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*pn*

June 27, 2014

**Via Regular Mail**

Mr. Daniel E. Shearouse  
Clerk, The S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: JONATHAN M. CAMPBELL v. State**

Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

**RECEIVED**

JUN 30 2014

**S.C. SUPREME COURT**

Yours very truly,

*Caroline Horlbeck*

Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General  
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
THE HONORABLE D. GARRISON HILL

CA No. 2012-CP-23-7608

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2014 JUN 23 PM 3 30

JONATHAN M. CAMPBELL,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

Appellant JONATHAN M. CAMPBELL, appeals from the Order of the Honorable D. Garrison Hill, Circuit Court Judge clocked June 5, 2014

**RECEIVED**

JUN 30 2014

**S.C. SUPREME COURT**

Respectfully submitted,

*Caroline M. Horlbeck*

Caroline M. Horlbeck, Esq.  
101 Whitsett St  
Greenville, SC 29601

Date: June 23, 2014

Other Counsel of Record: Karen Ratigan, Esq.  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE SUPREME COURT

Jonathan M. Campbell, )  
 )  
 )  
Appellant, )

C.A. No. 2012-CP-23-7608

-vs- )

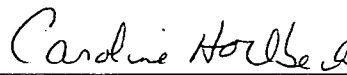
CERTIFICATE OF SERVICE

State of South Carolina, )  
 )  
 )  
Respondent. )

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Applicant, and that I have this day caused to be served upon the person(s) named below Applicant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French  
S.C. Office of Appellate Defense  
P.O. Box 11433  
Columbia, SC 29211

Karen Ratigan, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

  
\_\_\_\_\_  
Caroline M. Horlbeck

Greenville, South Carolina

June 27, 2014

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Jonathan Millard Campbell, )  
S.C.D.C. #236007, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2012-CP-23-7608

**ORDER OF DISMISSAL**

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2014 JUN 5 AM 10 24

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2012. The Respondent made its return on May 3, 2013. An evidentiary hearing was held on April 22, 2014 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, John P. Abdalla, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the January 2006 term of the Greenville County Grand Jury for murder (2006-GS-23-0328) and possession of a weapon during the commission of a violent crime (2006-GS-23-0329). He was represented by John P. Abdalla, Esquire.

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After the State brought the case to trial, the Applicant was found guilty. On January 14, 2010, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of forty-five years for murder and five years for possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Campbell, Op. No. 2012-UP-236 (S.C. Ct. App. filed April 18, 2012). The Remittitur was sent on May 4, 2012.

### **ALLEGATIONS**

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. Counsel did not adequately prepare the case.

### **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 (2003).

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action,

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"[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).

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. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he met with trial counsel six or seven times about the case but that they never discussed the State's evidence. The Applicant stated he told trial counsel his version of events. The Applicant stated there was no evidence connecting the blood on his shirt to the victim. The Applicant stated there was an Alabama order granting him an extradition hearing but that he was returned to South Carolina before having said hearing. The Applicant stated he told trial counsel about the extradition issue but that counsel did not contact his Alabama attorney. The Applicant stated he met with trial counsel, his co-defendant, and his co-defendant's attorney at the Law Enforcement Center on the Saturday before trial. The Applicant stated the attorneys told them there was a fifteen-year plea offer but that the victim's family wanted to know what happened on the night in question. The Applicant stated his co-defendant said he would take responsibility. The Applicant stated the judge would not accept the fifteen-

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year offer. The Applicant stated trial counsel did not cross-examine the co-defendant at trial about the things he said during that meeting. The Applicant stated trial counsel never used the statement from David Yearta to negotiate a better offer. The Applicant stated trial counsel should have asked for a jury charge on self-defense. The Applicant stated trial counsel should have objected to the jury charge about the inference of malice.

Trial counsel testified he had several meetings with the Applicant and that these meetings were sufficient to present a good defense. Trial counsel testified he reviewed the State's evidence with the Applicant, as well as his version of events. Trial counsel testified he explained the theory of accomplice liability to the Applicant, who had difficulty accepting it. Trial counsel testified he generally does not provide clients with their own copy of the discovery materials because of issues with those materials circulating around the jail. Trial counsel testified he objected to SLED reports at trial because he did not receive them in discovery. Trial counsel testified he moved for a mistrial under Rule 5, SCRCrimP. Trial counsel stated the SLED report indicated the Applicant's blood was not on cuttings of the victim's clothes and that this information may have aided in his plea negotiations. Trial counsel testified he spoke to the Applicant's attorney in Alabama and confirmed the Applicant did not receive an extradition hearing. Trial counsel testified the Alabama attorney did not provide him with any valid reason the Applicant may have had to fight extradition. Trial counsel testified he vaguely recalled the meeting at the Law Enforcement Center but did not recall either the co-defendant saying he would admit guilt or the judge later refusing to allow the Applicant to plead guilty. Trial counsel testified he proffered testimony from his investigator at trial about a statement she had taken from David Yearta. Trial counsel testified he did not contemplate a self-defense argument because the trial strategy was that the Applicant was innocent. Trial counsel testified he did not

