

APPENDIX

A

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 124,446

STATE OF KANSAS,
Respondent,

v.

SIDNEY J. CLARK JR.,
Petitioner.

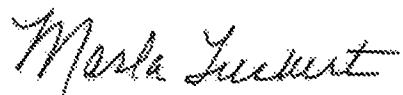
ORDER

The court has considered and denies Petitioner's motion to reconsider the court's January 28, 2022, order of dismissal.

This case is closed.

Dated this 25th day of February 2022.

FOR THE COURT



MARLA LUCKERT,
Chief Justice

FILED

OCT 15 2021

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

IN THE SUPREME COURT OF THE STATE OF KANSAS

STATE OF KANSAS

v.

SIDNEY J. CLARK JR.

: "Served on the attorney general as required by K.S.A. 75-764."

ORIGINAL ACTION IN MANDAMUS

APPEAL FROM THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

HONORABLE DANIEL CAHILL, CHIEF JUDGE

DISTRICT COURT NO. 84-CR-0172 ; KAN. SUP. CT. NO. 57,575-S

SINEY J. CLARK JR., K.D.O.C. NO. # 41605

HUTCH. CORR. FAC. C. MAX.

P. O. B. 1568 ; B1-231, C.H.

HUTCHINSON , KANSAS 67504

ORAL ARGUMENTS : 30 MIN.

FILED

IN THE SUPREME COURT OF THE STATE OF KANSAS

FEB 15 2022

STATE OF KANSAS

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

v.

SIDNEY J. CLARK JR.

KAN. SUP. CT. NO. 21-124446-S



MOTION TO RECONSIDER

SIDNEY J. CLARK J., THE PETITIONER AFTER RECEIVING A LETTER FROM THE KAN. SUP. CT., THAT, ON FEB. 7 TH, 2022 AT 1520 HR , I, S.J.C.JR. RECEIVED A LETTER BY WAY OF UT-CC1-RYAN M. ROHLING ; A COURT ORDER FROM KAN. SUP. CT. , JUSTICE, ERIC ROSEN FILED JAN. 28 TH,2022 MAILED JAN.31 ST,2022 THAT'S 11 DAY'S, SEE EXHIBIT # 1 ATTACHED. STATING "CONSIDERED AND DISMISSED THE PETITION FOR WRIT OF MANDAMUS, AS SUPPLEMENTED BY PETITIONERS WRIT OF ATTACHMENT AND WRIT OF SUPPLEMENTAL PLEADING . PETITIONER FAILED TO STATE A CLAIM FOR RELIEF AGAINST THE NAMED AND SERVED RESPONDENTS".

FIRST: THAT, PLEADING STATED ITS 'ENTER', INTO THIS CASE AS A FORCE IN LAW TO "SERVE THE CLAIMS ON THE SAID RESPONDENTS " SINCE THE RENO CO. DIST. CT. CLERK REFUSED TO DO THEIR STATUTORY DUTY'S BY LAW;

SECOND: THAT, ALL REQUESTED RELEIF IN THIS CASE MATTER IS BEFORE SAID COURT BE ENTERED IN THE " ORIGINAL ACTION " , NO PAGE 13, IN THAT PLEADING , AND THERE WILL NOT BE ANY FURTHER REQUEST'S FOR RELEIF THAT'S NOT IN THAT PLEADING, AS ALL GROUND ARE E NTERED,

THIRD: THAT, AT THE END OF THIS PLEADING STATED BY SAID JUSTICE ERIC ROSEN , S.J.C. JR.,

WHAT WAS ORDER IN THE LOWER COURT ORDER , BY THE RENO CO. DIST. CT. JUDGE , JOSEPH L. MCCARVILLE 3RD , FORE WHICH THE CLERK'S OF THE SAID COURT DID NOT DO; FOURTH : THIS , PLEADING FORE WHICH THE SAID HON. JUSTICE ERIC ROSEN HAS CENSORED IS A PROHIBITING ANY ONE FROM DENYING S.J.C.JR. HIS KAN. CONST. B.OF R. SEC. 1 , SEC. 3, SEC. 6, SEC. 7, SEC. 8, SEC. 9, SEC. 15, SEC 18 WITH OUT DELAY ! SEE BOARD OF COUNTY COMMISIONERS V. JORDAN , 303 KAN. 844 ; PEREZ V. NAT'L BEEF PACKING CO., 2021 KAN. APP. LEXIS 40 ; NAUSER , MDS, P.A. V. SCHMIDT , 309 KAN. 610, ID. AT HN 22 .. "ALTHOUGH THERE ARE NO KANSAS CASE'S APPLYING STRICT SCRUTINY TO NATURAL RIGHTS ".

