

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Charleston County

S.C. SUPREME COURT

Honorable John C. Hayes, Circuit Court Judge

TROY M. WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001817

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE 2014-GS-10-07119

STATE OF SOUTH CAROLINA)
)
VS.)
)
TROY MARION WRIGHT,)
)
DEFENDANT.)
_____)

PLEA

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Wednesday, January 7, 2015, Commencing at 11:34 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

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[None]

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PROCEEDINGS

THE COURT: Are you Troy Marion Wright?

MR. WRIGHT: Yes, ma'am.

THE COURT: I'm going to need you to speak loudly. Can you do that for me?

MR. WRIGHT: Yes, ma'am.

THE COURT: Mr. Wright, please raise your right hand.

[Whereupon, Mr. Wright complies]

THE COURT: Thank you. I'm going to place you under oath.

[Whereupon, Mr. Wright is duly sworn by the Court as follows: do you swear or affirm that the testimony you are about to give this Court is the truth, the whole truth, and nothing but the truth, so help you God]

MR. WRIGHT: Yes, ma'am.

THE COURT: Thank you.

Ms. Frayer, you represent Mr. Wright?

MS. FRAYER: That's correct, Your Honor.

THE COURT: Ms. Young, you are here representing the State?

MS. YOUNG: Yes, Your Honor.

THE COURT: Mr. Wright, you're here to plead guilty on 2014-GS-10-7119, which is a true billed

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1 indictment for assault and battery of a high and
2 aggravated nature. Are you pleading guilty here
3 today?

4 MR. WRIGHT: [No response]

5 THE COURT: Mr. Wright?

6 MR. WRIGHT: [No response]

7 [Whereupon, Ms. Frayer and Mr. Wright confer]

8 THE COURT: I need to hear it from you. Are you
9 pleading guilty, not guilty, or something else?

10 MS. FRAYER: Your Honor, he's asking me about
11 the Alford.

12 [Whereupon, Ms. Frayer and Mr. Wright confer]

13 MR. WRIGHT: Guilty under Alford.

14 THE COURT: Sir, do you believe that the State
15 will be able to -- would be able to produce witnesses
16 that would testify to a fact as you've been -- you're
17 entitled to a jury trial and if this case went before
18 a jury, a jury most probably would find you guilty
19 beyond a reasonable doubt?

20 MR. WRIGHT: Yes, ma'am.

21 THE COURT: Ms. Frayer, you discussed with
22 Mr. Wright the benefits and the consequences of this
23 plea and do you agree this is a benefit to him?

24 MS. FRAYER: Yes, Your Honor, I did.

25 THE COURT: Mr. Wright, tell me how old you are.

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1 MR. WRIGHT: Thirty-four.

2 THE COURT: How far did you go in school?

3 MR. WRIGHT: The ninth.

4 THE COURT: Ninth grade?

5 MR. WRIGHT: Yes, ma'am.

6 THE COURT: Do you have your GED?

7 MR. WRIGHT: No, ma'am.

8 THE COURT: Why not?

9 MR. WRIGHT: That was something I was going to
10 try to do when I got out on the street, but coming
11 back and forth to court I haven't had time. But I was
12 working, though.

13 THE COURT: Are you working now?

14 MR. WRIGHT: Yes, ma'am.

15 THE COURT: Where are you working?

16 MR. WRIGHT: Coastal Roofing.

17 THE COURT: And what do you do there?

18 MR. WRIGHT: Roofing.

19 THE COURT: You are a roofer?

20 MR. WRIGHT: Yes, ma'am.

21 THE COURT: Are you married? Do you have
22 children?

23 MR. WRIGHT: I've got one child, a little girl.

24 THE COURT: Ever been treated for the abuse of
25 drugs or alcohol?

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1 MR. WRIGHT: No, ma'am.

2 THE COURT: Ever been treated for mental
3 illness?

4 MR. WRIGHT: No, ma'am, except for this time
5 right here.

6 THE COURT: Tell me about that. Tell me about
7 your mental illness.

8 MR. WRIGHT: I had to go there because I tried
9 to slice my wrist and I got like eighty [phonetic]
10 stitches.

11 THE COURT: Are you on medication?

12 MR. WRIGHT: Yes, ma'am.

13 THE COURT: And what medication are you on?

14 MR. WRIGHT: For depression.

15 THE COURT: Does it affect your ability to
16 understand what we're doing here today?

17 MR. WRIGHT: No, ma'am.

18 THE COURT: Have you understood all of my
19 questions?

20 MR. WRIGHT: Yes, ma'am.

21 THE COURT: Ms. Frayer, any concerns about the
22 medication that he is on affecting his ability to
23 understand what we are doing here today?

24 MS. FRAYER: None, Your Honor.

25 THE COURT: Mr. Wright, you do not have to plead

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1 guilty. By pleading guilty, you are giving up certain
2 rights: your right to a jury trial, your right to
3 have a jury determine your guilt beyond a reasonable
4 doubt based upon the evidence the State presents, as
5 well as any evidence you may introduce, your right
6 against self-incrimination, your right to say nothing
7 at all, your right to confront and be confronted by
8 the witnesses against you, as well as the right to
9 call witnesses on your behalf. By pleading guilty
10 under Alford here today, you give up any defense that
11 you have to this charge. Do you understand those
12 rights?

13 MR. WRIGHT: Yes, ma'am.

14 THE COURT: And do you waive those rights at
15 this time?

16 MR. WRIGHT: Yes, ma'am.

17 THE COURT: You're here to plea on assault and
18 battery of a high and aggravated nature, ABHAN. I can
19 sentence you up to twenty years. Do you understand
20 that's the possible punishment?

21 MR. WRIGHT: Yes, ma'am.

22 THE COURT: This is also classified as a violent
23 and a serious offense. Do you understand that?

24 MR. WRIGHT: Yes, ma'am.

25 THE COURT: Knowing that, do you still wish to

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1 go forward here today?

2 MR. WRIGHT: Yes, ma'am.

3 THE COURT: You have the right to appeal this
4 plea and the sentence that I impose but you or your
5 attorney must do so within ten days. Do you
6 understand?

7 MR. WRIGHT: Yes, ma'am.

8 THE COURT: Have you been satisfied with the
9 services of Ms. Frayer?

10 MR. WRIGHT: Yes, ma'am.

11 THE COURT: Any complaints about the way she has
12 handled this case?

13 MR. WRIGHT: No, ma'am.

14 THE COURT: Please listen to the facts.
15 Ms. Young?

16 MS. YOUNG: Thank you, Your Honor. May it
17 please the Court.

18 This occurred around October 19th, 2013, around
19 4:00 a.m. Officers responded to [REDACTED]
20 in Charleston County. It was the Circle K gas
21 station.

22 The victim, Barbara Barrett, who's in the
23 courtroom today, she was working the night shifts at
24 the time and she and the victim -- she and the
25 defendant previously had an intimate relationship a

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1 few months prior to this. Despite ending that, the
2 defendant would still come to the gas station when she
3 was working and kind of hang out in the area and what
4 she would describe as making sure no other guys came
5 around.

