

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHESTERFIELD )  
 )  
 Michael Chad Lambert, 339270 )  
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 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 11-CP-13-49

2013 FEB 25 AM 10 54  
 FAYE L. GILBERTS  
 CLERK OF COURT  
 CHESTERFIELD COUNTY, SC

**ORDER OF DISMISSAL**

A True Copy Attest

*James C. Cox*  
 CLERK OF COURT C.P. & G.S.  
 CHESTERFIELD COUNTY, SC

This matter is before this Court by way of an application for post-conviction relief (PCR) filed February 4, 2011. The State made a timely Return. A hearing on the matter was convened at the Darlington County Courthouse on January 11, 2013. Applicant was present and represented by Andrew McLeod, Esquire. Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Office of the Attorney General represented the State.

Applicant testified on his own behalf at the hearing. His counsel, James C. Cox, Esquire, also testified. In addition, this Court had before it the transcript of Applicant's trial, 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 Chesterfield County Clerk of Court's orders of commitment. The Chesterfield County Grand Jury indicted the Applicant at the October 2008 term of General Sessions for felony driving under the influence (DUI), resulting in death (2008-GS-13-0787) and at the January 2010 term for reckless homicide (2009-GS-13-1118) and involuntary manslaughter (2009-GS-13-1119).

James C. Cox, Jr., Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On February 11, 2010 the Honorable Paul M. Burch sentenced the Applicant concurrent terms of twenty-two (22) years for felony DUI, resulting in death, ten (10) years for reckless homicide, and five (5) years for involuntary manslaughter. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel:
  - a. "Insufficient counseling."
  - b. "Things was brought to his attention and nothing done about it."
2. "Was not provided with a fair trial."
  - a. "The victim work for and lived in Chestfield County."

### 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 and Involuntary Plea

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

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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 each allegation of ineffective assistance of counsel:

**Applicant's expectation of a lower sentence**

Applicant was a party to a fatal auto wreck where the other driver was killed. At the PCR hearing, Applicant denied that he was intoxicated at the time of the wreck and blamed standing water in the road, and that the deceased had not gotten enough sleep the night before the wreck.

Applicant's blood alcohol level was .16 at the time of the wreck as shown on page 23 of the MAIT report. Applicant voluntarily gave a statement to trooper Leslie Davis admitting to drinking alcohol, to which counsel did not object. It had been previously established that Applicant's blood alcohol level was .16, so the trial strategy of essentially allowing the testimony that Applicant had been drinking beer still allowed counsel to present an apparently truthful position with regard to the his drinking, and to argue other road conditions and the victim's condition were the real cause of the wreck, but the jury simply disagreed.

Applicant next alleges he could not have received a fair trial in Chesterfield County. Counsel testified he moved for change of venue, but it was denied. Counsel also obtained

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affidavits from individuals in the community toward this effort and in support of his motion. Applicant did not allege any specific deficiency with counsel's attempt to change venue other than that the motion was unsuccessful. Applicant averred that the motion was not renewed but Counsel testified that in his experience, he could not meet the legal standard for changing venue, but also that in his trial strategy, the venue in Chesterfield may have actually worked and inured to the advantage of Applicant as he had significant contact there. Further, part of counsel's trial strategy was that any defect in venue could likely be cured by proper voir dire.

Applicant's contentions were argued at trial as part of his defense, but the jury simply disbelieved him. Applicant also alleged that as he was charged with Felony DUI resulting in death that he should not have been charged with reckless homicide and manslaughter roughly one month before trial, as he claimed these were lesser included offenses. Applicant's argument fails to show prejudice because all of his sentences were run concurrently, thereby causing him no prejudice. Applicant further alleged his dissatisfaction with his charges as "it seems I had been charge with three deaths." The court is not persuaded by this argument and Applicant has failed to show deficient performance by counsel or prejudice resulting from this claim. Counsel had no control over the indictments brought by the Solicitor, and counsel testified that he had to walk a fine line to put up a vigorous defense without appearing callous or inflaming passions in such a sensitive case.

Applicant further testified that he was offered an eight-year sentence of imprisonment and that he refused, because according to Applicant it would be just as difficult to serve eight years as it would be to serve one day.

Applicant also alleged counsel should have appealed his verdict and sentence. When questioned about this at his PCR hearing, Applicant candidly admitted he told his lawyer he did

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not wish to appeal. Counsel still advised Applicant he only had ten days in which to appeal. He argued at his PCR that because he had just been found guilty that he was not in the proper state of mind to make such a decision. This Court is not persuaded by such logic that would serve to expand the statutory time a defendant has to appeal a guilty verdict beyond the ten day period, and therefore this allegation is denied.

Applicant's claims now of defects in counsel's conduct of his trial are without prejudice because it was Applicant himself that was adamant that he did not wish to appeal. Therefore, no appeal was taken.

Counsel testified he went over discovery with Applicant, traveled to the scene of the wreck with Applicant and investigated potential defenses. Counsel diligently pursued all available defenses in the face of a difficult case resulting in the death of an innocent victim.

This Court finds that applicant was aware of the charges, elements of the offense, and potential defenses. Further, this Court finds that Applicant was not coerced, pressured, or promised anything in order to proceed to trial. Counsel's defense of Applicant was well within the professional norms of competent representation. This Court further finds Counsel's testimony credible and gives it great weight. This Court finds Applicant's testimony to the contrary lacks credibility. Applicant still denied being intoxicated though admitting to a blood alcohol level of .16. Accordingly, Applicant's allegations are denied.

#### 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.

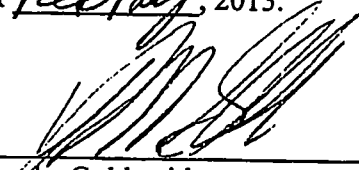
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This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South 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), SCRPC, 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 13 day of February, 2013.

  
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Brooks Goldsmith  
Presiding Judge  
4th Judicial Circuit

 South Carolina

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COUNTY OF CHESTERFIELD )  
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IN THE COURT OF COMMON PLEAS

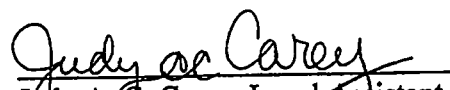
2011-CP-13-0049

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 copy of the **Order of Dismissal** in the above-captioned matter on the following person by depositing in the United States mail, postage prepaid:

**Andrew F. McLeod, Esquire  
Harris, McLeod & Ruffner  
Post Office Drawer 1449  
Cheraw SC 29520**

DATED this 27th day of February, 2013.

  
Judy A. Carey, Legal Assistant  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Chesterfield County  
Brooks P. Goldsmith, Circuit Court Judge

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MICHAEL CHAD LAMBERT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000584

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CERTIFICATE OF SERVICE

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I certify that a true copy of the motion to put into abeyance in which to file the petition for writ of certiorari and appendix in the above case has been served upon Karen Ratigan, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of December, 2013.




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Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day  
of December, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.