FIFTH ; THAT , PURSUANT TO KAN. SUP. CT. R. 11.01 AND K.S.A.75-764 (b,c,e) THE , PETITIONER SHALL SERVE ON THE KANSAS ATTORNEY GENERAL A " NOTICE OF SERVES ON THE FRONT PAGE OF THE PLEADING STATING : "Served on the attorney general as required by K.S.A. 75-764.**" " THEREFORE , PETITIONER HAS WITH THIS PLEADING NOTICED THE KANSAS ATTORNEY.**

Document: Kan. Sup. Ct. Rule 11.01

• RULE 11.01 NOTICE TO ATTORNEY GENERAL OF CHALLENGE TO STATUTE OR CONSTITUTIONAL PROVISION

• (b) Form of Document

- In addition to the notice required by subsection (a), a pleading, brief, written motion, or other filing or paper served under this rule must include these words in bold, 12-point font under the case caption on the first page: "**Served on the attorney general as required by K.S.A. 75-764.**"

Document: K.S.A. § 75-764

- (a) It is hereby declared to be the public policy of the state of Kansas that the attorney general, as the state's chief legal officer, should have notice and the opportunity to appear and be fully heard before any statute or constitutional provision of this state is determined by the judicial branch to be invalid as violating the constitution of the state of Kansas, the United States constitution or any other provision of federal law. This section shall be liberally construed to effectuate that public policy.

- (b) Before declaring or determining any statute or constitutional provision of this state invalid as violating the constitution of the state of Kansas, the United States constitution or any other

provision of federal law, or enjoining any statute or constitutional provision for such invalidity, or entering any judgment or order that determines or declares such invalidity, a district court or any judge of the district court, whether acting in judicial or administrative capacity, shall require:

- (1) In any criminal case, that the state of Kansas has been given notice of the disputed validity and provided an opportunity to appear and be heard on the question of the validity of the statute or constitutional provision. Such notice shall be served by the party disputing validity on the prosecuting attorney representing the state in such criminal case. If the prosecuting attorney fails to respond to such notice, the court shall notify the attorney general of such failure to respond and shall provide the attorney general the opportunity to appear and be heard on the question of the validity of the statute or constitutional provision; and
- (2) in any civil case, and in all other matters, that notice of the disputed validity has been served on the attorney general by the party disputing validity, or by the court, and the attorney general has been given an opportunity to appear and be heard on the question of the validity of the statute or constitutional provision.
- (c) In any matter before the supreme court or the court of appeals, or any justice or judge thereof:
 - (1) A party that files a pleading, brief, written motion or other filing or paper that contests or calls into doubt the validity of any statute or constitutional provision of this state shall serve such filing or paper on the attorney general, accompanied by a conspicuous notice that the attorney general is being served pursuant to this section; and
 - (2) the court shall ensure that the attorney general has been provided notice and an opportunity to appear before determining any statute or constitutional provision of this state to be invalid as violating the constitution of the state of Kansas, the United States constitution or any other provision of federal law.

(e) Whenever notice is required to be served on or provided to the attorney general by this section, the attorney general shall be allowed at least 21 days from the date of such notice to appear or intervene, and if the attorney general does appear or intervene, the attorney general shall be given such reasonable additional time to be fully heard as the court may order.

"Served on the attorney general as required by K.S.A. 75-764."

677-10



The Supreme Court of Kansas

KANSAS JUDICIAL CENTER
301 S.W. 10TH AVE.
TOPEKA, KANSAS 66612-1507

5-141

SIDNEY J CLARK JR #41605
HCF
PO BOX 1568, B1-231, C.H.
HUTCHINSON, KS 67504

785,296,3229

PRO
Appellate

67504

neopostTM
01/31/2022
US POSTAGE \$000.46¹

FIRST-CLASS MAIL
AUTO



ZIP 66606
041L12205135

APPENDIX

B

Order

County:

Supreme Court of Kansas

301 SW 10th Ave.
Topeka, KS 66612
785.296.3229

SIDNEY J CLARK JR #41605
HCF
PO BOX 1568; B1-231,C.H.
HUTCHINSON, KS 67504

PRO SE

Appellate Case No. 21-124446-S

STATE OF KANSAS, RESPONDENT,
V.
SIDNEY J. CLARK JR., PETITIONER.

