

Hugh W. Welborn

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email to:
hughwelborn@bellsouth.net

July 25, 2016

RECEIVED

JUL 28 2016

South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

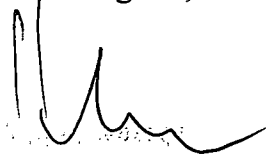
S.C. SUPREME COURT

In RE: Christopher T. Wilder, #303905 vs. State of South Carolina
Case #: 2015-CP-37-0595

Dear Sir/Madam:

Please find enclosed herewith the original and one (1) copy of the Appellant's Notice of Appeal in connection with the foregoing matter which I ask that you file for record, returning the clocked copy to my office. I also enclose a copy of the Order of Dismissal and the original Proof of Service on Johanna C. Valenzuela, Office of the Attorney General. Please use the enclosed self-addressed envelope to return the clocked copy to my office.

With kind regards,



Hugh W. Welborn

HWW/sba

Enclosures

cc: Office of the Appellate Defense

Office of the Attorney General

Client

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

HONORABLE R. SCOTT SPROUSE

2015-CP-37-0595

CHRISTOPHER WILDER, #303905

APPELLANT,

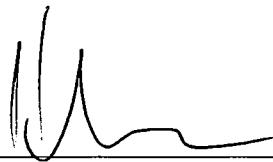
vs

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF APPEAL

Christopher Wilder, #303905 appeals the denial of his Post Conviction Relief. The Post Conviction Relief Action was heard and denied by the Honorable R. Scott Sprouse Circuit Court Judge on June 6, 2016, and Order of Dismissal issued on July 19, 2016 and filed on July 21, 2016. The Appellant received Order of Dismissal on July 25, 2016.



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Christopher Wilder, #303905

Other Counsel of Record:
Johanna C. Valenzuela
Office of Attorney General State of SC
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

JUL 28 2016

HONORABLE R. SCOTT SPROUSE

S.C. SUPREME COURT

2015-CP-37-0595

CHRISTOPHER WILDER, #303905

APPELLANT,

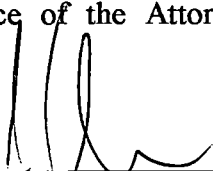
VS

STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail postage prepaid on July 25, 2016 addressed to its attorney of record Johanna C. Valenzuela, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549



Hugh W. Welborn
Attorney for the Appellant
Post Office Box 173
Anderson, South Carolina 29622
(864) 226-5787
Attorney for Christopher Wilder, #303905

Anderson, South Carolina

25 July, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF (Select one.)

COMMON PLEAS FAMILY COURT
TENTH JUDICIAL CIRCUIT

Christopher T. Wilder #303905,
Plaintiff(s),

CASE NO.: 2015-CP-37-0595

APPOINTMENT OF COUNSEL OR GAL

-vs-

(Select one.)

State of South Carolina,
Defendant(s).

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check 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 Christopher T. Wilder #303905, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a 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 guardian ad litem 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:

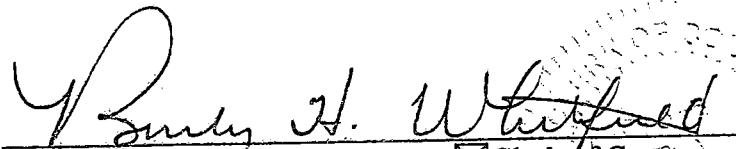
- counsel lead counsel (if capital PCR case) guardian ad litem

Therefore, it is ordered that HUGH WELBORN, P.O. Box 173, Anderson, SC, 29622, telephone (864) 226-5787, hereby is appointed as (Select one.)
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 11th DAY OF August, 2015.


 Circuit Judge Clerk of Court

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT

2015 AUG 11 PM 4:24

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.

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-37-0595

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

Christopher Wilder, # 303905
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

2016 JUL 21 P 3:04

Submitted by: Court	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- 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.

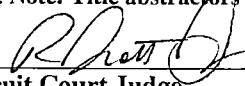
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

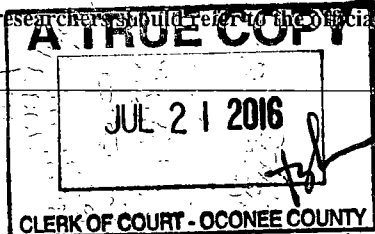
ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge
SCRPC Form 4C (03/2013)



2752
Judge Code

7-19-16
Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Christopher Wilder,)
 S.C.D.C. No. 303905,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-37-0595

ORDER OF DISMISSAL

2016 JUL 21 P 3:04

FILED OCONEE COUNTY, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 10, 2015. Respondent made its return and motion to dismiss on or about February 2, 2016. An evidentiary hearing was held on June 6, 2016, at the Lexington County Courthouse. Applicant was present and represented by Hugh Welborn, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant and his plea counsel, Wilson Burr, Esquire, testified at the hearing. The Court had before it Applicant's guilty plea transcript, the Oconee County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted at the October 2014 term of the Oconee County Grand Jury for criminal sexual conduct (CSC) – first degree (2014-GS-37-1135). On October 20, 2014, Applicant appeared before the Honorable Allison Lee and pleaded guilty as indicted. Applicant was represented by Wilson Burr, Esq.

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Judge Lee sentenced Applicant to a term of imprisonment for ten (10) years. Applicant did not appeal his plea or 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).

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) (citing SCRPC 71.1(e)).