6 On the night of the incident, he showed up
7 around midnight and waited around like usual. Around
8 4:00 a.m., she went outside to talk to him. He
9 confronted her about talking to another guy. At that
10 point eyewitnesses say the defendant grabbed her by
11 the neck and lifted her up off the ground, so her feet
12 were dangling, and he bit her nose. At that point, he
13 dragged her behind a propane tank. He threw her on
14 the ground, got on top of her, and began beating her
15 severely. One eyewitness would testify at trial that
16 he had an object in his hand when he was beating with
17 her -- beating her on her head. She suffered --

18 Your Honor, if I may approach?

19 THE COURT: You may.

20 MS. YOUNG: I wanted to show you some
21 photographs of the injuries.

22 THE COURT: Have you seen these, Ms. Frayer?

23 MS. FRAYER: Yes, Your Honor.

24 MS. YOUNG: Yes, Your Honor.

25 [Whereupon, Ms. Young proffers documents to the

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1 Court]

2 MS. YOUNG: Due to the fact that he struck her
3 so many times, she went in and out of consciousness.
4 You'll see from the injuries there's a laceration on
5 her head and there's two circular injuries on the
6 other side of her head. We would have a doctor
7 testify at trial, the doctor that treated her, that
8 those injuries could not have been caused by a fist,
9 they were caused by some object, what we would believe
10 was a brick. There was brick debris in the area.

11 Your Honor, the victim does not remember, you
12 know, what happened from that point on. The three
13 eyewitnesses helped her back into the gas station.
14 When police arrived, she was in and out of
15 consciousness, was able to relay to officers before
16 she passed out that it was Troy Wright that assaulted
17 her due to their prior engagement together. Video
18 surveillance in the store also shows them talking,
19 just before they go out, as being around 4:00 a.m.

20 Your Honor, as far as the injuries, the victim
21 was hospitalized for approximately three days. She
22 suffered a nasal fracture, skull fracture, and severe
23 lacerations on her face. And you can see the
24 defensive wounds on her hand where she was putting it
25 out maybe where the object may have hit her. She also

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1 had approximately 230 stitches. And, in addition, she
2 currently still does not have feeling on her forehead
3 and nose area where he bit her. I spoke with the ER
4 doctor. He would testify at trial that that feeling
5 probably won't ever come back due to the severity of
6 the injuries.

7 Lastly, Your Honor, she also quit her job after
8 the incident. She couldn't return there due to her
9 fear and too many memories from the incident.

10 The defendant's prior record, starting with the
11 most recent, is: 2010, assault and battery of a high
12 and aggravated nature; 2008, two counts of simple
13 assault; 2007, threatening the life of a public
14 official; 2006, simple assault; 2005 --

15 THE COURT: What did he receive on the 2010
16 ABHAN?

17 MS. YOUNG: I believe that he -- I will double-
18 check. I believe it was the old ABHAN, but I think it
19 was ninety days. Let me double-check that.

20 [Whereupon, Ms. Young review documents]

21 MS. YOUNG: Ninety days, Your Honor.

22 THE COURT: All right. Thank you.

23 Does the victim wish to address the Court?

24 MS. YOUNG: Yes, Your Honor.

25 THE COURT: I'll be happy to hear from her.

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1 MS. YOUNG: Thank you.

2 THE COURT: Ma'am, I need you to state your name
3 for the record and please spell your last name.

4 MS. BARRETT: My name is Barbara Barrett. B-A-
5 R-R-E-T-T.

6 THE COURT: Yes, ma'am.

7 MS. BARRETT: Thank you for letting me speak,
8 Your Honor.

9 I just wanted to say that this has had a long
10 impact on me as in fear of being at my house, outside,
11 moving around. I just -- I still have paranoia. I
12 have permanent scars now that I have to deal with.
13 From time to time I get headaches.

14 THE COURT: Thank you, Ms. Barrett. Thank you
15 for being here.

16 MS. BARRETT: Thank you.

17 THE COURT: Does anyone else wish to address the
18 Court?

19 MS. YOUNG: Your Honor, Sargent Thompson has
20 been very involved with the case. I don't think he --
21 he was just here for support for the victim. The
22 State, given his lengthy record of assault and the
23 severity of his actions that night, we would ask you
24 to impose the maximum sentence.

25 THE COURT: Mr. Wright, you heard the facts as

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1 presented by the State. You are pleading guilty under
2 Alford. Do you believe that the State would be able
3 to produce witnesses that would testify to those facts
4 and if you went to a jury trial a jury most probably
5 would find you guilty beyond a reasonable doubt?

6 MR. WRIGHT: Yes, ma'am.

7 THE COURT: I find a substantial factual basis
8 for your plea. Your decision to plead guilty has been
9 freely, voluntarily, knowingly and intelligently made.
10 You've indicated to the Court you've had the advice
11 and counsel of a competent attorney with whom you've
12 told the Court you were satisfied. I hereby accept
13 your plea of guilt under Alford.

14 As I understand it, this was on the trial docket
15 to begin tomorrow? Or was this a today's case?

16 MS. YOUNG: Today, Your Honor.

17 THE COURT: Ms. Frayer, I'll be happy to hear
18 from you regarding sentencing.

19 MS. YOUNG: Thank you, Your Honor, and may it
20 please the Court.

21 And Mr. Wright told you, he is thirty-four years
22 old, born and raised in Charleston. He was living
23 with his father. His mother passed away back in 1999
24 from a blood clot. He told you he did attend North
25 Charleston High School up until the ninth grade. He

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1 was working at California Dreaming for a long time in
2 2014, and then he lost that job and began to become
3 depressed. Got another job at Baker Car Dealership
4 detailing cars, but that job would only allow him to
5 work when it wasn't raining so he, knowing that he
6 needed a stable income, started working at Coastal
7 Roofing. And that's where he works now, and he pretty
8 much enjoys that job.

9 Your Honor, when I initially met with
10 Mr. Wright, immediately requested a competency
11 evaluation. When I met with him, he would not
12 communicate, very flat affect.

13 I observed the cuts on his wrist and asked him
14 about it. At first he said, they told me that I cut
15 my wrist and tried to kill myself. He had no memory
16 of the incident of trying to cut himself. He had been
17 admitted to -- taken to Roper -- St. Frances Hospital
18 and then from there he was hospitalized at Palmetto.

19 Your Honor, I've already submitted this to the
20 State. I have two documents I would like to submit.
21 May I approach?

22 THE COURT: You may.

23 [Whereupon, Ms. Frayer proffers documents to the
24 Court]

25 THE COURT: In relation to the ABHAN, when did

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1 this occur?

2 MS. YOUNG: The next day, Your Honor.

3 THE COURT: Thank you.

4 MS. FRAYER: The attempt -- the -- right. The
5 suicide attempt was the next -- well, later that --
6 because it happened at 4:00 and later that day when
7 the police went to his house, then they found him in
8 that state and had to take him to the hospital.

9 He was taken to Palmetto. And as a result of
10 that, the probate court had him evaluated and found
11 that he was mentally ill and needed involuntary
12 treatment for mental illness. Not even knowing that
13 the probate had done theirs, as soon as I met him I
14 felt like there was something that I needed to have
15 him evaluated for.

16 During that evaluation they found that he was
17 competent, however, that he was very depressed, that
18 he -- after the evaluation in December of 2013, he
19 wasn't evaluated until April of 2014. It confirmed
20 that he was severely depressed, suffered from alcohol
21 dependence, as well, and also had used cocaine in the
22 past.

23 He is currently getting mental health treatment
24 at Charleston Center, which is something that he did
25 not have in his past history.

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1 We understand that the State is requesting the
2 maximum. He was originally charged, Your Honor, with
3 assault and battery first degree and the charge was
4 later directly indicted after he did not plea to that
5 charge.

