

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM UNION COUNTY  
Court of Common Pleas

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J. Mark Hayes, Circuit Court Judge

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Appellate Case No. 2018-000880

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James A Giles,

Petitioner

vs.

State of South Carolina,

Respondent

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MOTION TO HOLD APPEAL IN ABEYANCE PENDING RESOLUTION OF PCR  
COUNSEL'S MOTION TO RECONSIDER, ALTER, AMEND AND/OR SET ASIDE ORDER

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Petitioner, by counsel moves the court to hold this appeal in abeyance pending a final decision by the Union Circuit Court on PCR counsel's motion to reconsider, alter, amend and/or set aside order.

1. On April 20, 2018 the Honorable J. Mark Hayes, II signed the Order dismissing Petitioner's application for Post-Conviction Relief.
2. On May 11, 2018 Beth Ramsey Faulkner, Esquire filed the Notice of Appeal.
3. On May 22, 2018 Beth Ramsey Faulkner, Esquire filed a MOTION TO RECONSIDER, ALTER, AMEND AND/OR SET ASIDE ORDER in the Union Circuit Court seeking to alter or amend the Honorable J. Mark Hayes' II order of dismissal. (Petitioner's Rule 59e Motion). A copy of Petitioner's Rule 59e Motion is attached hereto.

4. As of this date the Union County Circuit Court has yet to rule on Petitioner's Rule 59e Motion.

5. In its 59e Motion Petitioner asks the Union Circuit Court to include the following language in the order of dismissal: *While the record indicates that second counsel may not have been as aggressive and thorough in her representation of applicant (and arguably deficient), the guilt of the applicant was clearly established and thus, the conclusion that error by counsel was prejudicial would be speculative.* Petitioner alleges that in an email to counsel Judge Hayes instructed that the preceding language be included in the order of dismissal.

6. Additionally in its 59e Motion Petitioner alleges that Judge Hayes's finding that Petitioner was not prejudiced by trial counsel's deficiencies was against the weight of the evidence presented at the PCR evidentiary hearing and therefore the order of dismissal must be set aside.

7. The language set forth in paragraph 5 above does not appear in Judge Hayes' final order of dismissal. Instead the order states that Petitioner failed to demonstrate that his counsels' performances were unreasonable under prevailing professional norms.

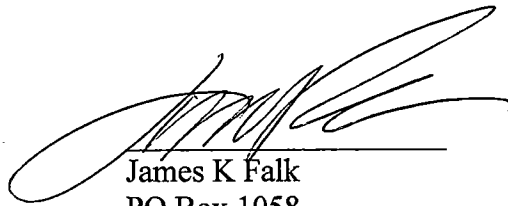
8. The language that PCR counsel alleges that Judge Hayes directed to be included in the order of dismissal is in conflict with the language actually included in the final order dismissing the PCR application. The language set forth in paragraph 5 above reflects a finding that Petitioner met its burden of proof under the first the two-prong test set forth in *Strickland v Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Whereas the order of dismissal reflects a finding that Petitioner failed to meet its burden under the first prong of the Strickland test.

9. Undersigned counsel respectfully contends that Union Circuit Court must first resolve any alleged uncertainties in Judge Hayes' findings of fact and conclusions of law before this matter is ready for appellate review.

WHEREFORE, undersigned counsel respectfully moves that:

1. That this matter be held in abeyance until after the Union Circuit Court issues a final order on Petitioner's MOTION TO RECONSIDER, ALTER, AMEND AND/OR SET ASIDE the circuit court's June 22, 2018 order of dismissal.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'James K. Falk', written over a horizontal line.

James K Falk  
PO Box 1058  
Charleston, SC 29402  
(843) 606 6007  
Attorney for Petitioner

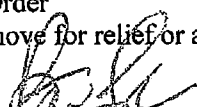
April 7, 2019

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF UNION )  
 )  
 James Albert Giles, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-44-295

MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET

Plaintiff's Attorney: Beth Ramsey Faulkner, Bar No. 77370 Address: PO Box 1030, York, SC 29745 Phone: 803-818-5700 Fax 803-818-5701 E-mail: beth@faulknerlawfirm.com Other: _____	Defendant's Attorney: Megan Harrigan Jameson, Bar No. _____ Address: PO Box 11549, Columbia, SC 29211 Phone: 803-734-4124 Fax _____ E-mail: mjameson@scag.gov Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	May 12, 2018 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input checked="" type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

FILED FOR RECORD  
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 CLERK OF COURT  
 UNION, SC

