

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

April 19, 2019

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

RECEIVED

APR 23 2019

S.C. SUPREME COURT

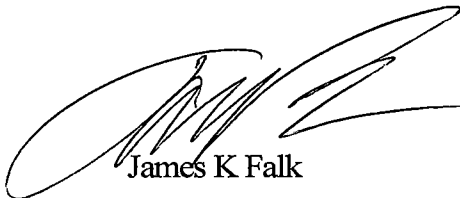
Re: Stanley Wright 337175 v State, 2017-CP-07- 2323

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and ORDER DENYING APPLICANT'S "MOTION TO RECONSIDER, ALTER OR AMEND PURSUANT TO RULE 59 (E), SCRCP" and Final Order of Dismissal in the above Beaufort County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

Thank you for your assistance.

Cc:

Benjamin Limbaugh, Esq
Stanley Wright 337175
Beaufort County Circuit Court Clerk

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 23 2019

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Honorable Jennifer B McCoy, Circuit Judge

Case No.: 2017-CP-07-2323

Stanley Wright 337175.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Stanley Wright appeals the Honorable Jennifer McCoy's April 4, 2019 order denying Petitioner's Motion to Alter or Amend the Court's March 11, 2019 Final Order of Dismissal. Undersigned counsel received notice of entry of the order on April 12, 2019. Copies of both orders on appeal are attached hereto.



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

April 19, 2019

Benjamin Limbaugh, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Clerk of Court- Beaufort CP
PO Box 1128
Beaufort, SC 29901

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 23 2019

APPEAL FROM BEAUFORT COUNTY

S.C. SUPREME COURT

Court of Common Pleas

Honorable Jennifer B McCoy, Circuit Judge

Case No.: 2017-CP-07-2323

Stanley Wright 337175.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Benjamin Limbaugh Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Beaufort County Clerk of Court. I further certify that all parties required by Rule to be served have been served this April 19, 2019.



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

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
 Stanley Wright, #337175,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

2017-CP-07-2323

ORDER OF DISMISSAL

RECEIVED
 CLERK OF COURT
 BEAUFORT COUNTY
 SOUTH CAROLINA
 JAN 10 2018 10:51 AM

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 30, 2017. An evidentiary hearing into the matter was convened on December 4, 2018, at the Beaufort County Courthouse. Applicant was present at the hearing and was represented by James K. Falk, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court were the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, the State's return, and Applicant's PCR application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. In November 2011, the Beaufort County Grand Jury indicted Applicant for trafficking cocaine, 200-400 grams (2011-GS-07-1852), possession with intent to distribute ("PWID") marijuana (2011-GS-07-1851), possession of a weapon during the commission of a violent crime (2011-GS-07-1853), PWID marijuana within proximity of a school (2011-GS-07-1854), and trafficking cocaine within one-

Jm | 1

half mile of a school or park (2011-GS-07-1855). The charges resulted from an August 2011 incident in which police responded to a 911 hang-up at Applicant's residence. Tr. p. 176, ll. 7-13. During a sweep of the residence, police saw marijuana in the master bedroom vanity sink and eventually detained Applicant, who had over one thousand dollars in cash on his person. Tr. p. 176, ll. 20-25 – p. 177, ll. 1-10. Pursuant to a search warrant, the Drug Task Force searched the residence and found over two hundred and twenty-two grams of cocaine and over five ounces of marijuana. Tr. p. 177, ll. 11-25.

Joenathan S. Chaplin, Esquire (“Trial Counsel”), and Charlie Jay Johnson, Esquire, represented Applicant at trial. Assistant Solicitors Ben T. Shelton and Mary Concannon prosecuted the case. On September 16, 2013, Applicant proceeded to trial before the Honorable Maite Murphy. The jury found Applicant guilty as indicted of trafficking cocaine, 200-400 grams, PWID marijuana, and possession of a weapon during the commission of a violent crime. The indictments for PWID within proximity and trafficking cocaine within one-half mile of a school or park were nolle prossed. On September 18, 2013, Judge Murphy sentenced Applicant to imprisonment for twenty-five years for trafficking cocaine, ten years for PWID marijuana, and five years for possession of a weapon during the commission of a violent crime. The ten year sentence for PWID was run concurrent with the trafficking charge, while the five years for possession of a weapon is consecutive.

