

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LARRY NEELY

PETITIONER

vs.

Civil Case No. 4:06CV00953 JTK

DUSTIN McDANIEL,
Attorney General of Arkansas

RESPONDENT

ORDER

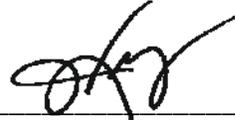
Petitioner's Motion for Reconsideration (DE #53) is granted. The Court appreciates Petitioner's argument that he has never been afforded a hearing to address whether Herbert W. Wright¹ and John C. Collins adequately advised him as to the prosecution's burden of proof under Ark. Code Ann. § 5-14-110 were he to proceed to trial. Although the record contains an affidavit from Mr. Collins, it does not adequately address what advice, if any, he gave Petitioner as to the prosecution's burden of proof. The affidavit does make clear, however, that Mr. Collins did not advise Petitioner that section 5-14-110 was a strict liability statute. The record further indicates that it was Mr. Wright, and not Mr. Collins, who represented Petitioner at the plea hearing. Also unclear is what advice Mr. Wright may have given Petitioner as to the nature of the charges. The Court believes an evidentiary hearing would aid in developing a more complete record upon which to base its ultimate decision. Testimony solicited from Petitioner, as well as his counsel, will be necessary for this purpose.

¹ Mr. Wright is now a circuit judge in the Sixth Judicial Circuit, which covers Pulaski and Perry Counties.

Therefore, the Court orders an evidentiary hearing to address the specific issue of whether Petitioner's counsel provided constitutionally effective advice in procuring Petitioner's guilty plea. The date of hearing will be scheduled by separate order.

IT IS SO ORDERED.

Dated this 21st day of July, 2010.



UNITED STATES MAGISTRATE JUDGE