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF UNION )  
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 James A. Giles, )  
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 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
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IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-44-0295

**MOTION TO RECONSIDER, ALTER,  
 AMEND AND/OR SET ASIDE ORDER**

**YOU WILL PLEASE TAKE NOTICE** that the Applicant James A. Giles, through his undersigned counsel, will move before the Court of Common Pleas in Union County for the Sixteenth Judicial Circuit on the tenth (10<sup>th</sup>) day after service hereof for an Order altering, amending and/or granting relief from the Order of Dismissal executed by the Honorable Mark Hayes, II on April 20, 2018 and filed in the Office of the Clerk of Court on May 2, 2018. Counsel for Applicant received said Order of Dismissal on May 7, 2018. Such Motion shall be based upon South Carolina Rules of Civil Procedure 59 and 60, the case law of this state, and such other matters as may be presented at the hearing on this motion.

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The basis for such motion is as follows:

Applicant filed an Application for Post-Conviction Relief on July 22, 2014. With the consent of the Respondent, Applicant filed an amended PCR application on January 25, 2018 and a subsequent amended PCR application on January 30, 2018. Applicant also filed a Brief in Support of Applicant's PCR Petition on January 30, 2018. Based upon the foregoing petitions and brief, along with the testimony and evidence presented at the evidentiary hearing on

January 30, 2018, Applicant submits that he met his burden of proving that his attorneys Vanessa Cason and Lanelle Durant provided ineffective assistance of counsel.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625.

In the instructions to counsel with a ruling in this matter, the Honorable J. Mark Hayes, II instructed, via email to counsel:

"While the record indicates that second counsel may have not have been as aggressive and thorough in her representation of applicant (and arguably deficient), the guilt of the applicant was clearly established and thus, the conclusion that error by counsel was prejudicial would be speculative.

This finding is not set forth in the court's Order of Dismissal in this matter. If the Court is not inclined to set aside its Order of Dismissal, Applicant seeks for this finding to be included in the Order of Dismissal.

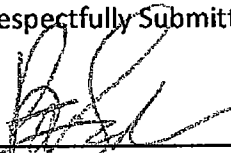
First and foremost, however, Applicant seeks to have the Order of Dismissal set aside. Attorney Vanessa Cason was deficient in her representation of Applicant, which was proven by Applicant when viewing the totality of her representation of Applicant.

The Court found that any conclusion that Vanessa Cason's shortcomings would have been prejudicial to Applicant's outcome would only be speculative. This determination is absurd and contrary to justice, when considering the evidence presented of Vanessa Cason's cumulative deficient representation, coupled with a guilty verdict in Applicant's trial.

**WHEREFORE**, the Applicant seeks an Order of this Court altering, amending and/or granting relief from the Order of Dismissal issued by this Court, and granting such other and further relief as the court deems just and proper.

York, South Carolina  
May 17, 2018

Respectfully Submitted,



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Beth Ramsey Faulkner  
Attorney for Applicant James Albert Giles  
Faulkner Law Firm, LLC  
P.O. Box 1030  
616 E. Liberty Street  
York, South Carolina 29745  
(803) 818-5700

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM UNION COUNTY

Court of Common Pleas

Honorable J Mark Hayes, Circuit Judge

Appellate Case No. 2018-000880

James A Giles.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within MOTION TO HOLD IN ABEYANCE PENDING RESOLUTION OF PCR COUNSEL’S MOTION TO RECONSIDER, ALTER AMEND AND/OR SET ASIDE ORDER upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Janell Gregory, Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that additional copies were served upon Beth Ramsey Faulkner, Esq at PO Box 1030 York, SC 29745 and the Union County Circuit Court Clerk at PO Box 703 Union, SC 29379-0703. I certify that all parties required by Rule to be served have been served this April 7, 2019

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

April 7, 2019

# 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

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April 7, 2019

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

RECEIVED  
APR 11 2019  
S.C. SUPREME COURT

Re: James A Giles v State of South Carolina 2018-000880

Dear Clerk Shearouse:

I enclosed originals and seven (7) sets of copies of a MOTION TO HOLD APPEAL IN ABEYANCE and CERTIFICATE OF SERVICE in the above Union County PCR action. Please return a clocked copy of the motion and certificate 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:

Janell Gregory, Esq  
James A Giles 264478  
Union County Circuit Court Clerk

**FALK LAW FIRM**  
PO Box 1058  
Charleston, SC 29402

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

