

Date: 9/30/19

Dear Clerk of Court,

I was indicted by an Horry County grand jury for Possession of a Weapon during the commission of a ~~Weapon~~ Crime and Murder on September 17, 2015. I proceeded to trial before Judge Steven John and jury on June 27, 2016. George DeBusts and Seth Ostkins appeared on behalf of the state, and Ralph Wilson, Sr. appeared on behalf of the defendant. Following a three-day trial, the jury me guilty of the Possession of a weapon charge and guilty of the lesser-included offense of Voluntary manslaughter.

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SC Court of Appeals

Judge John sentenced me to 27 years for the manslaughter and 5 years for the Possession of a weapon charge ran concurrent. On February 1, 2017, I filed a timely application for Post-Conviction Relief. It contained allegations of Ineffective assistance of Counsel: (1) trial counsel failed to file a Notice of Appeal on behalf of Applicant where Applicant asked counsel to appeal and counsel should reasonably have known Applicant would want to appeal, (2) trial counsel failing to adequately inform Applicant and the court of a potential or actual conflict of interest, and (3) trial counsel failing to object to the Solicitor's closing arguments and ask for a curative instruction, where Solicitor acted as a witness by arguing alleged facts that was not in evidence, which tended to bolster the credibility of false testimony of state witnesses, and where his argument was contradicted by testimony and other evidence, to the clear prejudice of the Applicant.

A evidentiary hearing was held before Judge Larry B. Hyman, Jr. on May 21, 2018. James K. Falls represented me, and Johnny E. James, Jr. appeared on behalf of the State. I testified at my PCR hearing, my Partner testified and my trial counsel (Ralph Wilson, Sr.) testified.

An order of Dismissal and Grant of Relief Pursuant to White v. State was filed on July 20, 2018. The PCR court granted me a Belated Direct Appeal and dismissed my remaining Post-Conviction relief allegations, including my claims of Ineffective assistance of Counsel.

The Division of Appellate Defense appointed me Taylor Davis Gilliam, Esq. Mr. Gilliam filed my Belated Direct Appeal and my Post Conviction Appeal at the same time, Appellate case No. 2018-001432. In my Anders Brief Pursuant to White v. State Mr. Gilliam filed a Petition to be relieved as Counsel and States: (1) He is an Appellate Defender for the South Carolina office of Appellate Defense, and was appointed to represent petitioner. (2) He has reviewed the record of Petitioner's trial

before Judge Steven John, which was held on June 27-29, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial, (3). He has, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed on arguable legal issue which arose during the course of the trial. WHEREFORE, He asks the court to relieve him as counsel for James Wilson. On the 15th day of March, 2014.

The only issue that Mr. Gilliam presented on my Belated Direct Appeal was whether the trial court erred in denying me motion for a direct verdict on the charge of murder, where that state failed to offer any substantial circumstantial evidence that I intended to kill the decedent with malice aforethought, where witnesses did not see me shoot her, and where I testified it was an accident? Mr. Gilliam refused to raise the claims that was presented on my PCR application that is of (1) Counsel Provided Ineffective assistance in failing to object to the Solicitor's closing argument and ask for a curative instruction, where the Solicitor acted as a witness by arguing alleged facts that was not in evidence, which tended to bolster the credibility and false testimony of state witnesses, and where his argument was contradicted by testimony and other evidence, to the clear prejudice of the Applicant, which I know now that this issue is Plain error on appeal, and (2) Trial counsel provided Ineffective assistance in failing to adequately inform Applicant and the court of the existence of a potential or actual conflict of interest where counsel and his son, who is also a lawyer, are cousins to the victim and the son represented a state witness who testified against Applicant, prior to, and after the incident. Even though the PCR court denied these issues, I know now that both of these claims should have been raised on my Belated Direct Appeal. Referring to the conflict of interest claim, it was obvious because due to the Cuyler v. Sullivan test, (1) Counsel was actively representing conflict of interest, which in my case my trial counsel was the victim's cousin and his son (also a lawyer) represented a state witness who testified against me at trial, (2) the conflict had an adverse effect on specific aspects of counsel's performance, which in my case trial counsel failing to object to the solicitor's improper arguments during closing, and acting as a state witness, further more counsel failed to file a Notice of Appeal on behalf of Applicant where Applicant asked counsel to appeal and counsel should have reasonably known that Applicant would want to appeal, which I was granted relief pursuant to White v. State on my PCR. I also wrote Mr. Gilliam a letter

mentioning these issues his response was:

Dear Mr. Wilson,

Date: Mar 28, 2019

I am in receipt of your letter. I wanted to follow up and ensure that you had received the Anders brief and Petition for Writ of Certiorari that I filed in March. If the Court grants Certiorari or allows me an opportunity to file additional documents, I will revisit your letter and include relevant concerns in further briefing.