THE COURT HAS TAKEN THE FOLLOWING ACTION:

MOTION FOR REHEARING OR MODIFICATION BY PARTY.

CONSIDERED BY THE COURT AND DENIED.

Date: February 25, 2022

Douglas T. Shima
Clerk of the Appellate Courts

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 124,446

STATE OF KANSAS,
Respondent,

v.

SIDNEY J. CLARK JR.,
Petitioner.

ORDER

The court has considered and dismisses the petition for writ of mandamus, as supplemented by Petitioner's "writ of attachment" and "writ of supplemental pleading." Petitioner failed to state a claim for relief against the named and served respondents that his court has original jurisdiction to consider in the first instance.

This case is closed.

Dated this 28th day of January 2022.

FOR THE COURT



ERIC ROSEN, Justice for
MARLA LUCKERT, Chief Justice

KANSAS CLERK OF THE APPELLATE COURTS OFFICE
DOCKET EVENTS LIST

DOCKETCE - 4.00

Generated March 07, 2022 at 10:24 AM

2021 124446 S STATE V. SIDNEY J. CLARK JR.

Date	Description	Filed By
10/15/2021	PETITION FOR WRIT OF MANDAMUS FILED 1 000 PETITION FOR WRIT OF MANDAMUS (SIX PARTS) BY SIDNEY J. CLARK JR.	PETITIONER
10/15/2021	CLERK NOTE WITH DOCUMENT(S) 2 000 WRIT OF ATTACHMENT; WRIT OF SUPPLEMENTAL PLEADINGS BY SIDNEY J. CLARK JR.	PETITIONER
10/15/2021	CLERK NOTE WITH DOCUMENT(S) 3 001 COPIES OF THE CHECKS RECEIVED FOR PAYMENT OF THE DOCKET FEE & RECEIPTS	
10/15/2021	CLERK NOTE WITH DOCUMENT(S) 4 001 NOTICE TO THE PARTIES THAT A PETITION FOR WRIT OF MANDAMUS WAS FILED	
01/28/2022	ORIGINAL ACTIONS - OTHER DISPOSITION 5 001 Dismissed: Petition for Writ of Mandamus and Supplements. Case Closed.	
02/15/2022	MOTION FOR REHEARING/MODIFICATION 6 005 Motion to Reconsider by Petitioner, Sidney J. Clark, Jr.	PETITIONER
02/25/2022	MOT FOR REHEARING OR MODIFICATION-DENIED 7 006 by Petitioner, Sidney Clark. Case is closed.	PETITIONER

--- End of Report ---

FILED
2015 JUN 16 PM 2:31
CLERK DISTRICT COURT
WYANDOTTE COUNTY KANSAS
BY
COUNTY, KANSAS, A. P. UTY

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS.

SIDNEY J. CLARK JR.

Plaintiff,

VS.

Case No. 15-CV-560

STATE OF KANSAS

Defendant.

JOURNAL ENTRY

The Court has before it, plaintiff's "Petition for Writ of Habeas Corpus" filed pursuant to K.S.A. 60-1507. After a thorough review of the file in this matter, and consideration of the same, and the previous holdings by this Court and the appellate courts of Kansas, the Court finds:

1. On 14th of September, 1984, the plaintiff was found guilty of one (1) count of Rape in violation of K.S.A. 21-3502, and one (1) count of Aggravated Burglary, in violation of K.S.A. 21-3716, in a jury trial in Wyandotte County, Kansas District Court.
2. On September 24, 1984, the plaintiff filed a motion for a new trial, and on November 9, 1984 said motion was denied, and he was sentenced to 45 years to Life on the Rape conviction, and a term of 15 years to 60 years on the Aggravated

Burglary, with said sentences to be served concurrent to each other, with the sentences to begin May 19, 1984,

3. In an opinion filed on December 30, 1985, the Kansas Supreme Court affirmed the judgment of Wyandotte County District Court as to the plaintiff's conviction and sentence.
4. On March 26, 1997, the plaintiff filed his Motion for Relief in Wyandotte County District Court, and the same was denied April 4, 1997.
5. A Motion to Alter Judgment was filed April 22, 1997, and the same was dismissed March 9, 1998.
6. An additional Motion for Judgment was filed by the plaintiff on February 25, 2013, and the same was denied by Order entered on March 11, 2013. The plaintiff did file notice to appeal that order but the same was never docketed with the Appellate Courts.
7. No action has taken place in this matter since the March 11, 2013 order, until the filing of this K.S.A. 60-1507.