6 Your Honor, for the record, at the time this
7 case was placed on the trial docket, Mr. Wright had
8 informed me that he wanted a new attorney, so there
9 was not any type trial prep that I had done because I
10 was waiting for him to get the new attorney at that
11 time.

12 However, if I called him to ask him about that,
13 he would answer the phone for me. He would always --
14 he would come in for status conferences, come to the
15 office and he was there. He showed that he is a
16 stable worker. When I call him -- he doesn't have a
17 phone but he has the sense to give you a -- the number
18 of coworker that he can be reached with or a cousin,
19 Miss Lindsey, who I can contact him with.

20 Your Honor, the attempt on is -- to end his own
21 life by cutting his wrist and drinking bleach and
22 taking prescription medicine for his father's high-
23 blood pressure and cholesterol indicates to me
24 somebody that's deeply mentally ill and completely
25 troubled.

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1 Your Honor, what I'm asking is that -- I know
2 the State is asking for the max, which is twenty
3 years. We're asking for something lesser than that.
4 We're asking for some intensive mental health
5 treatment for him because that's what he needs. He
6 needs -- we feel that he needs that. He did do 105
7 days in jail before bonding out. And that's what --
8 that's our position on sentencing at this time. We
9 understand that the one of the issues that I did have
10 on him is the fact that -- and that's why we do this
11 under Alford, is his memory situation. He can't
12 remember cutting his wrist or -- but he does agree
13 that if we went to trial, it's likely with evidence
14 that would be presented and the testimony of the
15 witnesses, that he would likely be found guilty of
16 this charge, Your Honor.

17 THE COURT: Mr. Wright, anything you wish to
18 tell me?

19 MR. WRIGHT: No, ma'am.

20 THE COURT: You understand you are facing the
21 potential of twenty years in the department of
22 corrections here today?

23 MR. WRIGHT: Yes, ma'am.

24 THE COURT: Do you still wish for me to accept
25 your plea?

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1 MR. WRIGHT: Yes, ma'am.

2 THE COURT: And you've been satisfied with
3 Ms. Frayer's services? You still wish to go forward
4 with her as your counsel?

5 MR. WRIGHT: Yes, ma'am.

6 THE COURT: Anything further from the State?

7 MS. YOUNG: No, Your Honor.

8 THE COURT: It's the order of the Court on 2014-
9 GS-10-7119 that you be committed to the State
10 Department of Corrections for a term of twenty years
11 provided upon the service of eight year the balance is
12 suspended. I'll give you credit for 105 days. You
13 must obtain your GED, mental health treatment,
14 substance abuse counseling, random drug and alcohol
15 testing. There is to be no contact with the victim,
16 either directly or indirectly, by any means. Do you
17 understand what that means, sir?

18 MR. WRIGHT: Huh?

19 THE COURT: Do you understand what no contact
20 means?

21 MR. WRIGHT: Yes, ma'am.

22 THE COURT: Good luck to you, sir.

23 [PLEA CONCLUDES AT 11:51 A.M.]

24

25

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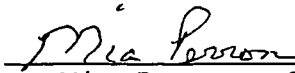
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the plea held before the Honorable Kristi L. Harrington on Wednesday, January 7, 2015.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 23rd day of May, 2015.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA)
County of Charles ton)

2015-CP-10-1828
IN THE COURT OF COMMON PLEAS

FILED
2015 MAR 27 PM 4:29
JULIE J. ARRASTRONG
CLERK OF COURT

Troy Marlon Wright,)
Full name and prison number (if any) of Applicant)
244763,)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McDonough Corr Inst, 1516 Old Gilliard Rd, Ridgville, SC 29472
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions.
3. Name(s) of co-defendant(s) (if any) None.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2000-14 (2014)

(b) Assault First Degree
(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) January 7, 2015
(b) _____
(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Guilty
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list: N/A

(a) the name of each Court to which you appealed: N/A
i. _____
ii. _____
iii. _____

(b) the result in each such Court to which you appealed: N/A
i. _____
ii. _____
iii. _____

(c) the date of each such result: N/A
i. _____
ii. _____
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results: N/A
i. _____
ii. _____
iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) My Attorney said I could not Appeal.

(b) _____
(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: *See Attached sheets*

(a) Ineffective Assistance of Counsel
(b) Counsel knew elements of CPV-HAN existed
(c) yet Coerced Applicant to Plead to a Greater offense

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Attached sheets
(b) _____
(c) _____

12. Prior to this application have you filed with respect to this conviction: N/A

(a) any petition in a State Court under South Carolina Law? _____
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
(d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A

(a) the specific nature thereof: N/A
i. _____
ii. _____
iii. _____
iv. _____

(b) the name and location of the Court in which each was filed: N/A
i. _____
ii. _____
iii. _____

iv. N/A

(c) the disposition thereof: N/A

i. _____

ii. /

iii. /

iv. _____

(d) the date of each such disposition: N/A

i. _____

ii. /

iii. /

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: N/A

i. _____

ii. /

iii. /

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? N/A

/

15. If you answered "yes" to (14) identify: N/A

(a) which grounds have been presented:

i. _____

ii. /

iii. _____

(b) the proceedings in which each ground was raised: N/A

i. _____

ii. /

iii. /

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: N/A

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Cantrell Frayer
Charleston County Office of
- ii. Public Defender, 101 Meeting Street
Charleston, SC 29401
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Plea
- ii. sentencing
- iii. _____

19. State clearly the relief you seek in filing this application:

To Have Charge of Assault in First Degree
Changed to Criminal Domestic Violence
High and Aggravated Nature based on Facts herein.

20. Are you now under sentence from any other court that you have not challenged?

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Tray Marion Wright #244763, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tray Wright

SWORN to and subscribed before me this 26th
day of March, 2015.

Lisa M Cross (L.S.)
Notary Public

My Commission Expires: Jan 16, 2024

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Troy Marion Wright #244763, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Troy Wright
Applicant

SWORN or affirmed to and subscribed before me this
26th day of March, 2015.

Lisa M. Cross
Notary Public

My Commission Expires: Jan 16, 2024

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

* Attached Sheets

①

The Same Elements of ABHAN, exists
in a Charge of Assault in the First Degree
and even in the Second Degree and in a CDV

* Troy Marion Wright, Respectfully States
that he is wrong Convicted
for ABHAN and for this
Honorable Court to take into
consideration all of the Actual Facts
of the case to include the Case
Laws and South Carolina Statutory
Codes involved to include the very
Essential Elements which Defines
and Distinguishes various Degrees of
Crimes from another, such as which
offenses are Deemed Lesser Included
Offenses

All of the essential elements in the
Applicant: Troy Marion Wright's particular
case pointed to either a Charge of
Assault in the First Degree or one of
Criminal Domestic Violence of a High and
Aggravated Nature (ABHAN type CDV)
Classified as CDV-HAN both of which
carries a far lesser sentence than actual
ABHAN. Attorney Cantrell Frayer, knew
that some of the same elements existed

(2)

which carries a sentence of between 0-3 years and has a Non-violent Classification.

For → Victims who sustained Non-Life Threatening Head Injuries and a fractured arm or ribs have been convicted of Assault and Battery in the Second Degree, even when a victim sustains a Broken Nose, or Swollen eye, etc. Its a Misdemeanor. The victim didn't suffer from any problems with mobility or movement from the alleged Head Injury, nor did the victim suffer from any Mental Defect or Instability.

