

**COPY**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )  
Jimmy Lee Williams, #331836 )  
 )  
Appellant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
IN THE FIFTEENTH JUDICIAL CIRCUIT

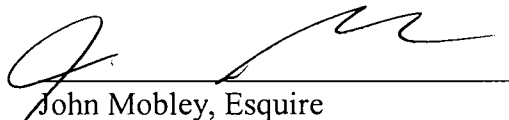
Civil Action No: 2011-CP-26-9990

**NOTICE OF APPEAL**

The Appellant, Jimmy Lee Williams, #331836, hereby gives Notice of Appeal from the Order of the Honorable Larry B. Hyman, Jr., denying Appellant's application for Post-Conviction Relief. The Order was filed on June 17, 2013 and received by Appellant's Attorney on June 24, 2013.

Respectfully submitted,

THE MOBLEY LAW FIRM, P.A.



John Mobley, Esquire  
925 Calhoun Street  
Columbia SC 29201  
(803) 933-0010 (telephone)  
(803) 931-3044 (facsimile)  
ATTORNEY FOR THE APPELLANT

Columbia, South Carolina

July 17<sup>th</sup>, 2013.

**RECEIVED**  
JUL 17 2013

**SC Court of Appeals**

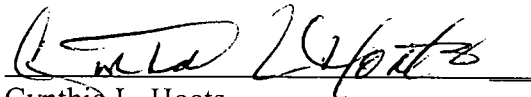
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IN THE COURT OF COMMON PLEAS  
IN THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No: 2011-CP-26-9990

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this the 17<sup>th</sup> day of July, 2013, a copy of the Appellant's Notice of Appeal in the above-referenced case has been served upon Melanie Huggins-Ward, Clerk of Court for Horry County, Post Office Box 677, Conway SC 29528, by depositing same in the U. S. Postal Service receptacle, with sufficient postage affixed thereto.

  
 Cynthia L. Hoats  
 Legal Assistant to John Mobley, Esquire  
 THE MOBLEY LAW FIRM, P.A.  
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 Columbia SC 29201  
 (803) 933-0010 (telephone)  
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 ATTORNEY FOR THE APPELLANT

Columbia, South Carolina

July 17, 2013.

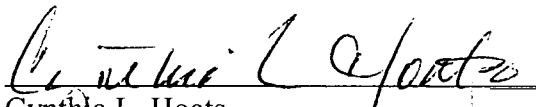
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IN THE COURT OF COMMON PLEAS  
IN THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No: 2011-CP-26-9990

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this the 17<sup>th</sup> day of July, 2013, a copy of the Appellant's Notice of Appeal in the above-referenced case has been served upon Jenny A. Kitchings, Clerk of Court, SC Court of Appeals, 1015 Sumter Street, Columbia SC 29201, by depositing same in the U. S. Postal Service receptacle, with sufficient postage affixed thereto.

  
 Cynthia L. Hoats  
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 ATTORNEY FOR THE APPELLANT

Columbia, South Carolina

July 17, 2013.

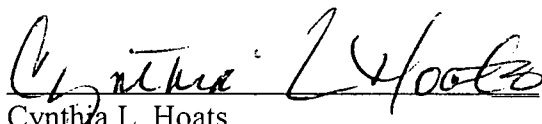
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IN THE COURT OF COMMON PLEAS  
IN THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No: 2011-CP-26-9990

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this the 17<sup>th</sup> day of July, 2013, a copy of the Appellant's Notice of Appeal in the above-referenced case has been served upon Salley W. Elliott, Esquire of the SC Attorney General's Office, Post Office Box 11549, Columbia, South Carolina, 29211, by depositing same in the U. S. Postal Service receptacle, with sufficient postage affixed thereto.

  
 Cynthia L. Hoats  
 Legal Assistant to John Mobley, Esquire  
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 Columbia SC 29201  
 (803) 933-0010 (telephone)  
 (803) 931-3044 (facsimile)  
 ATTORNEY FOR THE APPELLANT

Columbia, South Carolina

July 17, 2013.

STATE OF SOUTH CAROLINA )  
 COUNTY OF HORRY )  
 Jimmy Lee Williams, 331836 )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 11-CP-26-9990

ORDER OF DISMISSAL

HORRY COUNTY  
 13 JUN 17 AM 9:17  
 MELISSA HUGHES-WARD  
 CLERK OF COURT

This matter is before this Court by way of an application for post-conviction relief (PCR) filed December 2, 2011. The State made a timely Return. A hearing on the matter was convened at the Horry County Courthouse on April 23, 2013. Applicant was present and represented by John Mobley, Esquire. The State was represented by Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His trial counsel, Robert Paul Taylor, Esquire, also testified. In addition, this Court had before it the trial transcript, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

**PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. Applicant was indicted in 2008 by the Horry County Grand Jury for murder (2008-GS-26-1684). R. Paul Taylor, Esquire, represented Applicant.