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, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) (“[T]he defendant must show that counsel’s representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel’s performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.”); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (“PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms;

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and (2) that the deficient performance prejudiced the applicant's case."'). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (internal citations omitted).

In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant alleged his attorney failed to review discovery with him and claims he did not understand the plea offer was a recommendation to the plea court and not a binding contract. Applicant testified that if he received his discovery, he would have done his homework and stated there was no evidence in the file such as DNA or medical records. Applicant also alleged he was never told by counsel that he was facing a possibility of fifteen years. Applicant asserts counsel should have moved to withdraw the plea. Applicant confirmed that during the plea and while under oath he informed the plea court that he was guilty (Plea Tr., p. 14), that there was no hope or promise of any type of reward or benefit to him if he pleaded guilty (Plea Tr., p. 11-12), and that he was pleading guilty freely and voluntarily (Plea Tr., p. 14). Applicant also confirmed that while under oath he told the plea judge that he felt he had sufficient time with his attorney, had cooperated with his attorney in his defense, and that his counsel had done everything he had asked him to do in connection with the charge (Plea Tr., p. 14).

Plea counsel testified he met with Applicant at least six times during his representation of

Applicant. Plea counsel explained he reviewed all discovery with Applicant prior to the plea, to include a disc of photos. Plea counsel noted Applicant had even used those photos to identify an issue with the location of the hammer in the photos. Plea counsel explained Applicant never indicated he was interested in a trial and instead indicated he just wanted to "get it done." Plea counsel testified he did explain the differences between a recommendation and a negotiation and that he explained to Applicant the offer made by the State and that it was a recommendation and not a negotiation.

Plea counsel summarized the State's evidence against the Applicant as follows: the victim of the sexual assault knew Applicant and immediately reported the assault, identifying Applicant as the perpetrator; the physical done at the hospital on the victim showed vaginal tearing; there were photos of the crime scene; and the victim provided a written statement.

Initially, this Court notes Applicant confirmed to the plea judge he wanted to plead guilty to his charges after the plea judge informed Applicant of his charges and the associated maximum sentences (Plea Tr., pp. 8-9, 21). Applicant also told the plea judge he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and was not coerced in any way. (Plea Tr., pp. 1-7, 11-2, 14). Applicant had no trouble speaking up when he felt he needed to correct something on the record and in fact did object and offer a correction to a portion of the State and Probation's recitation of the facts in his case. (Plea Tr., pp. 13-14, 16).

This Court finds Applicant failed to meet his burden of proving plea counsel was ineffective or that he suffered any prejudice.

As to the claim that plea counsel failed to review discovery with him, plea counsel testified he met with Applicant several times, did review discovery, and that Applicant actively

responded to the discovery items reviewed with him. At the plea, Applicant, under oath, informed the plea court that his attorney had done everything that had been asked of him. As such, this Court finds plea counsel's testimony credible and finds Applicant has failed to meet his burden of proving counsel was ineffective for failing to review discovery with him prior to the plea.

As to the claim that plea counsel was ineffective due to the Court's decision to sentence Applicant to ten years instead of the recommendation of fifteen years suspended on seven active years and five years of probation, this Court finds plea counsel's testimony that he reviewed the differences between a negotiated offer and a recommendation with Applicant to be credible. The Court also finds the plea court's lengthy explanation of rights was thorough, and, based on Applicant's answers during his guilty plea, Applicant's plea was knowing and voluntary. This Court finds Applicant has failed to meet his burden of establishing plea counsel was ineffective.

This Court also finds Applicant failed to meet his burden of proving he suffered any prejudice related to his allegations because the State had overwhelming evidence of Applicant's guilt. See, e.g., Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009) (holding no prejudice occurred, even if trial counsel was deficient, where there was otherwise overwhelming evidence of the defendant's guilt).

All Other Allegations

As to any additional 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 Applicant has abandoned any such allegations.

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CONCLUSION

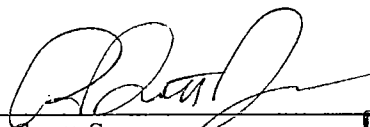
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, and Applicant was not prejudiced by counsel's representation. Therefore,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

This Court advises 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 Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 19 day of July, 2016.



R. Scott Sprouse
Presiding Judge
Tenth Judicial Circuit

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 JUL 21 P 3:04

A TRUE COPY
JUL 21 2016

CLERK OF COURT - OCONEE COUNTY

Waballa, South Carolina.

Hugh W. Welborn

Attorney at Law
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Anderson, South Carolina 29622

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July 25, 2016

South Carolina Office of Appellate Defense
P. O. Box 11589
Columbia, South Carolina 29211-1589

In RE: Christopher T. Wilder, #303905 vs. State of South Carolina
Case #: 2015-CP-37-0595

Dear Sir or Madam:

In connection with the foregoing matter, please be advised that I was the Court Appointed Attorney and enclose herewith a copy of my appointment. I also enclose copies of all documents you requested for filing a copy of the Appellant's Notice of Appeal in this matter together with a copy of the Order and Proof of Service. I ask that your office assume representation of this indigent Applicant.

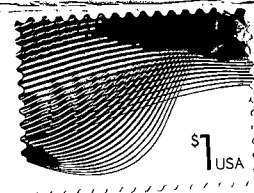
Very truly yours,


Hugh W. Welborn

HWW/sba
Enclosures

cc: South Carolina Supreme Court
Office of Attorney General
Client

Hugh W. Welborn
Attorney At Law
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Anderson, SC 29622



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