As a matter of Fact Shortly after the Injuries) the alleged victim functioned as normally as she had prior to the Incident. The *Original Arrest was for Assault in First Degree. To penalize Applicant or Defendant Troy Maria Wright with a Conviction for ABHAN Counsel "knew" was extremely harsh and his Attorney of Record Did Not Fight to get him a Conviction for the Lesser

(2) Included offense, which would have been a conviction for Assault in the First Degree, 16-3-600-c which carries a 10 year Maximum or 0-10. As a matter of fact, Counsel failed to properly investigate the case and thought only of getting the Applicant to plead Guilty to his current charge. There was no weapon involved.

There were a number of Mitigative Circumstances involved in the case and one such is the fact that the accounts of what actually occurred was over Exaggerated by the so-called witnesses who blew the entire matter out of proportion.

The Charge was a Domestic one and because the victim and the applicant knew one another beyond a casual relationship. All of the Evidence points to a CDV or CDV-HAN. Because of such this Attorney could have demonstrated to the Court that the Elements

(4)

or FACTS in the case involved a Criminal Domestic Violence, since everything stemmed from a Domesticated problem or Dispute between Lovers.

It contains the very same key Elements as Assault in The First Degree, yet is a violent 65% and not 85% sentence. The Solicitor Enhanced or Changed Charge to ABHAN.

* Legal Analysis

The Applicant, Tray Wright received Ineffective Assistance of Counsel by virtue of Counsel, Cantrell Frayer Failure to Motion to Alleviate The Indictment against him which was a Nullity. The Evidence did not in any way point to an ABHAN. There are a Number of Cases where victims suffered or sustained far more and worst physical injuries But was only charged with either a: Misdemeanor CDV or Criminal Domestic Violence of a High And

Aggravated Nature.

To sentence Tray Marion Wright to an ABHAN is fundamentally unfair and a Miscarriage of Justice.

His Case goes beyond a Judge or Solicitor using their Discretion, since its the Elements of the Charge that was overlooked. There was a Lack of Evidence to support a Charge of ABHAN.

please see South Carolina Statutory Code, §16-3-600, (South Carolina Code of Laws, as Amended) (2012-2013),

Great Bodily Injury is defined as one which causes substantial risks of Death, or which causes serious or permanent Disfigurement.

This very same Element occurs in Assault in the First Degree which only carries 0-10 years.

See 16-3-600, section C(2).

(6)

See the following cases:

State v. Goldstein, 399 SC 393, 732 S.E. -
 2d 175 (S.C. App. 2012)

The very same element of Great Bodily Injury is prevalent or exists in a charge of Criminal Domestic Violence of a High and Aggravated nature, which is also a violent offense.

State v. Sullivan, 362 SC 373, 375, 608 -
 S.E. 2d 422 (victim suffered Broken Nose, Fractures and stitches)

State v. Sater, 396 SC 547, 722 S.E. 2d -
 233 (S.C. App. 2011)

See also State v. Bryant, 2010 WL 100-
 78840 (S.C. App. 2010).

With regards to Lack of sufficient

(7)

Evidence and Counsel being Ineffective in Representation of a Client, please See the Cases below:

Smith v. State, 407 S.C. 270, 754 S.E. - 2d 900 where a Defendants sentence was vacated ("overturned") based on a lack of Proper Representation by his attorney.

See also State v. Gamble, 405 S.C. - 409, 747 S.E. 2d 784.

See, Hill v. Lockhart, 474 U.S. 52, applying the Strickland Standard, - 466 U.S. 668.

The voluntariness of a [Guilty plea] is not determined by an examination of a specific inquiry made by a Sentencing Judge alone, but is determined from both the record made at the time of entry of the Guilty and also from the of the PCR Hearing.

See, Holden v. State, 393 S.C. 565, - 572-74, 713 S.E. 2d 611, 612-15 (2011).

(8)

In the case of Ray v. State, 303 S.C. — 374, 401 S.E.2d 151 (1991) (Finding Defendant's guilty plea was not Intelligently and Voluntarily made in light of the erroneous advice of his Attorney.

see also Alexander v. State, 303 S.C. — 539, 542, 402 S.E.2d. 484, 485, where the Court found that generally a Constitutionally Defective performance by an Attorney is found when a Lawyer offers False, misleading or Erroneous advice that is Essential and Central to Defendant's plea.

Troy Marion Wright's attorney failed to fight for him by pointing to the Honorable Court that all the facts pointed to a Criminal Domestic Violence and this is what She (Cantrell Frayer) should have pushed for instead of allowing him to blindly enter a plea Deal that was not in his best of Interest

and where he would have to serve 85% of a sentence on with Probation.

A conviction for Assault in The First Degree would have been better since it carried a sentence between 0-10 years.

Applicant, Wright is Not trying to expose himself to more time. He's merely wishing for the Court at a Hearing to review the Facts and for the Attorney Assigned to Represent him in this Application for Post Conviction Relief to **AMEND** this Application for PCR and Loyally Fight to get him a far Better Deal or Sentence than the one he has and point out how his Attorney was Ineffective.

Attached Sheet

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.

INDICTMENT/CASE#: 2014GS1007119

TROY MARION WRIGHT

A/W#: DIRIND2242

AKA: _____

Date of Offense: 10/19/2013

Race: BLACK Sex: M Age: _____

S.C. Code § : 16-03-0600(B)(1)

DOB: _____ SS#: _____

CDR Code #: 3411

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Assault and Battery of a High and Aggravated Nature

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ARTIST Willie Young 100083 Troy Wright Christina N. Gray 68144
Young, Kelley SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of 8 days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 105 days

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ 500.00

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/cv \$ _____

Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 13.90

TOTAL \$ 643.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

mountain market health

no contact w/ victim

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Shirley Perry

Court Reporter: Mirya Person

SCCA/217 (03/2011)

Presiding Judge Christina N. Gray

Judge Code: 01511

Sentence Date: 1/7/15

March 26 2015

Hon. Julie J. Armstrong
Court of Common Pleas
100 Broad Street - Chas, SC 29401

Re. Wright v. State

Dear Ms. Armstrong:
please find Enclosed my Notarized
Application for Post-Conviction (PCR)
for Filing. Thank you,

P.S. Also Enclosed
is my Civil Rights
Cover sheet

Troy Wright
Troy Norton Wright
244763 - McDougall C.I.
1516 Old Gilliard Rd.
Ridgeville, SC 29472

Applicant, pro se

State of SC County of Berkeley
The foregoing instrument was acknowledged before me
this 26th day of March, 2015,
by Troy M. Wright
Lisa M. Cross Notary Public
My Commission Expires Jan 16, 2024

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
)	
)	
Troy Wright, #244763,	)	2015-CP-10-1828
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed March 27, 2015, would respectfully show this Court:

I.

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 the Applicant. 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 the service of eight (8) years the sentence would be suspended with five (5) years' probation. The Applicant did not appeal his sentence or plea.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction(s), the application, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

II.

In his current Application, 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"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRC(a).

III.

The Applicant's claim is an allegation of ineffective assistance of plea counsel. The Respondent submits plea counsel rendered effective assistance of 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.