On November 14, 2008, the Applicant was convicted as indicted and was sentenced by the Honorable Edward B. Cottingham to thirty years imprisonment. Applicant filed a timely notice of appeal, and the South Carolina Court of Appeals affirmed Applicant's conviction and sentence on December 14, 2010. State v. Jimmy Lee Williams, 201-UP-532.

### **ALLEGATIONS**

Applicant alleged in his Application for PCR that he is being held in custody unlawfully for the following reasons:

1. "Failure to request lesser charges of Aiding and Abetting and Accessory After the Fact."
2. "Failure to object to improper character evidence."
3. "Failure to object to an improper jury charge on circumstantial evidence charge."
4. "Stating in opening statements that Petitioner's defense was self-defense admitting Petitioner's killed the victim, yet presenting no evidence of that self-defense during the trial."

At the opening of the Applicant's case, his counsel advised the Court that Applicant was waiving the first three claims, and that they were only going forward on the fourth claim of "Stating in opening statements that Petitioner's defense was self-defense admitting Petitioner killed the victim, yet presenting no evidence of that self-defense during the trial." Accordingly, all other claims are deemed waived and denied, and the Court will address Applicant's only remaining allegation.

### **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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

### **Ineffective Assistance of Counsel**

Applicant alleges his conviction at trial is the result of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996).

In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address the allegation of ineffective assistance of counsel:

### **The defense of self-defense**

Applicant alleges that his counsel was ineffective for asserting the defense of "self defense" without presenting evidence of self defense. Applicant did not testify at trial. At the PCR hearing, Applicant and his trial counsel gave sharply divergent accounts on why Applicant

did not testify at trial. Applicant indicated he never intended to testify, whereas trial counsel indicated that Applicant only refused to testify after the State rested its case in chief, surprising counsel. Counsel indicated he was essentially ambushed by a suddenly uncooperative client who expressed that he was terrified of testifying after observing other witnesses testifying. Counsel also indicated that Applicant told him that since in Applicant's opinion the state had failed to prove its case, Applicant felt he didn't need to testify.

It is clear to this Court that trial counsel unequivocally intended to put up evidence of self-defense in the form of Applicant's trial testimony but Applicant surprised his trial counsel by refusing to testify. Applicant by his refusal to testify created the peril for which he now complains and blames trial counsel for.

In the testimony of counsel, he made a discovery request, reviewed the discovery with Applicant, met with Applicant in the course of counsel's investigation and discovered Applicant had made incriminating statements to others who were potential witnesses for the State.

In the course of his investigation counsel discovered there were witnesses who could likely testify that Applicant received a telephone call, that he argued on the telephone with a person believed to be the deceased victim, that Applicant left and then returned and made additional statements which were incriminating involving the death of the deceased victim. The shell casing found in Applicant's car was a ballistic match with a gun found in the woods behind Applicant's house. Counsel for Applicant also testified "[Applicant] told me he fired the gun."

Faced with overwhelming evidence of guilt against his client, counsel realized a trial strategy of self-defense was best course of action. Counsel indicated he believed Applicant could have been convicted based upon the circumstantial evidence.

The record also supports counsel's version of the Applicant's decision not to testify, and casts a shadow over Applicant's testimony. The trial judge announced that as there was no evidence presented on self-defense (as neither co-defendant testified) that the court would not charge self-defense. Once the trial judge made it abundantly clear to Applicant and counsel that unless there was additional evidence he would not permit a charge on self-defense, he gave Applicant another opportunity to testify or put up other evidence. Therefore, counsel indicated at page 298, Line 9-11 that he would once again ask Applicant if he wished to testify. The trial judge indicated he would still permit Applicant to testify at page 298 lines 19-21. Knowing without his testimony supporting the defense of self-defense he would be in an unfavorable position at trial, applicant still refused to testify with full knowledge that it would remove his ability to have the self-defense charge to the jury. Applicant now attempts to blame his trial counsel for his decision to not testify.

This Court finds counsel's version of events credible and Applicant not credible. This Court finds that applicant was aware of the consequences of not testifying. Applicant admitted to firing the shot that killed the victim to his trial counsel. Under these circumstances, Counsel's trial strategy of arguing self-defense was well within the professional norms of competent representation. Applicant's decision to sabotage his own defense is not something he can blame his trial counsel for. This Court further finds Counsel's testimony credible and gives it great weight, finding in particular that Counsel had every expectation of calling Applicant as a witness in support of his self-defense claim.

### CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

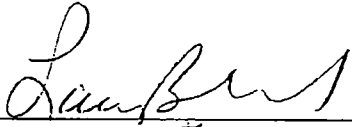
application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (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), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4 day of JUNE, 2013.

  
\_\_\_\_\_  
Larry B. Hyman, Sr.  
Presiding Judge  
15th Judicial Circuit

Cowley, South Carolina

STATE OF SOUTH CAROLINA )  
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COUNTY OF HORRY )  
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JIMMY LEE WILLIAMS, #331836 )  
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IN THE COURT OF COMMON PLEAS

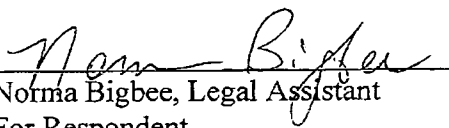
2011-CP-26-9990

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Order of Dismissal in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**John Terrence Mobley, Esquire**  
**925 Calhoun St.**  
**Columbia, SC 29201**

DATED this 21<sup>ST</sup> day of June, 2013.

  
Norma Bigbee, Legal Assistant  
For Respondent

THE MOBLEY LAW FIRM, P.A.

COPY

JOHN T. MOBLEY  
ATTORNEY AT LAW

WWW.JOHNMOBLEY.COM  
E-MAIL: JOHNMOBLEY@JOHNMOBLEY.COM

925 CALHOUN STREET  
COLUMBIA, SC 29201

TEL: 803-933-0010  
FAX: 803-931-3044  
24HR: 1-800-790-8631

PERSONAL INJURY • CRIMINAL DEFENSE • WORKERS COMPENSATION • CIVIL LITIGATION

July 17, 2013

Melanie Huggins-Ward  
Horry County Clerk of Court  
Post Office Box 677  
Conway SC 29528

Re: Jimmy Williams, #331836 v. The State of South Carolina  
Civil Action No: 2011-CP-26-9990

Dear Ms.Huggins:

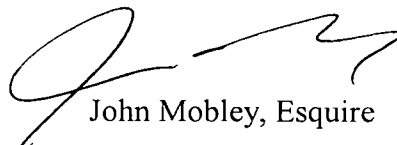
Enclosed please find for filing, and served upon you, an original and two (2) copies of Appellant's Notice of Appeal with three (3) Certificates of Service.

By copy of this correspondence, I am also serving Salley W. Elliott, Esquire, Senior Assistant Deputy Attorney General, and Jenny A. Kitchings, Clerk for the SC Court of Appeals with a copy of same. An envelope is enclosed for the return of the filed copies.

Should you have any questions, please feel free to contact me.

Sincerely,

THE MOBLEY LAW FIRM, P.A.



John Mobley, Esquire

JM/clh

Enclosures

cc:  Salley W. Elliott, Esquire  
 Jenny A. Kitchings, SC Court of Appeals

THE MOBLEY LAW FIRM, P.A.

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ATTORNEY AT LAW

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24HR: 1-800-790-8631

PERSONAL INJURY • CRIMINAL DEFENSE • WORKERS COMPENSATION • CIVIL LITIGATION

July 17, 2013

Jenny A. Kitchings, Clerk of Court  
SC Court of Appeals  
1015 Sumter Street  
Columbia SC 29201

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JUL 19 2013

S.C. Supreme Court

Re: Jimmy Williams, #331836 v. The State of South Carolina  
Civil Action No: 2011-CP-26-9990

Dear Ms. Kitchings:

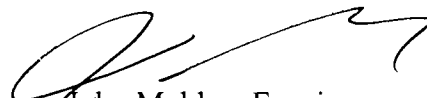
Enclosed please find and served upon you a copy of Appellant's Notice of Appeal with three (3) Certificates of Service.

By copy of this correspondence, I am also serving the Horry County Clerk of Court, Melanie Huggins-Ward and Salley W. Elliott, Esquire, Senior Assistant Deputy Attorney General, with a copy of same.

Should you have any questions, please feel free to contact me.

Sincerely,

THE MOBLEY LAW FIRM, P.A.



John Mobley, Esquire

JM/clh

Enclosures

cc: Salley W. Elliott, Esquire  
Melanie Huggins-Ward, Clerk of Court

RECEIVED

JUL 17 2013

SC Court of Appeals

THE MOBLEY LAW FIRM, P.A.

925 CALHOUN STREET  
COLUMBIA, SC 29201

**RECEIVED**

JUL 17 2019

**SC COURT OF APPEALS**

Jenny A. Kitchings, Clerk of Court  
SC Court of Appeals  
1015 Sumter Street  
Columbia SC 29201