Mr. Gilliam should have raised these issues from the begging because they're obvious, in fact these issues were so obvious that it appears that Mr. Gilliam ignored these issues intentionally and deprived me of my (6th) Sixth Amendment right to effective assistance of counsel, Hammon v. Ward 416 F.3d 919, 927-31 (10th Cir. 2006) (Appellate Counsel failure to assert that "trial counsel operated under perjudicial conflict of interest" was ineffective assistance because issue was obvious and would have resulted in reversal on appeal) However, the Clerk of Court sent me a letter on April 25, 2019, it was sent to Lieber Correctional Institution before it came to me at Broad River Correctional Institution in the month of May of 2019 it read:

Dear Mr. Wilson:

Date: April 25, 2019

As you know, your counsel has filed a petition for writ of certiorari asserting that you are entitled to a Related Direct Appeal from your criminal convictions. Regarding the direct appeal issues, your counsel has filed a brief indicating that any direct appeal issues are without merit and moves to be relieved as your counsel under Anders v. California, 386 U.S. 738, 87 S.Ct 1396, 18 L.E. 2d 493 (1967). The records in this office reflect counsel has served you with a copy of the petition for writ of certiorari, appendix and Anders brief.

You may, within forty-five (45) days of the date of this letter, file with this court a pro se brief addressing any direct appeal issues you believe the court should consider in this case. Upon receipt of your pro se brief or the expiration of forty-five (45) days, this case will be submitted to the court for its

## Consideration.

Regarding this letter I raised an outline of the Solicitor's "improper statements and acting as a witness during closing argument" the best I could but I had very little time and limited access to the law library at the time. And I did not know I could raise the conflict of interest issue on my Belated Direct Appeal. However, I am entitled to effective assistance of counsel do to the (6th) Sixth Amendment to the United States Constitution and Art. I, Sections 3 and 14, of the constitution of the state of South Carolina. These issues should have been raised on my Belated Direct Appeal but ~~the~~ Appellate Counsel failed to advocate for Applicant in a manner that might be expected of attorneys in criminal matters.

The only issue that was presented on my Writ of Certiorari was, did the PCR Court correctly grant Petitioner a Belated Appeal pursuant to White V. State, 263 S.C. 110, 108 S.E. 2d 35 (1974), where the undisputed evidence show he never knowingly and voluntarily waived his right to a direct appeal, and where the state conceded to allow a Belated Direct Appeal for Petitioner? It seems as though the issues that have been denied from my PCR are being pushed under the rug. These issues should have also be raised SPECIFICLY on my PCR Appeal. In my PCR Counsel's (James K. Falk) Notice of Appeal letter he states:

The Petitioner James A Wilson appeals the Honorable Larry B Hyman's July 17, 2018 order Granting Belated Appeal pursuant to White V. State and Denying All Remaining claims. Undersigned Counsel received notice of entry of the order on July 30, 2018. A copy of the order on appeal is attached to this notice.

There are other copies of Mr. James K. Falk order addressing my PCR Appeal Attached to this letter.

I respectfully request that Mr. Gilliam be removed from my case. I do not feel comfortable with him representing me on my Belated Direct Appeal and MY PCR Appeal which seems to be a conflict of interest, further I do not feel comfortable with him representing me at all. I also respectfully request an outside office attorney and/or my PCR attorney (James K. Falk) to take over my case

and to have a fair chance to amend my Belated Direct Appeal and my PCR Appeal issues. Again I have been deprived of my (6th) Sixth Amendment ~~effective~~ assistance of counsel that I am entitled to under the United States Constitution.

Thanks for your time and consideration.

Date: 9/30/19

Respectfully Submitted

James A. Wilson

Perry Correction Institution

430 Oaklawn Rd

Pelzer, S.C. 29669

(FACTS IN PCR TRANSCRIPT)

Note: If I am sent to another prison for any reason I will inform this court. I also request any other assistance that would be helpful to me in this matter.

