

R. MILLS ARIAIL, JR.  
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601  
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

February 2, 2016

**RECEIVED**

FEB 08 2016

**S.C. SUPREME COURT**

**Via US Mail**

Daniel Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

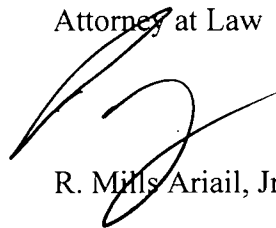
**Re: *Notice of Intent to Appeal from Christopher Lee Johnson vs. State of South Carolina C.A. No.: 2015-CP-23-01985***

Dear Mr. Shearouse:

I was Court Appointed in the above referenced matter, and I expect that appellate defense will handle the appeal and petition for certiorari. On behalf of my client, enclosed for filing please find the Notice of Appeal and proof of service. I've enclosed a copy of the Honorable Perry H. Gravely's Order of Dismissal to be challenged on appeal. By copy of this letter, I am also serving my client, counsel for the State of South Carolina, the South Carolina Commission of Indigent Defense - Appellate Defense Division and the Greenville County Clerk's Office.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me.

Sincerely,  
LAW OFFICE OF R. MILLS ARIAIL, JR.  
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dl  
Enclosures (as stated)

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2015-CP-23-01985

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FEB 08 2016

**S.C. SUPREME COURT**

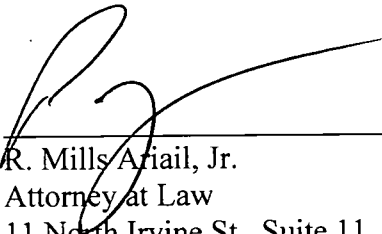
Christopher Lee Johnson,..... Appellant,

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable Perry H. Gravely's Order of Dismissal dismissing Appellant's application for post-conviction relief. On January 14, 2016, the Honorable Perry H. Gravely signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant, through counsel, received written notice of entry of this order on January 27, 2016. A copy of the Honorable Perry H. Gravely's Order of Dismissal is attached.

  
\_\_\_\_\_  
R. Mills Ariail, Jr.  
Attorney at Law  
11 North Irvine St., Suite 11  
Greenville, SC 29601  
Telephone (864) 232-9390  
Facsimile (864) 232-9392  
Attorney for Christopher Lee Johnson

Greenville, South Carolina  
February 2, 2016

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.2015-CP-23-01985

**RECEIVED**

FEB 08 2016

**S.C. SUPREME COURT**

Christopher Lee Johnson,..... Appellant,

v.

State of South Carolina ..... Respondent.

**CERTIFICATE OF SERVICE**

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this February 2, 2016, I served upon the below named Respondents copies of the **NOTICE OF APPEAL** by depositing copies of the same via U.S. Mail, postage prepaid, Registered Mail in an envelope addressed as set forth herein below:

**Karen C. Ratigan, Esq.**  
**Assistant Attorney General**  
**PO Box 11549**  
**Columbia, SC 29211**  
**Attorney for the State of South Carolina**

**Greenville County Clerk's Office**  
**Greenville County Courthouse**  
**305 East North Street**  
**Greenville, SC 29601**

**Christopher Lee Johnson**  
**203 Dovie Drive**  
**Greer, South Carolina 29651**

**SC Commission of Indigent Defense**  
**Division of Appellate Defense**  
**PO Box 11433**  
**Columbia, SC 29211-1433**

*Denise Tanner LaBeck*

Denise Tanner LaBeck

February 2, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2015CP2301985

FILED - CLERK OF COURT  
GREENVILLE CO. C.  
PAUL B. WICKENSIMER  
2016 JAN 21 4:13 PM

**Christopher Lee Johnson vs. South Carolina State Of**

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy:  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

*Court Reporter:* \_\_\_\_\_

**PRESIDING JUDGE - Perry H Gravely**

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

**R. Mills Ariail Jr.** 11 North Irvine Street, Suite 11  
Greenville, SC 29601

**Karen Christine Ratigan** PO Box 11549 Columbia,  
SC 29211.

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Christopher Lee Johnson, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2015-CP-23-1985

**ORDER OF DISMISSAL**

ENTERED COMPUTER

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS  
2016 JAN 21 PM 4 13

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 19, 2015. The Respondent made its return on September 2, 2015. An evidentiary hearing was held on December 16, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., 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, Daniel Farnsworth, Sr., Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the PCR application, the return, and the appellate records.

**PROCEDURAL HISTORY**

The Applicant was indicted at the April 2011 term of the Greenville County Grand Jury for driving under the influence (DUI) (2010-GS-23-9683) and driving under suspension (DUS) (2010-GS-23-9684). He was represented by Daniel Farnsworth, Sr., Esquire.

After the State called the case to trial, the Applicant was found guilty. On October 11, 2011, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of 1 year

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suspended on service of 9 months and \$1000 fine with the balance suspended to 15 months probation for DUI, second offense and 30 days for DUS, first offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Carmen V. Ganjehsani, Esquire and Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense represented the Applicant on appeal. The Court of Appeals affirmed the Applicant's convictions and sentences on May 14, 2014. State v. Johnson, 408 S.C. 544, 758 S.E.2d 911 (Ct. App. 2014). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on January 23, 2015. The remittitur was sent on January 29, 2015.

### **ALLEGATIONS**

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

1. Ineffective assistance of counsel.
  - a. "Ineffective Counsel to speak to prosecutor before hearing Privately."
2. "Entrance of faulty illegal evidence."

### **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,

“[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 trial counsel should not have had him talk to the prosecutor in his absence. The Applicant stated trial counsel did not properly challenge the introduction of illegal evidence (the video from the officer’s personal device).

Trial counsel testified he did not recall telling the Applicant to talk to the assistant solicitor alone but did not think he would have told the Applicant to do so. Trial counsel testified there was no basis to have objected to the introduction of the video taken with the officer’s camera.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective. Trial counsel testified he did not think he would have recommended the Applicant speak to the assistant solicitor outside of his presence. Trial counsel testified there was no basis for objecting to the admission of the video evidence. This Court finds trial counsel’s testimony

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is credible. This Court notes trial counsel is an experienced criminal defense attorney and it is clear upon review of the trial record that he presented a well-researched and thorough defense at trial. This Court finds trial counsel would not have advised the Applicant to speak to the assistant solicitor alone. This Court also finds the Applicant has failed to articulate what specific argument trial counsel should have made in order to suppress the video evidence. See, e.g., Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) (“When the defendant claims that counsel’s failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.”) (citation omitted). Trial counsel argued the statutory provisions regarding dashcam videos had not been satisfied and this issue was addressed on appeal.

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**

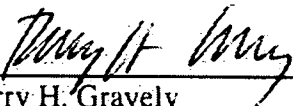
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this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

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 14<sup>th</sup> day of June, 2016.

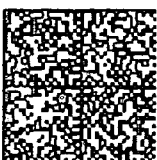
  
\_\_\_\_\_  
Perry H. Gravely  
Presiding Judge  
Thirteenth Judicial Circuit

  
\_\_\_\_\_, South Carolina.

████████████████████  
R. MILLS ARIAIL, JR.

11 NORTH IRVINE STREET, SUITE 11  
GREENVILLE, SC 29601

Daniel Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211



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