After full review of these transcripts and the files of this case, as well as the underlying case (1984CR172), this Court does hold as follows:

First, the Court finds that the Petition is beyond the statutory limits of K.S.A. 60-1507. The noted time limit for this case, by statute would be July 1, 2004. The filing in 2013 was denied for that reason, and no decision by the appellate courts has taken place to modify that holding. Clearly, this filing, made two years later does not in any manner jump-start the time limitations. The Court would also note that this petition is a second or subsequent request by the plaintiff wherein he is seeking

post-conviction relief. The law notes that such petitions are not favored and not to be allowed if the issues are being raised could have been raised at the time of the direct appeal or the first post-conviction review. This Court finds that to clearly be the situation presented, and as such the petition is barred by statute.

The Court does anticipate that the plaintiff will contend that the allegations of ineffective assistance of counsel can be raised by this pleading. The plaintiff alleges several instances of conduct by defense counsel that he maintains rises to the level of ineffective assistance of counsel. They are:

(From the original petition)

1. Did improperly represent the plaintiff by failing to move the Court to dismiss the Habitual Criminal Act and its application;
2. Failed to move the Court for acquittal once the K.B.I. report was introduced into the court;
3. Failed to remove a juror as requested by the plaintiff;
4. Failed to make the Texas prosecutor submit their files to the Court in Kansas.

Analysis

Defendants charged with crimes are guaranteed "reasonable effective" legal assistance. The two landmark cases on the subject are *Strickland v Washington*, 466 U.S. 668, and *Chamberlain v State* 694 P.2nd 468. To sustain a claim of ineffective assistance the plaintiff herein must show that the counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defendant.

The prejudice prong of *Strickland* requires the plaintiff to show there is a reasonable probability that, "but for counsel's errors, the result would have been different. A 'reasonable probability' is defined as a probability sufficient to "undermine confidence in the outcome." *Chamberlain*. A court considering a claim of ineffective assistance of counsel must apply a strong presumption that counsel's representation was within the wide range of reasonable professional assistance. Mr. Clark's burden is to show that "counsel made errors so serious that counsel was not functioning as the counsel guaranteed by the 6th amendment. The Court here is required to weigh this matter under that standard, and not view the matter as to whether the trier of fact was correct or not in his finding.

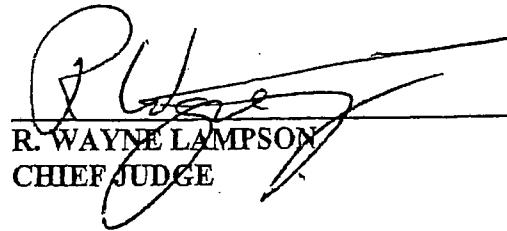
HOLDING

In examination of the claims of Mr. Clark, the Court has gone back and reviewed both the original criminal file, and the holding by the Kansas Supreme Court in the original appeal. After a careful examination of the same, it is the finding of this Court that the motion must fail as to all claims. It is clear that defense counsel did not perform in a manner that this Court finds to be ineffective. The evidence against Mr. Clark was substantial, and it is a stretch to suggest that a jury trial would have resulted in any different verdict than what was entered by the Jury.

The Court finds it unnecessary to comment on the second prong of the test. The Court further notes no evidence was presented to show that the claims now being made either were not or could not have been presented on direct appeal.

For the reasons noted herein, the petitioner's prayer for relief herein is considered and denied.

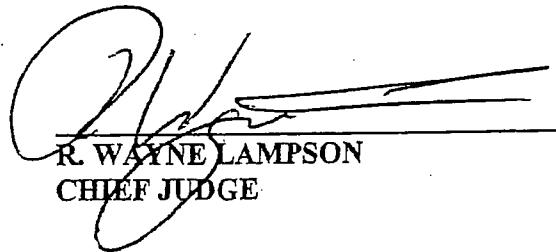
IT IS SO ORDERED.



R. WAYNE LAMPSON
CHIEF JUDGE

CERTIFICATE OF MAILING

I hereby certify that a file-stamped copy of the above and foregoing Journal
Entry was mailed postage prepaid to: Mr. Sidney J. Clark, Jr., Lansing Correctional Facility, P.O.
Box 2, Lansing, Kansas 66043, and to Jerome Gorman, District Attorney, Wyandotte County
Courthouse, 710 North 7th Street, Kansas City, Kansas 66101, on this 15th day of June, 2015.



R. WAYNE LAMPSON
CHIEF JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**