

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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APR 15 2019

CERTIORARI TO UNION COUNTY

Court of Common Pleas

S.C. SUPREME COURT

The Honorable J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2018-000880

JAMES A. GILES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO MOTION TO HOLD APPEAL IN ABEYANCE

In response to Petitioner's motion, Respondent would respectfully show this Court:

1. Petitioner proceeded to a post-conviction relief hearing on January 30, 2018 before the Honorable J. Mark Hayes, II. Following the hearing, Judge Hayes denied Applicant's post-conviction relief application by order filed May 2, 2018. Judge Hayes thoroughly addressed the following issues in his order:
 - a. Ineffective assistance of Petitioner's former counsel, Ross Burton, for coercing Petitioner into signing a court order to provide a blood sample.
 - b. Ineffective assistance of Petitioner's trial counsel, Vanessa Cason (Counsel), for failing to move to suppress any blood and DNA evidence.
 - c. Ineffective assistance of Counsel for failing to object to the procedure used to strike and choose the jury.
 - d. Ineffective assistance of Counsel for failing to give an adequate opening statement.
 - e. Ineffective assistance of Counsel for failing to investigate the State's witnesses.
 - f. Ineffective assistance of Counsel for failing to make a motion to dismiss the kidnapping charge.

- g. Ineffective assistance of Counsel for failure to cross-examine Ms. Wilburn on the kidnapping allegations and elements.
 - h. Ineffective assistance of Counsel for failing to file Rule 5 and/or Brady motions.
 - i. Ineffective assistance of Counsel for failing to suppress or object to the admission of testimony and evidence taken from the crime scene and the blood sample collected from Applicant based on a lack of establishment of chain of custody.
 - j. Ineffective assistance of Counsel for failing to cross-examine SLED Investigator Jeffrey Crooks.
 - k. Ineffective assistance of Counsel for failing to object to admission of crime scene photographs.
 - l. Ineffective assistance of Counsel for providing erroneous advice about sentencing.
 - m. Trial judge gave Petitioner improper Faretta warnings.
 - n. Ineffective assistance of appellate counsel for failing to raise on appeal the issue of whether or not there was any error by the trial court in the selection of the jury.
 - o. Ineffective assistance of appellate counsel for failing to raise on appeal the issue of the trial judge's Faretta warnings.
2. Respondent received a Notice of Appeal issued on Petitioner's behalf on May 8, 2018.
 3. Respondent then received Petitioner's Motion to Reconsider, Alter, Amend and/or Set Aside Order, which was issued on May 17, 2018.
 4. In his motion, Petitioner's requests the following language be added to the order of dismissal:

“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.”
 5. Respondent did not file a response to Petitioner's motion because the circuit court no longer had jurisdiction over Petitioner's case since he filed his notice of appeal first.
 6. A decision has not been made on Petitioner's motion because the Union County Circuit Court does not have jurisdiction over Petitioner's motion.
 7. Additionally, remand is unnecessary in this case because the language Petitioner is requesting Respondent add does not affect the substantive issues Petitioner would proceed

on in appeal since Judge Hayes' findings were clear that Petitioner could not prove prejudice.

8. Lastly, Judge Hayes' email did not instruct Respondent to include the specific sentence Petitioner has highlighted in their order, rather Judge Hayes instructed Respondent to draft the order denying the application and listed factors significant to his decision; all of which were incorporated within the final order of dismissal. The order was submitted to Judge Hayes and he initialed each page of the order and signed it without requesting any edits or additional language be added.

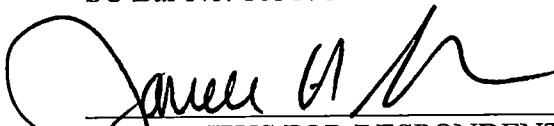
WHEREFORE, Respondent does not believe remand is necessary in this situation as the twenty-eight page order thoroughly addresses each of Petitioner's issues. Additionally, Judge Hayes reviewed and initialed each page and signed the order without requesting any additional findings be added prior to its issuance. Further, the sentence Petitioner is requesting be added is not dispositive to any issue Petitioner would raise on appeal since Judge Hayes' findings in that sentence show Petitioner could not prove prejudice. However, Respondent will defer to this Court on whether Petitioner's appeal should be held in abeyance.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
SC Bar No. 100108

JANELL H. GREGORY
Assistant Attorney General
SC Bar No. 103176



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April 15, 2019

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STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Motion to Hold Appeal in Abeyance**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, South Carolina 29402**

This 15th day of April, 2019.



CAROLINE COLLINS
Administrative Coordinator



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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

April 15, 2019

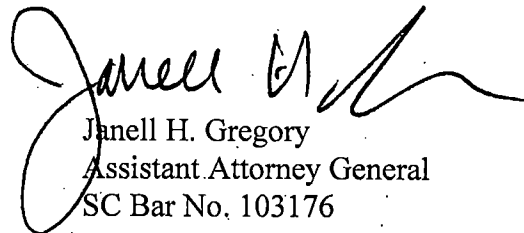
The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: James A. Giles v. State of South Carolina
Appellate Case No. 2018-000880
Lower Court Case No. 2014-CP-44-0295

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Motion to Hold Appeal in Abeyance. By copy of this letter we are serving opposing counsel today.

Sincerely,



Janell H. Gregory
Assistant Attorney General
SC Bar No. 103176

JHG/cc
Enclosures

cc: James K. Falk, Esquire (2 copies)