

The Supreme Court of South Carolina

James Willie Elkins, Jr., Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Frank R. Addy, Jr.
Newberry County
Trial Court Case No. 2010-CP-36-00263

ORDER

The request for an extension until May 9, 2012 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

April 10, 2012

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General J. Rutledge Johnson

ORIGINAL



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 9, 2012

RECEIVED

APR 9 2012

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

C

S.C. Supreme Court

Re: James Willie Elkins, Jr. v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter, I am informing J. Rutledge Johnson, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

cc: J. Rutledge Johnson



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 7, 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

RECEIVED
FEB 07 2012
S.C. Supreme Court

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

James Willie Elkins, Jr v. State of South Carolina

2/7/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham
Administrative Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 3, 2012

RECEIVED

JAN - 3 2012

Ms. Jo Rice
Circuit Court Reporter
401 Wardlaw Street
Abbeville, SC 29620

S.C. Supreme Court

Dear Ms. Rice:

Please provide us with the following transcript:

James Willie Elkins, Jr. v. State of South Carolina Case #: 10-CP-36-00263

County: Newberry Date of Trial: November 17, 2011

Presiding Judge: Frank R. Addy

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Lorlene French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office

PCR

The Brooks Law Offices, LLC

Charles T. Brooks, III
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

Irma R. Brooks
Attorney

November 23, 2011

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: James W. Elkins v State of South Carolina
Case No. 2010-CP-36-263

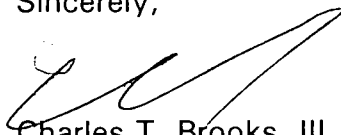
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,



Charles T. Brooks, III
CTB/jlb

Enclosed as stated

Cc: Suzanne White , Office of Attorney's General
Rutledge Johnson, Office of Attorney's General
South Carolina Office of Appellate Defense
James W. Elkins, 241002

RECEIVED
NOV 28 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No: 2010-CP-36-263

James Willie Elkins, Jr., Appellant
S.C.D.C. No.: 241002

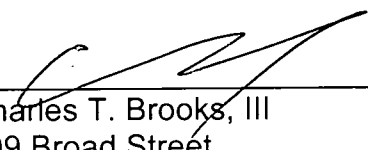
v.

The State Respondent

NOTICE OF APPEAL

James Willie Elkins, Jr., appeals his Denial for Post Conviction Relief in this case. The Order of Dismissal was imposed and signed by the Honorable Frank R. Addy, Jr., on November 5, 2011, which I, Charles T. Brooks, III, received on November 23, 2011.

November 23, 2011


Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708
Attorney for Appellant

Other Counsel on Record:
Suzanne White, Esquire
Rutledge Johnson, Esquire
Assistant Attorney's General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3970

RECEIVED
NOV 28 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No: 2010-CP-36-263

James Willie Elkins.....Appellant
S.C.D.C. No.: 241002

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 23rd day of November, 2011, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on November 23, 2011 addressed to the following as indicated below:

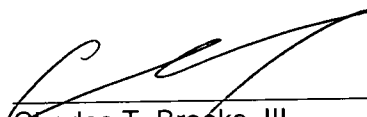
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Suzanne White, Esquire
Rutledge Johnson, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

James Willie Elkins, 241002
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina, 29899

Dated: November 23, 2011



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

THE COURT OF COMMON PLEAS
CASE NO. 10-CP-36-263

JAMES WILLIE ELKINS, JR.,
Plaintiff,

vs.

STATE OF SOUTH CAROLINA,
Defendant.

ORDER DENYING POST
CONVICTION RELIEF

THIS MATTER CAME BEFORE THE COURT on November 17, 2011 for a hearing on Plaintiff's action for Post-Conviction Relief.¹ Present were Charles T. Brooks, III, Esq. representing Plaintiff; Suzanne White, Esq. and Rutledge Johnson, Esq. appeared on behalf of Defendant. The court received the testimony of Plaintiff and trial counsel, Ray Wicker, Esq. of the Newberry Bar. I make the following findings of fact and conclusions of law.

1. Plaintiff bears the burden of proving entitlement to relief. Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). Plaintiff must first prove that counsel's performance was deficient in that it fell below the reasonable standards pursuant to standing professional norms. Chery v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Plaintiff must also demonstrate resulting prejudice from counsel's deficient performance; prejudice is demonstrated by proving that, but for counsel's errors, the result of the proceedings likely would have been different. Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991). After a full review of the transcript and for the following reasons, I find that counsel's performance was not deficient, and even if it was, no prejudice to Plaintiff resulted.

