

RECEIVED

OCT 17 2016

S.C. SUPREME COURT, 3. 2016

Daniel E. Shearouse

Case No: 2015-CP-10-1828

I'm writing you on behalf of my P.C.R. case that I been to on Aug 2, 2016. J. Rutledge Johnson the attorney general on my case send me back my paper work saying my P.C.R. was denied and I would like to know how can this be when he did not have my summary of testimony, Findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003) in the paper work but he also didn't have the conclusion. As you can see in the paper work I send you copy of, that he is using process default, committing fraud and obstruction of justice for with holding evidence so can you please look in to this matter for me?

I would like you to look into James K. Falls because I mail him my attachment facts to my P.C.R. stating that the solicitor breach the agreement by imposing the maximum sentence, when she say was not going to make a recommendation as it states on my sentencing sheets but he would not let me read it out in court. I told him to get the doctor report and he would not get that for me and I told him to do a propose order and he did not do that for me. I have send you a copy of his letter also stating he have not filed my attachment facts. Not only my first counsel

was ineffective but James K. Falk my P.C.R. counsel
also was ineffective.

Thank you

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-10-1828

ORDER

2016 AUG 15 PM 2:34
JULIE E. HARRINGTON, CLERK

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.¹ 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"

¹ 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 813.²

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).

² 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.

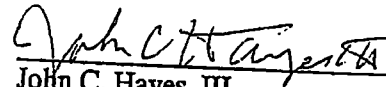
Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

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.

Ji K #3

August 9th, 2016
Charleston, South Carolina
York



John C. Hayes, III
Presiding Judge



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

John C. Hayes, III
Judge

Moss Justice Center, 2nd Floor
1675-1H York Highway
York, SC 29745-7434
Phone: (803) 628-3047
Fax: (803) 628-3055
jhayesj@sccourts.org

August 9, 2016

The Honorable Julie J. Armstrong
Clerk of Court
100 Broad Street, Suite #106
Charleston, SC 29401

Re: Troy Wright, #244763 v. State of South Carolina
C.A. No. 2015-CP-10-1828

Dear Ms. Armstrong:

Please file the enclosed Order and forward a clocked copy to counsel.

Thanking you, I am

Yours very truly,

A handwritten signature in cursive script that reads "Frances J. Kirkman".

Frances J. Kirkman
Administrative Assistant to the
Honorable John C. Hayes, III

Enclosures

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

January 19, 2016

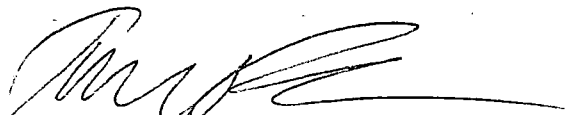
Troy M. Wright 244763
MacDougall Correctional
1516 Old Gilliard Road
Ridgeville, SC 29472

Dear Mr. Wright:

I received your September 28, 2015 attachment to your PCR application. I have not filed it as I think it is unnecessary and would provide the State with more information than necessary. All that is necessary is that you state specific grounds for your PCR application, and it is not necessary to provide any factual support for those grounds in the PCR application.

The information you provided will be helpful in our preparation for your PCR hearing.

Regards



James Falk

Troy Wright # 244763
1516 Old Gilliard Rd.
Ridgeville, S.C 29472



Daniel E. Shearouse
Clerk's office
P.O. Box 11330
Columbia S.C 29211

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