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. at 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, 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).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

(SIGNATURE BLOCK ON NEXT PAGE)

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

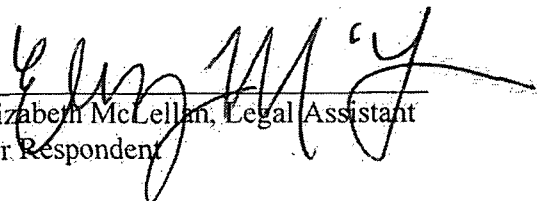
August 12, 2015.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
	)	2015-CP-10-1828
TROY WRIGHT, #244763)	
)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

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

DATED this 12th day of August, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	FOR THE 9th JUDICIAL CIRCUIT
)	
Troy Wright #244763)	
Applicant	)	2015-CP-10-1828
vs.)	
)	
State of South Carolina	)	AMENDED APPLICATION FOR
Respondent,	)	POST-CONVICTION RELIEF
_____)	

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

Applicant moves to file an amendment to his application for Post-Conviction Relief. Applicant incorporates all grounds for relief set forth in his initial application filed March 27, 2015 and adds the following as grounds for relief.

1. Trial counsel failed to fully advise applicant of the collateral consequences of the State's offer to allow Applicant to plead to Assault & Battery 1st degree.

The 9th Circuit Solicitor's office offered a plea to the lesser charge of Assault & Battery 1st. Trial Counsel advised Applicant that the state would seek the maximum 10 year sentence on the reduced charge. Trial Counsel failed to advise Applicant that pursuant to S.C. Code § 24-21-620 he would have been parole eligible after serving ¼ of his sentence. As a direct result of trial counsel's incomplete advice, applicant rejected the state's 10 year offer.

2. The Solicitor violated the terms of its plea agreement by asking the court to impose the maximum term of imprisonment.

Applicant plead guilty to Assault and Battery of a High and Aggravated Nature. Judge Kristi Harrington sentenced Applicant to the 20 year maximum term. Before agreeing to plead guilty, Applicant was lead to believe that the Solicitor would take no stand on sentencing. As noted on the sentencing sheet, the plea was entered *Without Negotiations or Recommendations*. At the sentencing hearing the Solicitor asked the judge for the maximum term. (Plea transcript p. 13 lines 19-25). Prior to pleading guilty Applicant was unaware that the Solicitor would ask for the most severe penalty. Applicant contends that either the Solicitor's office breached its agreement or trial counsel failed to advice Applicant of Solicitor's intentions to seek the maximum penalty. Had Applicant know that the Solicitor would seek the maximum penalty, he would not have agreed to plead.

Respectfully Submitted,



James Falk, Esq.
PO Box 1058
Charleston, SC 29402
(843) 606- 6007
(843) 972 9005 fax
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on July 23, 2016 a copy of the above was deposited in the US Mail to the above named party at the above identified address. Additionally and on the same day a copy of the above was emailed to the above named party at rjohnson@scag.gov.


James Falk

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STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF CHARLESTON)	Case No. 2015-CP-10-1828
_____)	
TROY WRIGHT,)	
)	
Applicant,)	
)	
vs.	)	Transcript of Record
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.	)	DATE: August 2, 2016
_____)	

B E F O R E :

THE HONORABLE JOHN C. HAYES

A P P E A R A N C E :

JAMES FALK
Attorney for the Applicant

J. RUTLEDGE JOHNSON
Attorney for the Respondent

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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EXAMINATION

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CANTRELL FRAYER

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Cross By Mr. Falk 17

Re-Direct by Mr. Johnson 24

1 MR. JOHNSON: May it please the Court. This is the
2 case of Troy Wright vs. The State of South Carolina, Case
3 2015-CP-10-1828.

4 Mr. Wright was indicted at the December 2014 term of
5 Charleston County Grand Jury for assault and battery of a
6 high and aggravated nature. Cantrell Frayer, Esquire,
7 represented him. On January 7th, 2015, he pled guilty as
8 indicted under *North Carolina vs. Alford*. The Honorable
9 Kristi Lea Harrington sentenced him to confinement of 20
10 years, provided upon the service of eight years, suspended to
11 eight years with five years probation. He did not appeal the
12 sentence or plea.

13 He filed this immediate action on March 27th, 2016.
14 State filed its return August 12th, 2015. And he is
15 represented here by Mr. Jim Falk.

16 THE COURT: All right. Yes, sir, Mr. Falk. You can
17 call your first witness. Tell me a little bit first about
18 what the issues are.

19 MR. FALK: We filed an amended PCR application in
20 this case. And there's really two main issues: That trial
21 counsel failed to fully advise the applicant of collateral
22 consequences of the State's first offer in this case; and the
23 second is that the solicitor violated the terms of the plea
24 agreement by asking the Court to impose the maximum sentence.

25 He was under the impression that this was a plea

1 agreement where there was going to be no recommendation as to
2 sentencing. And the solicitor asked for the court to impose
3 the maximum. So we are arguing a breach of implied plea
4 agreement. And would follow Supreme Court decision *New York*
5 *vs. Santobello*, which holds that he has contractual remedies
6 here and it's an enforceable contract and the solicitor
7 should abide by those terms.

8 THE COURT: First, he was fully advised of the
9 collateral consequences?

10 MR. FALK: He was originally arrested for A and B
11 first. And at some point, he was direct indicted down to
12 ABHAN. And the solicitor -- it would be our contention that
13 the solicitor brought him an offer that he could plead to A
14 and B first, but that the solicitor wanted all 10 years. My
15 client believes that his trial counsel should have advised
16 him of the fact that A and B first is, you know, not a
17 violent offense. He would have been parole eligible after
18 serving 25 percent and would have served after serving 51
19 percent of the sentence. As it stands, he ends up pleading
20 to a most serious and nonparolable offense.

21 THE COURT: I got you. Call your first witness.

22 MR. FALK: I will call my client to the stand.

23 THE COURT: Mr. Johnson, do I have the amended --

24 MR. JOHNSON: We got it late. I don't think it's
25 included. I actually don't have it in my package.

1 THE COURT: Again, we can get a copy made.

2 TROY WRIGHT,

3 having been duly sworn, testifies as follows:

4 THE CLERK: Please state your first and last name
5 and spell your last clearly into the microphone.

6 THE WITNESS: Troy Wright. Wright, W-r-i-g-h-t.

7 DIRECT EXAMINATION

8 BY MR. FALK:

9 Q. Mr. Wright, can you tell me who represented you at
10 trial? Who was your trial counsel?

11 A. Cantrell Frayer.

12 Q. And can you tell me something about the plea
13 negotiations in this case? Did she ever make a plea offer or
14 did she ever commute a plea offer to you?

15 A. No. The first charge it was something of a high and
16 aggravated nature, which she only stated one to ten years.
17 She then explained to me that it only carried 51 percent and
18 that I would have been eligible for parole after a year --
19 every year.

20 Q. So you were in custody at the time when she talked
21 to you?

22 A. No, I was out on bond.

23 Q. So you met with her in her office?

24 A. Yes, sir.

25 Q. And she had told you that the State was willing to

1 accept a plea in this case?

2 A. For the 10 years?

3 Q. Yeah.

4 A. Yep.

5 Q. And what all -- what specifically did she tell you
6 about the plea?

7 A. That the State was just asking for 10 years; that
8 they were going to recommend 10 years.

9 Q. And what was your response to that?

10 A. No.

11 Q. And why was that?

12 A. Because I thought I had to do it over 10 years.

13 Q. And so you were looking for something that you could
14 plead less to?

15 A. Yes, sir.

16 Q. Okay. Did you tell her that you wanted to go to
17 trial?

18 A. I tell her I wanted another lawyer. So that's when
19 they gave me enhancement charge.

20 Q. What is your understanding of the enhancement? You
21 got indicted for high and aggravated; is that correct?

22 A. Yes, sir.

23 Q. Okay. And when did that -- when were you advised
24 that you got indicted for high and aggravated?

25 A. Like, in December, when I call her and she tell me I

1 had to go to court in January.

