice of Intent to Appeal with Julie Armstrong, Charleston County Clerk of Court. All documents were correctly addressed with sufficient postage attached thereto this 13<sup>th</sup> day of April, 2012.

  
Demal I. Mattson, Jr.  
Attorney for the Appellant  
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990 Lake Hunter Circle, Ste. 201  
Mt. Pleasant, SC 29464  
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Email: [DMattson52@aol.com](mailto:DMattson52@aol.com)

Sworn to before me this 13<sup>th</sup> day  
of April, 2012.

  
Notary Public for South Carolina  
My Commission Expires: 3-6-2018

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APR 16 2012

SC Court of Appeals

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APR 23 2012

DEMAL I. MATTSON, JR.

ATTORNEY AT LAW

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April 13, 2012

Julie Armstrong  
Charleston County Clerk of Court  
Court of Common Pleas  
100 Broad St.  
Charleston, SC 29401

Re: Ashante Ishmael Wright, Appellant vs.  
State of South Carolina, Respondent  
Court of Common Pleas  
2010-CP-10-8286

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APR 23 2012

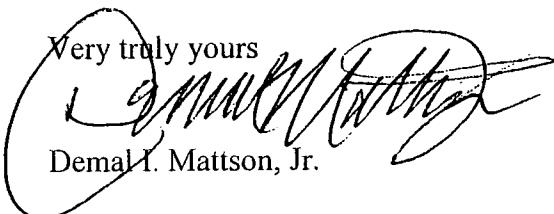
S.C. Supreme Court

Dear Ms. Armstrong:

Please find enclosed two copies of my Notice of Intent to Appeal in the above matter along with my Certificate of Service by mail. Please file one copy and return the other copy to me in the enclosed, stamped, self-addressed envelope. I am simultaneously herewith filing the original of said Notice of Intent to Appeal with the Clerk of Court for the South Carolina Court of Appeal.

Thanking you in advance for your time and consideration in this matter.

Very truly yours

  
Demal I. Mattson, Jr.

DIMjr:lt

Enclosure

CC: Clerk of Court, Court of Appeals  
Henry McMaster, Attorney General  
Matthew J. Friedman, Assistant Attorney General  
Ashante Ishmael Wright

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APR 16 2012  
SC Court of Appeals

DEMAL I. MATTSON, JR.

ATTORNEY AT LAW

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April 13, 2012

Matthew J. Friedman  
Assistant Attorney General  
SC Attorney General's Office  
PO Box 11549  
Columbia, SC 29211

Re: Ashante Ishmael Wright, Appellant vs.  
State of South Carolina, Respondent  
Court of Common Pleas  
2010-CP-10-8286

Dear Mr. Friedman:

Please find enclosed for service upon you a copy of my Notice of Intent to Appeal along with my Certificate of Service by mail. I am simultaneously herewith filing the original of said Notice of Intent to Appeal with the Clerk of Court of the SC Court of Appeals and copy of said Notice with Julie Armstrong, Clerk of Court, Charleston County.

Very truly yours

  
Demal I. Mattson, Jr.

DIMjr:lt

Enclosure

CC: Clerk of Court, Court of Appeals  
Julie Armstrong, Clerk of Court, Charleston County  
Henry McMaster, Attorney General  
Ashante Ishmael Wright

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APR 23 2012

S.C. Supreme Court

APR 16 2012  
CLERK OF APPEALS  
S.C. COURT OF APPEALS

DEMAL I. MATTSON, JR.

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April 13, 2012

Henry McMaster  
SC Attorney General  
PO Box 11549  
Columbia, SC 29211

Re: Ashante Ishmael Wright, Appellant vs.  
State of South Carolina, Respondent  
Court of Common Pleas  
2010-CP-10-8286

Dear Mr. McMaster:

Please find enclosed for service upon you a copy of my Notice of Intent to Appeal along with my Certificate of Service by mail. I am simultaneously herewith filing the original of said Notice of Intent to Appeal with the Clerk of Court of the SC Court of Appeals and copy of said Notice with Julie Armstrong, Clerk of Court, Charleston County.