Applicant filed a timely notice of appeal on September 18, 2013. Appellate Defender Robert M. Pachak filed a brief on Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). Subsequently, Sonya Chachere-Compton, Esquire, and Valerie V. Vie, Esquire, filed a motion to be substituted as counsel of record and to amend Applicant's brief. The South Carolina Court of Appeals granted Pachak's motion, substituted Chachere-Compton and

Vie as counsel, and struck all filings. After briefs were filed, the South Carolina Court of Appeals affirmed Applicant's conviction on May 24, 2017. State v. Wright, Op. No. 2017-UP-224 (Ct. App. 2017). The remittitur was returned to the circuit court on June 12, 2017.

II. ALLEGATIONS

At the PCR hearing, Applicant enumerated his allegation as follows:

1. Ineffective Assistance of Counsel

- a. "Failure to preserve challenges to the search of Applicant's home for appeal."

III. SUMMARY OF TESTIMONY PRESENTED

Trial Counsel was the only testifying witness at the PCR hearing.

Trial Counsel

Trial Counsel testified he felt he in fact did preserve for appeal the issues relating to the search of Applicant's home. As Trial Counsel explained, he did everything he could to suppress the drug evidence found in Applicant's home, but the trial judge nevertheless ruled against him. Trial Counsel recalled the trial judge ruled the search was legal as a warrantless search justified by the exigent circumstances doctrine where there is a risk of danger to police or others inside of a dwelling, and then, the drugs fell within the plain view of law enforcement who were rightfully and lawfully in position to view the subjects. Although Trial Counsel felt the vanity in which the drugs were found was too small to contain a person, Trial Counsel acknowledged the judge felt differently and the size of the vanity was presented at trial. Furthermore, Trial Counsel noted there was testimony at trial the vanity was large enough for a person.

As to the State's evidence against Applicant, Trial Counsel recalled police found \$1,480 cash in Applicant's pocket, and an additional \$1,000 in his living room. Trial Counsel also recalled the police executing the search of the home found a clear bag of marijuana and an open Crown Royal bag containing white powder in the vanity. Police also recovered a handgun, and

Applicant's debit card was located under the drugs. Trial Counsel acknowledged no one other than the Victim (the mother of Applicant's children) and Applicant's aunt testified at trial that law enforcement actually spoke with the victim at the park and therefore knew she would not be found inside the home. In fact, as Trial Counsel acknowledged, both Officers Archbell and Collier testified at trial they searched the house for the victim after they were informed by an Officer Irving that she did not in fact see the victim when she searched for her at the park.

Trial Counsel testified he did everything he could to have the evidence suppressed, but was simply unsuccessful. Trial Counsel recalled although Applicant was charged with drug charges and possession of a weapon during the commission of a violent crime, Applicant was never charged with domestic violence.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witness presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

This Court finds Applicant has failed to prove he is entitled to post-conviction relief on his allegation of ineffective assistance of counsel. This Court finds Trial Counsel rendered competent and calculated representation before and during Applicant's trial, and notwithstanding, Applicant has failed to satisfy his burden of proving prejudice from Trial Counsel's performance.

Applicant alleges Trial Counsel was ineffective for failing to adequately challenge the search of his home which led to the discovery of marijuana, cocaine, large sums of cash, and a handgun. Applicant contends Trial Counsel's failure to challenge the admission of this evidence prejudiced him because the issue was not preserved for appeal. This Court finds this allegation to be meritless. As this case is demonstrably devoid of prejudice, this Court will address the second

prong of Strickland first. “[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even address both components of the inquiry if the defendant makes an insufficient showing on one ... If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.” Strickland, 466 U.S. at 697. This Court finds, regardless of whether Trial Counsel failed to preserve the issue for appellate review, the search of Applicant’s residence which led to the discovery of the drugs in the vanity was clearly lawful. Accordingly, there is no reasonable probability the Court of Appeals would have reversed Applicant’s conviction and therefore no reasonable probability the result of the proceedings would have been different.