2 THE COURT: I missed something. The first charge
3 before it was elevated to assault and battery high and
4 aggravated nature, what was he -- what was the charge?

5 MR. FALK: Assault and battery first.

6 THE COURT: I missed that. All right. Thank you.

7 BY MR. FALK:

8 Q. That's correct? You were originally charged with
9 assault and battery first?

10 A. Yes, sir.

11 Q. And then she called you. You went into her office
12 and she said you had to be in court in January?

13 A. Yes, sir.

14 Q. And that was just this past January; is that
15 correct?

16 A. Yes, sir.

17 Q. What happened then?

18 A. We got into court. And then she said that the State
19 wasn't making no recommendation, so I plead out.

20 Q. So were you ready to go to trial in January?

21 A. Was I ready to go to trial?

22 Q. Yes.

23 A. Yes, if I had to. Only reason why I plea out,
24 because the State said they wasn't making no
25 recommendation.

1 Q. Okay. But you otherwise were preparing to go to
2 trial?

3 A. Yes, sir.

4 Q. Okay. And you were told that the State was not
5 making a recommendation?

6 A. No, sir.

7 Q. Excuse me. I guess I asked that in the negative.
8 What was your understanding of what the State's position was?

9 A. No recommendation.

10 Q. And what did that mean to you?

11 A. That it wasn't going to make no recommendation when
12 I plead out.

13 MR. FALK: Okay. May I approach the witness, Your
14 Honor?

15 THE COURT: Yes.

16 MR. FALK: I'm going to show him a sentencing sheet.

17 BY MR. FALK:

18 Q. You've got the sentencing sheet. That's your
19 signature on top of -- on the sentencing sheet where it says
20 defendant?

21 A. Yes, sir.

22 Q. Okay. And do you see those two checked boxes above
23 the --

24 A. Yes, sir.

25 Q. What did that mean to you?

1 A. Recommendation.

2 Q. Okay. And so what did you expect the solicitor to
3 say when you came to sentencing?

4 A. She wasn't going to say -- she wasn't going to make
5 no time period, that she wasn't going to make no
6 recommendation, just like my attorney told me that she
7 wasn't.

8 Q. Okay. And what was your experience then when you
9 went to court?

10 A. How do you mean?

11 Q. What happened when you went to court?

12 A. She requested maximum sentence.

13 Q. Okay. Was that the first time you heard that the
14 solicitor was going to ask for the maximum sentence?

15 A. Yes, sir.

16 Q. Had you known the solicitor was going to ask for the
17 maximum sentence, what would you have done?

18 A. I would have gone to trial.

19 Q. When you went in to court that day, did you think
20 that you had a deal?

21 A. When I didn't ask for no maximum sentence, you mean
22 recommendation?

23 Q. Yeah.

24 A. Yeah.

25 Q. And the basis for your pleading that day was in

1 exchange for the recommendation that -- was in exchange for
2 her not making a recommendation; is that correct?

3 A. Yes, sir.

4 MR. FALK: I have no further questions.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q. Mr. Wright, you pled guilty and gave up your right
9 to a trial, correct?

10 A. Yes, sir.

11 Q. And the judge explained to you you were facing up to
12 20 years in prison, correct?

13 A. Yes, sir.

14 Q. And you actually said that you were satisfied with
15 your counsel's representation, correct?

16 A. Yes, sir.

17 Q. You had no complaints about how she handled the
18 case, correct?

19 A. Not at the time.

20 Q. And you were originally charged with assault and
21 battery first degree, right?

22 A. Yes, sir.

23 Q. And once the injuries to the victim came back, the
24 solicitor indicted you for assault and battery high and
25 aggravated nature, right?

1 A. I never seen no injuries.

2 Q. She had a facial fracture. She was beaten with a
3 brick behind a store, sir, correct? Is that what you plead
4 to?

5 A. No, that's what he said.

6 Q. That's what you pled to.

7 A. I plead to something about high and aggravated
8 nature.

9 Q. Sir, don't you have 2010 ABHAN convictions for these
10 before? Is that a yes?

11 A. Yes, it should be.

12 Q. And the solicitor asked for the maximum sentence,
13 correct?

14 A. Yes, sir.

15 Q. You realize you did not receive the maximum
16 sentence. You received 20 years suspended upon eight years
17 of service with five years probation.

18 A. But the State said they wasn't going to make no
19 recommendation at sentencing.

20 Q. But when the judge told you that you were facing a
21 20-year sentence, did you ever stop the judge and say, hold
22 on, I don't want to do this; solicitor said they weren't
23 going to make a recommendation? You never said that, did
24 you?

25 A. No, that's why I had an attorney for. I didn't know

1 I could have stopped them when she said asked for maximum
2 sentence.

3 Q. What did your attorney ask for, less than the
4 maximum, correct?

5 A. Yep.

6 Q. And you didn't get the maximum, did you?

7 A. No.

8 Q. Okay. And you do realize that if you are successful
9 here today, you go back and face the full 20 years?

10 A. Yes, sir.

11 Q. And you are willing to take that chance?

12 A. Yes, sir.

13 MR. JOHNSON: No further questions, Your Honor.

14 THE COURT: Redirect?

15 MR. FALK: We have no redirect.

16 THE COURT: You can step down and have a seat.

17 Thank you, Mr. Wright.

18 Call your next witness.

19 MR. FALK: We would rest.

20 THE COURT: Okay.

21 MR. JOHNSON: I call Cantrell Frayer to the stand,
22 Your Honor.

23 CANTRELL FRAYER,

24 having been duly sworn, testifies as follows:

25 THE CLERK: Please state your first and last name,

1 and spell your last name loudly and clearly into the
2 microphone.

3 THE WITNESS: Cantrell Frayer, F-r-a-y-e-r.

4 DIRECT EXAMINATION

5 BY MR. JOHNSON:

6 Q. Good morning. And thank you for coming back from
7 Virginia. Can you please tell me how you got involved in
8 Mr. Wright's case?

9 A. I was assigned this case by the public defender's
10 office.

11 Q. When did you first meet with him?

12 A. I first met with Mr. Wright at the Charleston County
13 Detention Center on -- in 2013 after his arrest.

14 Q. And did you have Rule 5 discovery at that point?

15 A. No. At that time, we didn't have any of the
16 materials.

17 Q. Subsequently, you obtained that information?

18 A. Yes, we obtained the videos and all of that
19 information and we had meetings with him in the office after
20 that time.

21 Q. Did he bond out?

22 A. He did bond out.

23 Q. Originally, he was charged with assault and battery
24 first degree?

25 A. Originally, that was the charge.

1 Q. And why was it elevated to assault and battery high
2 and aggravated nature?

3 A. It was elevated after the medicals and due to the
4 injuries that the victim suffered, facial fractures, and the
5 fact that the medicals showed that she had lost some feeling
6 in her face that she would never possibly regain and some
7 hearing loss.

8 Q. Did you explain that, that's why the solicitor was
9 indicting him for assault and battery high and aggravated
10 nature, to Mr. Wright?

