

# FALK LAW FIRM, LLC.

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**RECEIVED**

SEP 06 2016

**S.C. SUPREME COURT**

March 3, 2016

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

Re: Troy Wright 2015-CP-10-1828

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.; Troy Wright 244763.

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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SEP 06 2016

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

**S.C. SUPREME COURT**

Honorable John C Hayes, Circuit Judge

Case No.: 2015-CP-10-1828

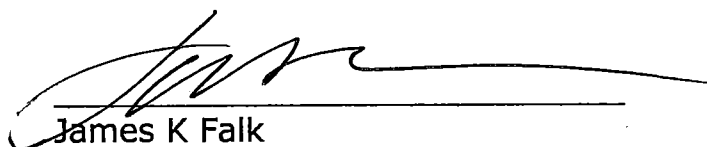
Troy Wright 244763.....PETITIONER

V.

State of South Carolina.....RESPONDENT

**NOTICE OF APPEAL**

The Petitioner Troy Wright appeals the Honorable John C Hayes' August 9, 2016, Order dismissing this PCR action. Undersigned counsel received notice of entry of the order on August 19, 2016. A copy of the order on appeal is attached hereto.



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

August 31, 2016

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

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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SEP 06 2016

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas **S.C. SUPREME COURT**

Honorable John C Hayes., Circuit Judge

Case No.: 2015-CP-10-1828

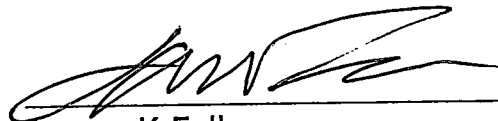
Troy Wright 244763.....PETITIONER

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, 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 August 31, 2016.



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

3c  
AG  
AT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Troy Wright, #244763, )  
 )  
Applicant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent, )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-10183

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Applicant filed this Post-Conviction Relief application on March 27, 2015. The Court heard this matter on August 1, 2016. Applicant was represented by Jim Faulk, Esquire; the State was represented by J. Rutledge Johnson, Esquire.

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 at the December 2014 term of the Charleston County Grand Jury for assault and battery of a high and aggravated nature (ABHAN) (2014-GS-10-7119). Cantrell Frayer, Esquire, represented him. On January 7, 2015, the Applicant pled guilty as indicted under Alford.<sup>1</sup> The Honorable Kristi Harrington sentenced the Applicant to confinement for twenty (20) years provided that upon service of eight (8) years the sentence would be suspended with five (5) years' probation. The Applicant did not appeal his sentence or plea.

In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
  - a. "Counsel knew elements of CDV-HAN existed yet coerced Applicant to plead to a greater offense"

<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

JCH

Applicant's claim in an allegation of ineffective assistance of plea counsel. In a Post-Conviction Relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 334 S.E.2d 813.<sup>2</sup>

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 v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. 117, 386 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, she 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).

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<sup>2</sup> The same standard applies to pleas of guilt.

Applicant's theory, as best deciphered by the Court, is that trial counsel exposed him to a possible twenty year, violent, and serious offense of Assault and Battery of a High and Aggravated Nature (ABHAN), by not informing him of the statute's collateral consequences associated with ABHAN.

This theory is purely and simply wrong. Applicant testified that he turned down an offer of a ten year sentence on the charge of Assault and Battery, First Degree. He testified he did not want ten years, but wanted something less and wanted new counsel. Unfortunately, for Applicant, the ten year offer was mooted when he was indicted for ABHAN.

Applicant's theory is just that, a theory. It is a theory without substance. His choice not to plea to the ten year offer for Assault and Battery, First Degree was his own. His indictment for ABHAN after he rejected the ten year offer was an action by the State, and is an action over which trial counsel had no control.

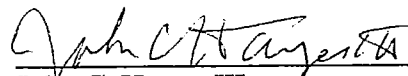
Wherefore, I find Applicant has not carried his burden of proof as to elements of his stated grounds for relief, and has not proven trial counsel was ineffective.

Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

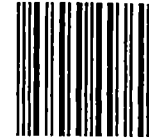
JC  
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\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge

August 9<sup>th</sup>, 2016  
Charleston, South Carolina  
York



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Supreme Court of South Carolina  
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