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object to the jury charge on the inference of malice.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly object to a violation of Rule 5, SCRCrimP. During the State's direct examination of a former investigator, a DNA report was mentioned. Trial counsel stated he had never seen this report and the jury was excused. (Trial transcript, p.187). Trial counsel moved for a mistrial, arguing "had we had the DNA results we could have done some further testing and made conclusions so the jury would have had some information to consider." (Trial transcript, p.191). Trial counsel argued the SLED report should have been disclosed under Rule 5, SCRCrimP. (Trial transcript, p.194). The assistant solicitor countered the SLED report was not material to the defense. (Trial transcript, p.195). Upon questioning by the judge, the former investigator stated there were two DNA profiles on the Applicant's clothing that could not be identified. (Trial transcript, pp.197-200). The assistant solicitor noted the State was not arguing the blood that was found belonged to the Applicant. (Trial transcript, p.204). The trial judge denied the motion for a mistrial. (Trial transcript, pp.197-205). This Court finds that while the SLED report was a surprise to trial counsel, he expertly handled the issue. This Court finds the Applicant has failed to demonstrate prejudice. While trial counsel testified he may have been able to use the SLED report to procure a better plea offer, this Court finds this is entirely speculative. Trial counsel testified both the Applicant and his co-defendant were offered plea deals and that the trial judge repeatedly told the Applicant throughout the trial that he could plead

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guilty. It is clear to this Court the Applicant wanted a jury trial in order to attempt to prove his innocence – he proclaimed his innocence both at trial and at the PCR hearing – and that he would have proceeded to trial even if trial counsel had received the SLED report in discovery. Further, the SLED report was not material to the defense, did not contain any exculpatory evidence, and would not have changed the outcome of the trial if it had been provided to trial counsel earlier. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly raise the extradition issue at trial. At the start of trial, trial counsel moved to dismiss the charges because the Applicant had been unlawfully transported to South Carolina before he received his extradition hearing in Alabama. (Trial transcript, pp.12-23). The trial judge denied the motion, finding there was no evidence the extradition violated due process or that the Applicant had a valid basis to challenge the extradition. (Trial transcript, p.25). The trial judge later revisited the extradition issue and held there was no showing of a constitutional violation, the Applicant's complaint with a violation of extradition laws would be with Alabama, South Carolina had jurisdiction over the Applicant, and the Applicant failed to demonstrate prejudice. (Trial transcript, pp.90-91). This Court finds trial counsel effectively presented the extradition issue to the trial judge and the Applicant has failed to present any evidence (such as court documents from Alabama or compelling case law) at the PCR hearing that may have bolstered this argument at trial. Cf. Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). As such, the Applicant cannot prove either error or prejudice.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not

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properly handle the events that occurred after the Saturday meeting at the Law Enforcement Center with the co-defendant and his attorney. The Applicant stated his co-defendant said at this meeting that he would take responsibility. The Applicant stated the judge subsequently would not allow him to plead guilty and that trial counsel should have cross-examined the co-defendant on his admission of responsibility during the trial. Trial counsel, however, testified he did not recall the co-defendant accepted responsibility for the murder during that meeting. Trial counsel also testified he did not recall the judge ever stating the Applicant could not plead guilty and noted the judge said throughout the course of the trial that he could enter a plea. This Court finds trial counsel's testimony on this issue is more credible. This Court notes trial counsel is an ~~experienced~~ <sup>911</sup> criminal defense attorney and would have capitalized on any admission of guilt or responsibility that the co-defendant would have made. This Court finds the absence of such cross-examination questions of the co-defendant supports trial counsel's testimony that the co-defendant never accepted responsibility for the murder. The Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding a PCR applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly handle David Yearta's statement. At trial, trial counsel wanted to call his investigator as a witness to testify that she took a statement from Yearta in which he said the co-defendant admitted to killing the victim. (Trial transcript, pp.278-81). Trial counsel proffered the investigator's testimony but the trial judge stated he would not allow the investigator to testify. (Trial transcript, pp.285-87). This Court finds trial counsel was not deficient. Trial counsel made a compelling argument for the admission of the investigator's testimony and then properly proffered it for the record. Regardless, this Court finds the Applicant cannot demonstrate any

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prejudice because he failed to articulate a cognizable basis upon which this testimony could have been admitted. See id.; Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued self-defense at trial. It is clear from the trial testimony that the defense strategy was to argue the Applicant did not kill the victim but was merely present when the co-defendant committed the murder. As such, this Court finds there would have been no reason for trial counsel to have argued self-defense or <sup>to</sup> ~~request~~ <sup>request</sup> such a jury charge. Regardless, this Court further finds that, given the facts of the case, it would have been exceedingly difficult for the Applicant to have prevailed on such an argument. See, e.g., State v. Bixby, 388 S.C. 528, 553-54, 698 S.E.2d 572, 585-86 (2010) (listing the elements of self-defense).

This Court finds the Applicant failed to meet his burden of proving he was prejudiced by trial counsel's lack of objection to the presumption of malice charge. Trial counsel did not object when the trial judge charged the jury that malice can be inferred from the use of a deadly weapon. (Trial transcript, p.458, lines 14-15). As this case was tried after the South Carolina Supreme Court issued State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), trial counsel was deficient in failing to object. This Court finds, however, the Applicant cannot prove resulting prejudice because of the overwhelming evidence of the Applicant's guilt. See State v. Stanko, 402 S.C. 252, 264-65, 741 S.E.2d 708, 714-15 (2013) (holding that, even though the judge's jury charge did not comply with Belcher, the error was harmless in light of the overwhelming evidence of guilt). This Court also finds this jury charge did not contribute to the verdict. This Court notes the jury asked about the jury charges of reasonable doubt and accomplice liability,<sup>1</sup> which indicates they were focusing upon the Applicant's responsibility as a principal and not

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<sup>1</sup> (Trial transcript, pp.465-68).

whether malice existed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 23<sup>d</sup> day of May, 2014.

*D. Garrison Hill*

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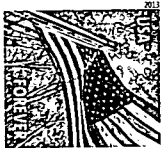
D. Garrison Hill  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

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