11 A. Right. He was directly indicted for that charge and
12 I explained that to him.

13 Q. And he claims that there was a ten-year offer for
14 assault and battery. Was there ever a ten-year offer from
15 the solicitor?

16 A. I have reviewed the records. And, again, I flew in,
17 so I did a brief cursory review of all of my notes in here.
18 And I do not see a ten-year offer. I always discuss with the
19 client the possibility what I will ask the solicitor if they
20 reduce the charge and go back. And I see something in here.
21 Chad Simpson at one time was on the case, and I asked him
22 something about a reduction. And he said that he was going
23 to ask for the max. He would ask for a serious sentence on
24 it. There was Lindsey at one time -- Kelley Young actually
25 did the actual plea on the case. There's nothing in any of

1 my records about them offering him 10 years, in any of my
2 records that I have, any of my notes on it.

3 Q. But had there been a ten-year offer, you would have
4 relayed that to Mr. Wright?

5 A. I would have definitely relayed that to Mr. Wright.

6 Q. And on that ten-year, this imaginary ten-year offer,
7 would you have told him what Department of Corrections would
8 have calculated the sentence at?

9 A. I do not do calculations. That is something that
10 all of the good judges always tell us, it is not our job to
11 do calculations, because we cannot determine what South
12 Carolina Department of Corrections will estimate somebody's
13 time for the sentence that they will serve. So that's
14 something that I don't do. And, also, I didn't major in
15 math, so I don't try to do calculations at all.

16 Q. You would not have told 51 percent?

17 A. 51 percent, that's even an odd number that we
18 usually -- generally, that's not something -- a number that
19 people usually serve with time. So I'm not sure where that
20 number comes from.

21 Q. Okay. And then, apparently, there was an offer.
22 Was there a 20-year offer, or was there just the fact that he
23 was going to go in without recommendations or negotiations to
24 plead straight up to assault and battery high and aggravated?

25 A. Right. We were going in under an Alford plea. And

1 that's what we understood. The sentencing sheets, as I look
2 at the sentencing sheets, says without negotiations or
3 recommendation as indicted. And it was going in -- we were
4 going to do an Alford plea. And that was going to be -- he
5 was on the trial docket. And we had several trial
6 conferences with the judge and -- with Judge Harrington,
7 because she was the administrative judge.

8 And so November 17th, he came in, and also in
9 December. And I also had filed a motion to be relieved as
10 counsel because he had indicated that he wanted another
11 attorney. But that never -- he never got one. And so,
12 therefore, when the time came when it was on that last docket
13 in January, he presented himself in court, and we went
14 forward with the plea at that time.

15 Q. And he did, in fact, plead under Alford?

16 A. Yes, he did.

17 Q. And the judge, in fact, explained to him that he was
18 facing up to 20-year max?

19 A. That's correct.

20 Q. Have you had a chance to read the transcript?

21 A. Yes, I did.

22 Q. Can you point anywhere in there where the solicitor
23 makes any type of recommendation, where she says, we
24 recommend sentence of X or sentence of Y?

25 A. I believe she uses the language we were asking for.

1 And I believe when I do my -- I'm looking: Ask that you
2 impose the maximum sentence. She says that we asked. She
3 doesn't say we are recommending. She does say we asked. And
4 then when I respond, when I get my chance to address the
5 Court, I responded: I understand that the State is asking
6 for the max; however, we are asking for you to consider his
7 mental health treatment, et cetera, and that you give him
8 less.

9 Q. But so nowhere in there does the solicitor say, hey,
10 we recommend a sentence of X or a range of 12 to 15?

11 A. No.

12 Q. For example?

13 A. Nothing in the transcript that I can see.

14 Q. If she had, would you have objected to that or
15 withdrawn the plea?

16 A. Yes, I would have.

17 MR. JOHNSON: No further questions at this time,
18 Your Honor.

19

20

CROSS-EXAMINATION

21 BY MR. FALK:

22 Q. So you were referring to that on page 13, lines 9
23 through, I guess, 25?

24 A. Yes, sir. Yes, sir.

25 Q. So that's where she says: We would ask, based on

1 the severity of the actions, we would ask to impose the
2 maximum sentence?

3 A. Yes, sir. That's the only time I saw in the
4 transcript where she mentions anything about sentencing.

5 Q. Did you explain to your client the difference
6 between asking for something and recommending something, what
7 the solicitor's different positions would be as far as
8 recommending a sentence and asking for a sentence?

9 A. During the plea?

10 Q. Or at any time prior to him entering his plea.

11 A. I just told him that we were pleading under Alford,
12 that they -- we went over the sentencing sheet. I discussed
13 the sentencing sheet, and that is it.

14 Q. Did you tell him that they may recommend the max?

15 A. No. I still don't believe that she recommended
16 it.

17 Q. Did you tell him that she may ask for the max?

18 A. I think probably in our discussions all along, I
19 probably -- I think I -- all along, I told him about the
20 injuries of the girl, that the State wanted -- they really
21 wanted him to do some time because of the seriousness of the
22 injuries that she had suffered. They wanted him to do some
23 serious time. And I think I stressed that to him all along,
24 about they wanted him to do some serious time, the max, that
25 they weren't going to reduce it. I don't think that I

1 said -- I don't know if I said the max.

2 Q. When they had talked about -- when did you find
3 out -- so you are saying you never spoke with him about --
4 that he could plead to assault and battery first?

5 A. No. Once the charge was directly indicted, I don't
6 recall us having another conversation about that, that
7 charge, it being like reduced at a plea. I think I probably
8 said, now, what do you want me to do; what would you like me
9 to do for you? And I think he probably said that he wants --
10 you know, well, can I get that back? And I probably said,
11 well, sure, I will ask.

12 When my clients tell me they want me to ask for
13 something, I will ask for anything. I will ask for whatever
14 they want, because it's their life. It's their charge. I
15 think I have a duty to ask for whatever they are asking for.
16 So, sure, I probably went back to the solicitor. And, you
17 know, lots of times when I would be doing a plea or
18 something, the people in court would get on me, why are you
19 asking for that? Because that's what the client asked me to
20 do. So I probably did go back and say, hey, can you give
21 this guy a chance, do this. And I probably got slammed in
22 the face and said, they said no, or something like that. But
23 I never would have gone back to him and said, hey, they said
24 they would give you this for sure.

25 Q. Did you meet with him prior to them getting the

1 direct indictment?

2 A. Prior to the direct indictment?

3 Q. He was originally arrested on assault and battery
4 first and was assigned to a public defender?

5 A. Right.

6 Q. And then they got a direct indictment for the
7 assault and battery high and aggravated; is that correct?

8 A. Correct.

9 Q. Was there any meetings that you had with him between
10 the time of his arrest and you receiving notice that he was
11 being indicted for the higher charge?

12 A. Yeah. We would have had some meetings before then
13 because the direct indictment didn't come until -- I don't
14 think it was until a year later, I believe.

15 Q. Okay. So during the course of that year, did you
16 ever tell him that the solicitor wanted him to plead to the
17 full 10 years of assault and battery first?

18 A. No. I think we probably were going over discovery
19 and getting discovery in then during that time. And so then
20 I think once she got the medicals, that's when that direct
21 indictment came in. Correct. I'm thinking.

22 Q. I'm just trying -- was it -- is it your testimony
23 that you never told him he could plead to assault and battery
24 first?

