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November 21, 2013

The South Carolina Supreme Court  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211

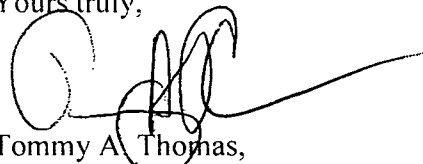
RE: Jesse Ray Lane #345702 v. State of South Carolina  
Appellate Case No.: 2012-CP-40-6138

Dear Sir or Madam:

Enclosed please find an Original and a copy of Mr. Lane's Notice of Appeal and Certificate of Service for filing in the above matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, please feel free to contact me.

Yours truly,



Tommy A. Thomas,  
Attorney at Law

TAT/jem  
cc: Mary S. Williams, Esq.  
Jesse Ray Lane #345702  
Appellate Defense

**RECEIVED**

NOV 25 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Post Conviction Relief

James R. Barber, III, Presiding Judge

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Case No.: 12-CP-40-6138

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Jesse Ray Lane #345702 .....Appellant,

vs.

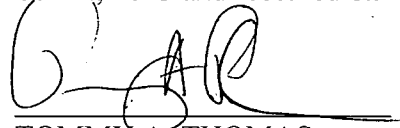
State of South Carolina .....Respondent.

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NOTICE OF APPEAL

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Jesse Ray Lane #345702 appeals the Order of Dismissal of the Honorable James R. Barber, III , signed October 28, 2013 and filed on November 12, 2013 and received on November 19, 2013.



TOMMY A. THOMAS  
Attorney for Appellant  
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Other Counsel of Record:

Mary S. Williams, Esq.  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent

Irmo, South Carolina  
November 21, 2013

**RECEIVED**

NOV 25 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
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Case No.: 12-CP-40-6138

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Jesse Ray Lane #345702 .....Appellant,

vs.

State of South Carolina .....Respondent.

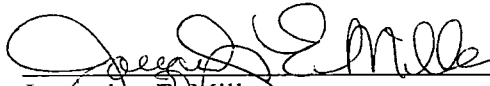
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CERTIFICATE OF SERVICE

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I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of the Notice of Appeal, with postage prepaid and the return address clearly shown on said envelope to:

Office of the Attorney General  
Atten: Mary S. Williams, Esq.  
P.O. Box 11549  
Columbia, SC 29211-1549



Jacquelyn E. Miller  
Tommy A. Thomas, Attorney for Appellant  
P.O. Box 88  
Irmo, SC 29063  
(803) 732-5507

Irmo, South Carolina  
November 21, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Jesse Ray Lane, #345702, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2012-CP-40-6138

**ORDER OF DISMISSAL**

RICHLAND COUNTY  
 FILED  
 2013 NOV -5 PM 2:10  
 JEANETTE W. MORRISON  
 C.C.P. & G.S.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 13, 2012. An evidentiary hearing was convened on October 1, 2013, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf and presented testimony from his mother, Sheila Lane. Also testifying was John C. Newton, Esquire. This Court had before it the records of the Richland County Clerk of Court, the guilty plea transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

**PROCEDURAL HISTORY**

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted for Murder (2010-GS-40-2525) and Burglary – 1<sup>st</sup> Degree

(2010-GS-40-2524). James D. Cooper, III, Esquire, and John C. Newton, Esquire, represented him.<sup>1</sup> On April 15, 2011, the Applicant pled guilty before the Honorable G. Thomas Cooper, Jr. Applicant was sentenced to two (2) concurrent terms of fifty (50) years imprisonment.

A notice of appeal was filed. The appeal was dismissed in an order dated November 16, 2011, and the matter was remitted.

In his application for post-conviction relief (PCR), Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. "Ineffective conflict of interest."

At PCR hearing, Applicant presented the following issues:

1. Ineffective assistance of counsel.
  - a. Applicant believed he would receive a sentence of thirty-five (35) years.
  - b. Counsel misinformed Applicant that DNA evidence connected him to the crime.
  - c. Counsel misinformed Applicant that fingerprint evidence connected him to the crime.

#### **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 witnesses 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

<sup>1</sup> James D. Cooper, III, passed away in March 2013. Cooper was primarily responsible for the case. In accordance with custom in the Public Defender's Office in a murder case with the potential of trial, Newton was assigned as second chair.

2013 NOV -5 PM 2:10  
JEANETTE W. McBRIDE  
D.C.F. & G.S.  
RICHLAND COUNTY  
FILED

pursuant to S.C. Code Ann. §17-27-80.

### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, supra). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735

(1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

### Sentence

Applicant argues Counsel informed him he would receive a sentence of thirty-five (35) years if he pled guilty. Applicant claimed that when he signed the sentencing sheet the annotation of a recommendation by the state with "life sentence" written in underneath did not appear. In contrast, Newton explained that the notation of "life sentence" was on the plea sheet when he and Applicant signed it. Newton stated that the solicitor would always fill in all items before having the defense sign. Newton expressly recalled notating under Applicant's signature, "Defense Rec. 35 years" so that the judge would know that the defense did not agree with the State's recommendation and was arguing for a lesser sentence. Newton further recalled that they felt that Judge Cooper would be most likely of the judges in circuit around that time to agree with the defense argument for thirty-five (35) years. Newton reflected that fifty (50) years felt like a "gut punch" given their hope for thirty-five (35) years but acknowledged that they had not guaranteed thirty-five (35) years to anyone. Applicant's mother, Sheila Lane, testified she believed Applicant would receive thirty-five (35) years and believed that if a sentence of thirty-five (35) years had been imposed he would not have challenged his plea further.

Applicant was advised by the plea judge that he faced thirty (30) years to life for Murder and fifteen (15) years to life for Burglary – First Degree, and Applicant indicated that he understood. (Tr. p. 3, line 21 – p. 4, line 8.) Applicant further affirmed to the court that no sentence had been

promised. (Tr. p. 6, lines 5-7.)

This Court finds Newton's testimony to be credible. While Applicant certainly hoped for a sentence of thirty-five (35) years, he was not promised any specific sentence. This is supported by Applicant's answers during the plea colloquy in which he understands the potential sentences and denies being promised any particular sentence. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences and that no promises have been made.")

#### Evidence

Applicant further claims he was misinformed regarding the evidence against him. Applicant asserts that counsel informed him (1) DNA evidence linked him to the crime and (2) his fingerprints had been found on a pipe purported to be the murder weapon.

In rendering a detailed factual basis for the plea, the solicitor specifically noted that:

- While a witness would say that he saw Applicant throw the pipe used to bludgeon the victim in a wooded area and the group discussed concern over fingerprints on the pipe, the pipe was never recovered. (Tr. p. 15, lines 12-19; p. 16, lines 17-19.)
- While witnesses would say they saw blood spatter on Applicant, there was no DNA evidence recovered from his clothing linking him to the crime. (Tr. p. 15, lines 19-23; p. 17, lines 4-8.)

Other evidence against Applicant as recited by the solicitor included Applicant's statement in which he admitted his presence in the victim's home with intent to rob but claimed a co-defendant actually beat the victim. The others involved in the robbery attempts would also identify Applicant and attest to statements made before and after the murder.

Newton was not privy to conversations between Cooper and Applicant regarding any DNA or

fingerprint evidence (or lack thereof). Nonetheless, I find that Applicant was aware that such evidence did not exist due to the solicitor's detailed factual rendition during his plea if not before. Moreover, this court notes the extensive evidence which would have been presented against Applicant even in the absence of DNA or fingerprint evidence, evidence which surely would tend to make a guilty plea an appealing option for a defendant. This court also notes Applicant's admissions of guilt during his plea both before and after the solicitor's rendition of the facts. (Tr. p. 7, lines 19-25; p. 35, lines 3-7; p. 38, lines 7-11.)

Based on the foregoing, I find that any misapprehension Applicant may have had regarding the evidence against him was cured during the plea colloquy. Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011) (alleged deficiency by counsel can be cured by plea colloquy). Moreover, this court also finds dubious Applicant's current claim that had he not been misinformed regarding the non-existence of DNA and fingerprint evidence he would have insisted on a trial given the evidence against him. Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009) (discussing prejudice prong in context of guilty plea). Applicant's PCR testimony proclaiming his innocence is contrary to his plea testimony, also given under oath, and lacks credibility given all the attendant circumstances including substantial evidence of guilt. Therefore, I find that Applicant has failed to meet his burden in this regard.

#### **Other Allegations**

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

#### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes that the Applicant has not

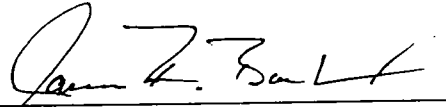
established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

**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 28 day of OCTOBER, 2015.



JAMES R. BARBER, III  
Presiding Judge  
Fifth Judicial Circuit

Columbia, South Carolina.

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