Very truly yours

  
Demal I. Mattson, Jr.

DIMjr:lt

Enclosure

CC: Clerk of Court, Court of Appeals  
Julie Armstrong, Clerk of Court, Charleston County  
Matthew J. Friedman, Assistant Attorney General  
Ashante Ishmael Wright

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APR 23 2012

S.C. Supreme Court

SC Court of Appeals  
APR 16 2012  
DEMAL I. MATTSON, JR.

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CC  
AT  
AG  
SOL  
GS

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Ashante Ishmael Wright, #326386, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2010-CP-10-8286

ORDER OF DISMISSAL

FILED  
 2012 FEB 22 AM 9:03  
 JULIE HAYES TRONG  
 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 5, 2010. The Respondent made its Return on February 3, 2011. An evidentiary hearing into the matter was convened on January 11, 2012 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Demal Mattson, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Jason King, Esquire, also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief, the Court of Appeals' opinion dismissing the appeal, the Remittitur dated March 1, 2010, the PCR application, the State's Return thereto, and an affidavit from Thomas Johnson regarding the use of Photoshop.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant

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SC Court of Appeals

APR 16 2012

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was indicted at the October 2006 term of the Charleston County Grand Jury for murder (2006-GS-10-10690). Jason King, Esquire, represented the Applicant. The Applicant proceeded to trial on January 28-30, 2008, after which a jury found him guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for fifty (50) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek, Esquire, of the South Carolina Commission on Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals subsequently dismissed the appeal. State v. Wright, Op. No. 2010-UP-127 (S.C. Ct. App. filed February 11, 2010). The Remittitur was issued on March 1, 2010.

### ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
  - a. Failed to timely investigate.
  - b. Failed to obtain independent photographs of the crime scene at night.
  - c. Failed to check with SCE&G about status of street lighting at alleged crime scene during the time the crime was allegedly committed.
  - d. Failure to investigate the status of church/school exterior lighting near crime scene on night of crime.
  - e. Failure to obtain photographs from different locations of the alleged witnesses.
  - f. Failure to investigate and obtain medical testimony about the prevalence of lip pigment disorder of Applicant which one witness used to identify Applicant as the alleged murderer.
  - g. Failure to object to Solicitor's opening statement: "This may be the most important week of Ashante Wright's life. He's plead not guilty. So I am asking you to do your duty as solicitors [sic]." (Tr. p. 62, lines 2-4).
  - h. Failure to object to Solicitor's closing statement that violated the Golden Rule and denied Applicant his right to a fair trial. The argument suggests to jurors that they put themselves in the shoes on the Solicitor and in the shoes of the Applicant. (Tr. p. 335, lines 13-25; p. 356, lines 13-18).

### 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 hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her 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).

Trial counsel testified that he met with Applicant six times prior to trial. He testified that Applicant told him he was with two women at the time of the shooting. He testified that he contacted both women, and one testified for the State while the other one testified for Applicant. Counsel asserted that one of these women, Johnetta Campbell, denied Applicant's alibi. Counsel testified that he argued that Ms. Campbell denied Applicant's story because she was on probation and they were all smoking marijuana at the time.

Counsel testified that he did not have anyone take photographs of the crime scene. He testified that he visited the crime scene during the day on October 18, 2007. He asserted that most of the photographs taken the night of the incident were of the victim's body. He testified that the solicitor's investigator, Matt Casey, took photographs of the scene at night, and counsel was able to cross-examine Mr. Casey and even admitted one of Mr. Casey's photographs that the State did not plan to introduce. Counsel testified that he has no reason to believe that Mr. Casey's photographs were modified. He testified that the two witnesses who observed the shooting knew Applicant prior to this incident and had seen Applicant on their street earlier in the evening as they were coming home from the grocery store. He testified that the two witnesses saw Applicant running with a gun right in front of their house immediately after the shooting. Counsel testified that he objected to a Golden Rule comment during the State's closing, but the objection was overruled after a bench conference. He testified that during his opening statement he inadvertently asked the jury to do its job as "solicitors," but he meant to

say "jurors." He asserted that he did not think his statement confused the jury.