“[A] search or seizure carried out on a suspect’s premises without a warrant is per se unreasonable, unless the police can show ... the presence of ‘exigent circumstances.’” Coolidge v. New Hampshire, 403 U.S. 443, 474-75 (1971). “One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. ‘The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.’” Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (citing Mincey v. Arizona, 437 U.S. 385, 393-94 (1978)). A warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling, and in such cases, a protective sweep of the premises may be permitted. State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344 (Ct. App. 2004) (citing Minnesota v. Olson, 495 U.S. 91, 100, 110 S.Ct. 1684 (1990)).

In this case, law enforcement responded to Applicant’s residence as a result of a 911

hang-up from a female who sounded to be in distress. Tr. p. 184, l. 19; p. 209, l. 1. Throughout the 911 call, Applicant could be heard yelling at the victim, and the altercation could be heard escalating before the phone call abruptly ended. Tr. p. 122, l. 5. When law enforcement arrived, Applicant exited his front door but immediately closed it behind him. Tr. p. 185, l. 24. Pretrial testimony revealed Applicant acted nervous, was breathing heavily, and repeatedly looked back at the door while speaking with law enforcement. Pretrial Tr. p. 35, l. 8. Applicant told law enforcement the victim may be found at the nearby ball field. Tr. p. 218, l. 17. Deputy Ervin was then directed to look for the victim at the ball field. Tr. p. 218, l. 13. When Deputy Ervin returned to inform the officers at Applicant's residence that her efforts to locate the victim at the ballpark were unsuccessful, law enforcement conducted a protective sweep to look for the victim from the 911 call. Tr. p. 210, l. 7. As the officers testified, they did not enter the residence until they received word from Deputy Ervin that the victim could not be located at the ball field. Tr. p. 210, l. 15 – p. 211, l. 3. Given the nature of the 911 hang-up from the residence, Applicant's nervous temperament and attention toward the front door, and their inability to locate the victim, the trial court was clearly correct in concluding an exigency existed to justify searching the residence without a warrant. Pretrial Tr. p. 100.

Once law enforcement was lawfully in the house, their seizure of evidence including the marijuana and cocaine was lawful under the plain view exception to the warrant requirement. Under the "plain view" exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced into evidence. State v. Wright, 416 S.C. 353, 368, 785 S.E.2d 479, 488 (Ct. App. 2016). The two elements required to satisfy the exception are (1) the initial intrusion that afforded the authorities the plain view was lawful and (2) the incriminating nature

of the evidence was immediately apparent to the seizing authorities. Id. The trial court correctly found the facts of this case satisfied both criteria. Pretrial Tr. p. 102. First, as noted above, law enforcement's initial entry was clearly lawful under the exigent circumstances. Then, while conducting the search for the potential endangered person, they saw a clear bag of marijuana and a Crown Royal bag of white powder in a vanity which was large enough to contain an endangered person. Pretrial Tr. p. 102; Tr. p. 87, 196, 212. The incriminating nature of this evidence was immediately apparent. For these reasons, the drug evidence in this case was properly seized under the plain view exception after law enforcement legally entered the residence pursuant to the exigency. Accordingly, the trial court properly admitted the evidence, and there is no reasonable probability the Court of Appeals would have reversed Applicant's conviction on this issue. Therefore, Applicant cannot satisfy his burden of proving he was prejudiced by an alleged failure of Trial Counsel to challenge the issue and preserve it for appeal.

At the PCR hearing, Applicant questioned Trial Counsel as to whether he considered challenging the search under S.C. Code § 16-25-70(H). Trial Counsel did not challenge the search on this basis, but this statute is inapplicable to Applicant's case and would not have been a ground for suppression of the evidence. S.C. Code § 16-25-70(A) and (B) allow for arrest for domestic violence-related offenses based on probable cause or the presence of injury. The statute continues in relevant part:

(H) Evidence discovered as a result of a warrantless search **administered pursuant to a complaint filed under this article is inadmissible in a court of law:**

(1) if it is found:

(a) in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect; or

(b) pursuant to a search incident to a lawful arrest for a violation of this article or for a violation of Chapter 3, Title 16; or

(2) if it is evidence of a violation of this article.