Also in my PCR Transcript of Record that are Facts from my trial transcripts. On pg 19 (lines 21-25) Proved that the witnesses of the state testimony were not consistent with the evidence at trial. Pg 21 (lines 14-19) Prove that the solicitor was painting a picture that the victim was cowering down in a defenseless position, and there was never any testimony or evidence saying that the victim was in a defenseless position. U.S. V. Rodriguez, 581 F.3d 775, 803 (8th Cir 2009) (Prosecutor's statement during closing argument asking jury to imagine victim's "raw fear" improper because government did not introduce evidence of victim's fear. Pg 22 (lines 14-18) Nobody testified that the victim had dropped down, ducked, or anything. It is the jury's province to determine what version of the facts to accept. Pg 24 Proves that there was nothing in doctor's Batalis's testimony that proves I ever lied at trial (lines 14-20) as asserted by solicitor in closing arguments. Pg 25 Proves that Dr. Batalis never said my version as an accident was incorrect but that it was not the only way it could have happened. Showers v. Beard, 635 F.3d 625, 632-34 (3d Cir. 2011) (Procedural default excused because counsel failed to investigate available key evidence in support of defense theory and ignored argument directly on issue guilt that is clearly stronger than those presented). (Conflict of Interest Case, Gonzales v. State (Opinion No. 27095, Jan. 5, 2017), the S.C. Supreme Court held that the Court of Appeals erred in affirming the PCR Judge's order denying petitioner relief on the ground that trial counsel had a conflict of interest which adversely affected trial counsel's performance.

Special Procedures Where a White v. State Review is Sought. Where the Petition seeks review under White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1974), the following Procedure shall be followed:

① When the Post-Conviction relief Judge has affirmatively found that the right to a direct appeal was not knowingly and intelligently waived, the Petition shall contain a question raising this issue along with all other Post-Conviction relief issues Petitioner seeks to have reviewed. At the same time the Petition is served, Petitioner shall serve and file a brief addressing the direct appeal issues. This brief shall, to the extent possible, comply with the requirements of rule 208(b). Respondent's return to the Petition shall address the Post-Conviction relief issues, including whether the direct appeal was knowingly and intelligently waived. At the same time the return is due, respondent shall also serve and file a brief addressing the direct appeal issues. Within (10) ten days after service of respondent's brief, Petitioner may file a reply brief on the direct appeal issues.

There is no record to Prove I waived my right to Conflict of interest ~~by~~ by colloquy between court and defendant, between court and defendant's counsel, or Both. Brannon v. State (S.C. 2001) 345 S.C. 437, 548 S.E. 2d 866.

# 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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July 30, 2018

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

Re: James A Wilson v State of South Carolina, 2017-CP-26-00597

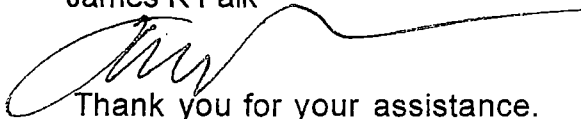
Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal and Grant of Appeal pursuant to White v State, in the above Horry 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: Johnny James Jr. Esq. James A Wilson 339674.

# FALK LAW FIRM, LLC.

James K. Falk

PH (843) 606-6007

FAX (843) 972 9005

jfalklaw@gmail.com

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July 30, 2018

James A Wilson 339674

Broad River Correctional

4460 Broad River Rd

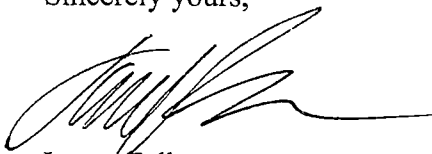
Columbia, SC 29210

Dear Mr Wilson:

I enclosed a copy of Judge Hyman's order granting you the right to file a belated appeal under White v State, but denying your remaining PCR claims. As a result you will have the right to appeal your General Sessions conviction. (a direct appeal) Additionally this notice also advises the Attorney General that you intend to appeal the denial of the other claims of ineffective assistance of counsel that we raised in your PCR application.

Once the Office of Appellate Defense receives notice that you filed an appeal, they will appoint someone from their office to represent you for your appeal. I am therefore closing my file on your case.

Sincerely yours,



James Falk

James A. Wilson #339619 DY-8  
Perry Correctional Institution  
430 Oaklawn RD  
Pelzer, SC 29669

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SC 29665  
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OCT 01 2019

P.C.I. MAILROOM

DANIEL E. SHEAROUSE  
CLERK OF COURT  
P.O. BOX 11330  
Columbia, S.C. 29211

RECEIVED

OCT 04 2019

SC Court of Appeals

LEGAL MAIL

29211-133030

