

# 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

July 14, 2016

**RECEIVED**

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

JUL 19 2016

**S.C. SUPREME COURT**

Re: Travaris Walker, 2014-CP-10-06748

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Charleston County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc: Rutledge Johnson, Esq.; Travaris Walker 358642.

THE STATE OF SOUTH CAROLINA

In The Supreme Court

**RECEIVED**

APPEAL FROM CHARLESTON COUNTY

JUL 19 2016

Court of Common Pleas

**S.C. SUPREME COURT**

Honorable Doyet A. Early, III, Circuit Judge

Case No.: 2014-CP-10-06748

Travaris Walker 358642.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Travaris Walker appeals the Honorable Doyet A. Early, III June 15, 2016, Order of Dismissal. Undersigned counsel received notice of entry of the order on July 5, 2016. A copy of the order on appeal is attached hereto.



James K Falk  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402

July 14, 2016

Rutledge Johnson, Esq  
Office of S.C. Attorney General  
PO Box 11549  
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA

In The Supreme Court

**RECEIVED**

APPEAL FROM CHARLESTON COUNTY

JUL 19 2016

Court of Common Pleas

**S.C. SUPREME COURT**

Honorable Doyet A. Early III, Circuit Judge

Case No.: 2014-CP-10-06748


Travaris Walker 358642.....PETITIONER

V.

State of South Carolina.....RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Rutledge Johnson, Esq, Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this July 14, 2016.

  
James K Falk  
Falk Law Firm  
PO Box 1058  
Charleston, SC 29402

AG  
AT  
5/16  
23

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
  
Travaris Walker, #358642, )  
  
Applicant, )  
  
v. )  
  
State of South Carolina, )  
  
Respondent. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

2014-CP-10-6748

ORDER OF DISMISSAL

FILED  
2016 JUL -5 PM 2:02  
JULIEN CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 31, 2014. Respondent made its Return on June 2, 2015. An evidentiary hearing into the matter was convened on April 20, 2016 at the Charleston County Courthouse. James K. Falk, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Beattie Butler, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted by the October, 2012, term of the Charleston County Grand Jury for Murder (2012-GS-10-5821). Beattie Butler, Esquire represented the Applicant. On January 27, 2014, the Applicant pled

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guilty to the reduced charge of voluntary manslaughter. The Honorable Roger M. Young, Sr., sentenced the Applicant, pursuant to the negotiated plea, to incarceration for thirty (30) years. The Applicant received credit for time served in the amount of six hundred and fifty one (651) days. The Applicant did not appeal his conviction and sentence.

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

1. "Trial counsel was ineffective for:
  - a. Losing evidence
  - b. Never going over my case with me and never presenting me with a Rule 5
  - c. Erroneous advice as to my case were [sic] insufficient to satisfy 'prejudice' requirement of State v. Walker
  - d. Not informing me of my right to [a]ppeal"

#### SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that Counsel represented him at his plea and met one week prior to the plea. Applicant then testified he told Counsel about possible alibi witnesses a week after he was charged with murder. Applicant claimed he wanted to see the surveillance video from Total Wine because it was Christmas time, and he was shopping at the time of the murder. Counsel apparently told Applicant he had received a copy of this video tape, but left it in his office and never presented this tape to Applicant. Applicant said he saw the surveillance video from Norm's Pizza, but he was at Total Wine before Norm's. Applicant could not understand why Counsel got a copy of the Norm's video, but not Total Wine. Applicant claims he was at Total Wine from 6:30 pm to 8:30 pm on the evening of the murder.

At the guilty plea, Applicant testified he was satisfied with Counsel. Applicant claimed Counsel told him he did not have a choice but to plead guilty because other witnesses were going to testify against Applicant. Applicant then testified he always trusted Counsel's word and did not have a choice because a trial would make him look crazy. He also pled guilty for his mother and his children. Applicant stated counsel advised him not to speak at the plea.

Applicant claimed he was "a puppet and counsel was pulling his strings." Applicant claimed that everything he said was what his counsel told him to say. Applicant also claimed he followed the script that counsel gave him.

Counsel testified he remembered the facts very well and met Applicant shortly after his arrest. Counsel stated that he received the video from Norm's pizza, but this video did not give Applicant an alibi for that night because it did not occur at the same time. Counsel stated it was possible that he did not show the video to Applicant and does not remember talking to Applicant until after he was off bond. Counsel also stated Applicant violated his bond conditions. Counsel testified he does not recall the Darnell Segar's case. Additionally, Counsel testified he tried to obtain the Total Wine surveillance video and that his private investigator subpoenaed some documents, but nothing ever panned out. Counsel stated that Applicant could not be a Total Wine and Lincolnville at the same time. Counsel then testified that Applicant wanted to plea because his codefendants were going to testify against him; Applicant stated he never wanted a trial. Counsel then stated he could not imagine that he did not share the discovery and Rule 5 materials with Applicant. Counsel testified that the plea was to a negotiated 30 years. Counsel said this is a difficult case as there were two separate incident scenes and sets of witnesses. The underlying facts the case were that the victim

had stolen drugs or guns from Applicant and Applicant was angry; Applicant thereafter found victim in an apartment, kidnapped him and drove him to Lincolnton and shot him.

On cross-examination, Counsel testified he always discusses the Rule 5 material and codefendants' statements with his clients. Counsel could not recall any resistance from Applicant to plead guilty. Counsel also stated he never told Applicant how to answer the judge's questions. Lastly Counsel testified he did not force, threaten or coerce Applicant to plead guilty. Counsel stated it was ultimately Applicant's choice to plead guilty.

Upon being recalled to the stand, Applicant testified he was never given his Rule 5 materials and was never told the names of the people who testified against him. Applicant stated he was called on the half of Darnell Segars when he was out on bond. Applicant also claimed he did understand why Counsel obtained the Norm's Pizza tape but not the Total Wine tape. Applicant also complained that Counsel could remember certain things but not some of the important things. On cross-examination, Applicant admitted that he did not have possession of these videos, nor did any of his witnesses testify at the PCR hearing.

#### **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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

### **Ineffective Assistance of Counsel**

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) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible.

This Court also finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant the charges and the sentences the charges carried. Counsel negotiated with the State in Applicant's best interest, namely that Counsel negotiated for the lesser included offense of voluntary manslaughter instead of murder. Applicant testified he pled because he did not want to put his mother and children through a trial. Applicant admitted nobody threatened him to plead guilty, and there were no promises other than the negotiations to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned, prepared counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court also finds the guilty plea transcript dispositive of this case as it is a contemporaneous recording of the proceedings. This Court finds the Applicant waived his rights to a jury trial.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – 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.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his

burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

### CONCLUSION

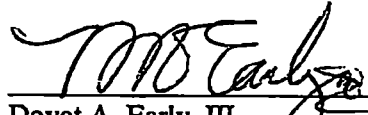
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

This Court notifies the 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), SCRCR, 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!**

  
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Doyet A. Early, III  
Presiding Circuit Court Judge  
Ninth Judicial Circuit

June 15, 2016

Bamberg, South Carolina

2014-CP-10-6748