An officer may arrest and file criminal charges against a suspect

for any offense that arises from evidence discovered pursuant to this section.

Unless otherwise provided for in this section, no evidence of a crime found as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in any court of law.

S.C. Code § 16-25-70 (Supp. 2014) (emphasis added).

The language of Subsection (H) is unambiguous. The provision only applies to warrantless searches administered pursuant to a complaint filed under the article related to criminal domestic violence. At trial, law enforcement testified Applicant was never charged with domestic violence. Tr. p. 219, l. 1. Furthermore, Trial Counsel confirmed at the PCR hearing Applicant was never charged with domestic violence. In fact, the testimony pretrial and at trial reveals law enforcement responded to the residence to due to a 911 hang-up, not a domestic violence complaint as there never was a domestic violence complaint. Tr. p. 184, p. 209. The clear statutory intent is meant to apply to allow law enforcement to affect the arrest of an individual, not searching for a victim. Regardless, it is clear the search in this case was not conducted pursuant to this statute, as law enforcement's search instead properly relied on the exigency doctrine and plain view exception. There is therefore no reasonable probability the outcome of the proceedings at trial or on appeal would have been any different had this argument been raised. Again, Applicant has failed to satisfy the second prong of Strickland as he was not prejudiced by any of the alleged deficiencies on the part of Trial Counsel, and this application is denied and dismissed with prejudice.

VI. CONCLUSION

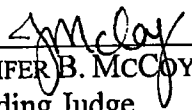
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 5th day of March, 2019.



JENNIFER B. MCCOY
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-07-02323

COUNTY OF BEAUFORT

Stanley Wright, #337175,

2019 APR 8 PM 12:12

ORDER

Applicant: ADI ROSE DENYING APPLICANT'S MOTION
BEAUFORT COUNTY TO ALTER OR AMEND THE COURT'S
CLERK OF COURT FINAL ORDER OF MARCH 11, 2019

vs.

State of South Carolina,

Respondent.

THIS MATTER came before the court by way of a post-conviction relief (PCR) application filed on October 30, 2017. An evidentiary hearing into the matter was convened on December 4, 2018, at the Beaufort County Courthouse. Applicant was present at the hearing and was represented by James K. Falk, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this court were the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, the State's return, and Applicant's PCR application.

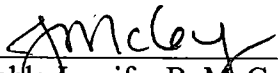
By written order dated March 11, 2019, this court determined that the Applicant failed to prove he is entitled to post-conviction relief based on his allegation of ineffective assistance of counsel. This court found trial counsel rendered competent and calculated representation before and during Applicant's trial, and notwithstanding, Applicant has failed to satisfy his burden of proving prejudice from trial counsel's performance. The Applicant timely filed a Motion to Alter or Amend pursuant to Rule 59(e) SCRCF on March 27, 2019.

JBM/1

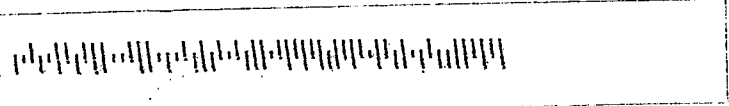
After considering the record in this matter, the arguments of counsel, and the applicable legal authorities, this court respectfully **DENIES** the Applicant's Motion to Alter or Amend and reaffirms its decision in the Order of March 11, 2019.

IT IS, THEREFORE, ORDERED that the Applicant's Motion to Alter or Amend the court's March 11, 2019 Order is hereby denied.

April 4th, 2019
Beaufort, South Carolina



Honorable Jennifer B. McCoy
Judge, Fourteenth Judicial Circuit



FALK LAW FIRM
PO Box 1058
Charleston, SC 29402

RECEIVED
APR 23 2019

S.C. SUPREME COURT

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