25 A. Not that I remember.

1 Q. Okay. During those initial meetings, did you tell
2 him what collateral consequences there would be for pleading
3 to assault and battery first? That's what he was charged.
4 Did you tell him the collateral consequences of his charge?

5 A. Right. And I have to tell you that during our
6 initial meetings, he was not very commute -- he did not
7 communicate much. So I did have him evaluated. So he was
8 evaluated twice with me because he was not very commute -- he
9 did not communicate much. So he had an initial evaluation.

10 And then before the plea, I had him evaluated a
11 second time to make sure that his mental capacity was where
12 it should be. So I had him evaluated twice, just because
13 there was a suicide attempt after this by Mr. Wright, after
14 the incident. And so he did some time at Palmetto and all
15 that.

16 And then when I met him initially, he would stare
17 off. And some things he wasn't comfortable talking about.
18 So he wouldn't talk about the incident and stuff like that.
19 So I had him evaluated to make sure that, A, is he okay. So
20 the discussions at first weren't about sentencing, because he
21 wasn't there. He was not able to communicate. So, no, I
22 would not have discussed sentencing with him, because I was
23 trying to get him to open up about the case. Yeah.

24 Q. You testified earlier that you would never talk
25 about percentages of how long somebody would have to serve;

1 is that correct?

2 A. I don't do -- generally, it's been my practice of 14
3 years not to calculate. I don't do like -- I mean, some
4 people say, okay, that's 85 percent. That's a -- you know,
5 hey, this is on the sentencing sheet here, that's what I
6 read, most serious, serious, three strikes. That's -- I
7 think that's what they are most interested in, I think.

8 Q. Sure.

9 A. You know?

10 Q. But --

11 A. I don't think 51 percent, I don't even know what
12 charge carries 51 percent of a sentence that you have to do.

13 Q. But assault and battery first is a nonviolent
14 charge; isn't that correct?

15 A. And that's what I would have to lean to you on that.
16 I haven't practiced in over a year. So I'm not really up on
17 that today.

18 Q. Okay.

19 A. You have to forgive me.

20 Q. Fair enough. South Carolina has a statute that
21 lists violent charges and nonviolent charges. And one of the
22 consequences of pleading to a violent charge talks about when
23 somebody is going to be parole eligible. And South Carolina
24 statute discusses parole eligibility for people who are not
25 convicted of a violent charge. And the statute says that

1 after serving one-quarter of a sentence, he would be parole
2 eligible.

3 A. Uh-huh.

4 Q. That's not something that's necessarily within the
5 discretion of Department of Corrections. That is a South
6 Carolina statute.

7 A. Uh-huh.

8 Q. Would that have been something you would have
9 advised your client about?

10 A. If that were available to him about nonviolent and
11 violent? Yeah, of course, we would have discussed
12 nonviolent, whether it was a nonviolent crime or a violent
13 crime, right, after his evaluation period.

14 Q. And, again, is it your testimony that you told him
15 that when he went and finally pled in January 2015? Is it
16 your testimony that you told him that the State was going to
17 make some type of -- they were going to ask the judge for a
18 particular type of sentence?

19 A. It's my -- when we talked, when Mr. Wright and I
20 talked, I told him that the State wanted the max for him. We
21 were going to ask for something less, but they weren't going
22 to make a recommendation or a negotiation. They weren't
23 negotiating or making a recommendation, but they were going
24 to ask for the max. We were pleading under Alford. We were
25 going to ask for something less.

1 MR. FALK: No further questions.

2 REDIRECT EXAMINATION

3 BY MR. JOHNSON.

4 Q. Would you agree with me that making a recommendation
5 to the Court and asking are two different things?

6 A. Correct.

7 MR. JOHNSON: Thank you, Your Honor. No further
8 questions.

9 THE COURT: You may step down. Thank you.
10 Appreciate you coming back to see us.

11 MR. JOHNSON: The State has no further witnesses,
12 Your Honor.

13 MR. FALK: No further witnesses.

14 THE COURT: Anything else?

15 I will take it under advisement.

16 MR. JOHNSON: Thank you, Your Honor.

17 MR. FALK: Can we submit a proposed order?

18 THE COURT: No.

19 MR. FALK: I just want to draw the Court's
20 attention -- or if I can just say, I think this fits. My two
21 points are, I think this fits pretty closely to *Santobello*,
22 404 U.S. 257. And, I mean, the whole argument here is
23 whether my client is supposed to be able to appreciate the
24 difference between what the solicitor, when they can ask for
25 something and recommending something. There may be a

1 distinction that is important to the solicitors and maybe the
2 attorneys. But I'm not sure my client had any idea that he
3 could go in there and the solicitor would still be asking for
4 the maximum sentence when he was told they were not going to
5 make any recommendation.

6 I'm not sure that we should hold my client
7 accountable for understanding the difference in those two as
8 it would apply in a sentencing hearing. My client testified
9 that he thought he was going to go in and the solicitor
10 wasn't going to have to say anything and it was going to be
11 all in the judge's hands.

12 THE COURT: Well, is that a question or is it a
13 question whether or not the State complied with their
14 contract, whether he understood it or not? I follow what you
15 are saying. And I agree that is a very crucial -- I mean,
16 very important. But slicing it, isn't the real issue as
17 presented whether or not the State complied with what they
18 said they were going to do? It's a fine line.

19 MR. FALK: It is a fine line. And the *Santobello*
20 case is a recommendation case where they said they would, and
21 came back and recommended. I'm saying under these settings,
22 I'm not sure my client had any idea that there's a difference
23 between the State still being able to say, we want the max,
24 but we are not going to recommend anything.

25 THE COURT: I follow it. I will look at it and

1 read. I'm familiar with *Santobello*, not the Bell case,
2 but --

3 MR. FALK: That was what I said, *Santobello vs. New*
4 *York*.

5 THE COURT: Oh, I thought we were talking about two
6 different cases. I got you.

7 MR. FALK: Thank you, Your Honor.

8 MR. JOHNSON: Thank you, Your Honor.

9 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 15th day of September, 2016, at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

374
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-00188

RECEIVED

SEP 08 2016

S.C. SUPREME COURT

JULIE H. HARRINGTON
CLERK OF COURT

2016 AUG 15 PM 2:34

FILED

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).

J. H. Harrington

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).

²The same standard applies to pleas of guilt.

JC 1-1/2

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 H
#3

John C. Hayes, III
John C. Hayes, III
Presiding Judge

August 9th 2016
Charleston, South Carolina
York

KFN20131108614

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1316979

ARREST WARRANT NUMBER

DIRIND2242

DATE OF ARREST

December 1, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *[Signature]*

DEC 1 - 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1007119

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2014

THE STATE

vs.

TROY MARION WRIGHT

DOB:

B/M

Indictment for

Assault and Battery of a High and Aggravated Nature

FILED

12/11/2014 8:54:46 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)


INDICTMENT

At a Court of General Sessions, convened on December 1, 2014 the Grand Jurors of Charleston County present upon their oath:

Assault and Battery of a High and Aggravated Nature

That in Charleston County, South Carolina, on or about October 19, 2013, the Defendant, TROY MARION WRIGHT, did commit an assault and battery of a high and aggravated nature constituting an unlawful act injuring the victim, , and either great bodily injury to the other person resulted or the act was accomplished by means likely to produce death or great bodily injury; all in violation of Section 16-3-600(B)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


KELLEY YOUNG
ASSISTANT SOLICITOR