Counsel testified that he had plenty of time to prepare for trial because the first trial resulted in a hung jury and a mistrial so the case was tried twice. He testified that the State made a plea offer of twenty-five (25) years for voluntary manslaughter prior to the first trial and an offer of twenty (20) years for voluntary manslaughter after the mistrial. Counsel asserted that he advised Applicant to accept the offer for twenty (20) years because only one juror had held out during the first trial. He testified that he communicated each plea offer to Applicant, and it was Applicant's decision to reject both offers.

The Applicant testified that he saw counsel two times. He testified that during the first meeting counsel brought him the State's plea offer for twenty-five (25) years, and Applicant decided to reject it because he wanted to go to trial. He testified that during a second meeting, counsel brought him an offer for eighteen (18) years and said it was not looking good, but Applicant told counsel that he was not taking the offer. Applicant testified that counsel was ineffective for asking the jury during the opening argument to do its job as solicitors. He asserted that even though counsel objected when the solicitor asked the jury to put themselves in Applicant's shoes, counsel should have done more to protect against that argument. Applicant testified that counsel did a sloppy investigation and he should have sent an investigator to the scene to check the lighting conditions.

#### **Ineffective Assistance of Counsel**

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's

conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that the Applicant’s testimony is not credible while also finding that trial counsel’s testimony is credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant’s constitutional rights, and possible defenses or lack thereof.

Regarding Applicant’s claims of ineffective assistance of counsel, this Court finds

Applicant has failed to meet his burden of proof. This Court finds that counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel conducted a thorough investigation. He went to the scene and raised the fact that a police notation indicated that there was bad lighting at the scene. He was able to cross-examine the State's investigator about his photographs and the lighting conditions, and he admitted one photograph that was favorable to Applicant. Counsel also had no reason to believe that the State's investigator had modified the photographs. Counsel was able to cross-examine the two eyewitnesses and bring out any relevant inconsistencies in their testimony.

This Court finds that counsel properly communicated both plea offers to Applicant, and it was Applicant's decision to reject both offers. Counsel advised Applicant to accept the second plea offer based on the fact that only one juror had held out during the first trial. Ultimately, Applicant elected to proceed to trial. This Court finds that counsel was adequately prepared for trial and met with Applicant a sufficient number of times prior to trial.

This Court finds that Applicant was not prejudiced by counsel's comment during opening argument that the jury should do its job as "solicitors." Clearly, counsel meant to say jurors rather than solicitors, and there is no indication that the jurors were confused or influenced by his mistake.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

#### 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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

#### 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 or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

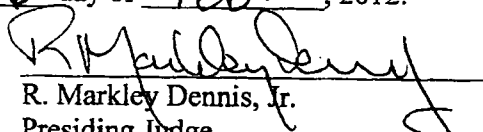
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate

Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and 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.

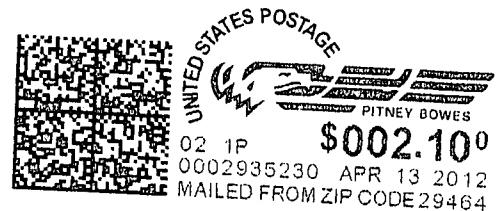
**AND IT IS SO ORDERED** this 16 day of Feb., 2012.

  
R. Markley Dennis, Jr.  
Presiding Judge  
9<sup>th</sup> Judicial Circuit

Charleston, South Carolina.

EMAL I. MATTSON, JR.  
ATTORNEY AT LAW

990 LAKE HUNTER CIRCLE, SUITE 201  
MT. PLEASANT, SC 29464



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