2. Plaintiff first alleges that trial counsel was deficient for failing to "get a doctor to challenge the forensics." Simply put, in this case, there was no forensic evidence tying Plaintiff to the crime. Evidence was introduced that the minor victim was diagnosed with a venereal

¹ On December 4, 2007, Plaintiff was convicted at trial of two counts of Criminal Sexual Conduct with a Minor, first degree. An appeal was taken and dismissed. State v. Elkins, Op. No. 2010-UP-161 (S.C. Ct. App. February 24, 2010). Subsequently, this action was timely filed.

disease, Trichomonas, shortly after the assault. (Trial Transcript, Dr. Gratin Smith, p.86, lines 13-15) Subsequent testimony revealed that Plaintiff tested negative for this disease. Dr. Smith testified that even males who carried this disease would frequently test negative for Trichomonas, and in males the disease often clears up without treatment. (Trial Transcript, p. 88, lines 10-25; p. 89, lines 1-7) Therefore, the fact that Plaintiff tested negative for the disease requires no additional corroboration, and counsel was not deficient for failing to obtain an expert witness to testify to an uncontroverted fact.

3. Plaintiff further complains that he lacked understanding about the nature of the charges and asserts that he did not commit this crime. Based upon Plaintiff's prior contact with the criminal justice system, I do not believe Plaintiff's assertion is credible, and I find Plaintiff's testimony that he was unfamiliar with the nature of this case to be unsupported by the record. Plaintiff took the stand and denied sexually assaulting the minor victim. The jury was in a superior position to judge the credibility of the witnesses, and by their conviction they obviously considered the minor victim's testimony more credible.

4. Plaintiff also asserts that trial counsel was deficient in "wishing the little girl well" when trial counsel concluded his cross of the minor victim. (Trial Transcript, p. 51, lines 16-17) I find that trial counsel's remarks are so innocuous that, even if they could be considered prejudicial, they did not affect the verdict. The court is very familiar of the inherent dangers of cross examining a minor child, and juries will often hold an excessively aggressive cross examination of a child against defense counsel and the accused. Counsel's brief statement to the minor victim was little more than an effort to demonstrate appropriate courtesy to a minor witness who, per the transcript, had obviously experienced emotional difficulty in testifying. (Trial Transcript, p. 21, lines 11-15; ,p. 25, lines 2-4 "Here is a Kleenex."; p. 39, line 13-19; p. 41, lines 6-9)

5. Similarly, Plaintiff's assertion that counsel's reference to the O.J. Simpson case was deficient and prejudicial is unsupported. First, the reference was fleeting. (Trial Transcript, p. 34, line 25) Second, trial counsel was using the reference to explain why the defense would not get final argument since they intended to present a defense. (Trial Transcript, p. 34, lines 25-25; p. 35, lines 1-10) Accordingly, when read in context with the point trial counsel was making in his opening statement, trial counsel's reference was both appropriate and certainly non-prejudicial.

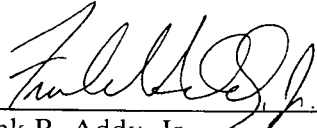
6. Finally, Plaintiff argues that trial counsel was deficient in bringing out the fact that Plaintiff was in jail serving a forty-five (45) day sentence for minor charges when the minor victim made the accusations. Taken as a whole, the reference to Plaintiff being in jail was necessary to explain the sequence of events leading up to his arrest and also relates to Plaintiff's implied assertion that the minor victim's mother had fabricated the accusation out of mercenary desires. (Trial Transcript, p. 105, lines 24-25; p. 106, lines 1-4)

7. As to Plaintiff's final assertions concerning his taking the witness stand and the dismissal of the lewd act charges, I do not find counsel deficient in these regards. First, the court finds trial counsel's testimony credible with regard to the issue of Defendant taking the stand. Taking the stand was absolutely necessary in order for Plaintiff to present his defense; additionally, based on the long-standing relationship between Plaintiff and his trial counsel, trial counsel's belief that Plaintiff would be a good witness is amply supported in the record. Second, concerning the lewd act charges, those indictments were dismissed at the insistence and encouragement of the trial judge due to apparent confusion on the part of the jury. (Trial Transcript, p. 140, lines 24-25; p. 141, lines 1-9; p. 145, lines 1-25, p. 146, lines 1-7) Because Plaintiff's defense was that he never engaged in any improper activities with the minor victim, no prejudice could result in the court's removal of the lewd act allegations from the jury's consideration.

8. I have reviewed the trial transcript in full, and I find there are no reasonable grounds to support Plaintiff's general requests for relief. During the trial there may have been some instances where a relevancy objection could have been interpose; however, the court finds that no prejudice resulted which would have reasonably altered the outcome of the trial.

9. Accordingly, Plaintiff's application for post-conviction relief is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

November 21, 2011
Greenwood, South Carolina

CHARLES T. BROOKS, III
THE BROOKS' LAW OFFICES, LLC
309 BROAD STREET
POST OFFICE BOX 3512
SUMTER, SOUTH CAROLINA, 29151

*James W.
Elkins*

COLUMBIA, SC 29211
23 NOV 2011 PM 3:17



South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

29211+1330

