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February 10, 2017

**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 State of SC v. Karl Ryan Lane  
C.A. No.: 2015-CP-39-729***

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 John C. Hayes, III's Order 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 Pickens 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)

**RECEIVED**

FEB 14 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

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John C. Hayes, III, Circuit Court Judge

Case No. 2015-CP-39-729

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RECEIVED

FEB 14 2017

S.C. SUPREME COURT

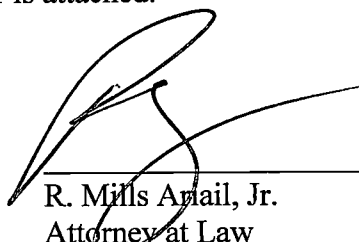
Karl Ryan Lane,..... Appellant,

v.

State of South Carolina ..... Respondent.

**NOTICE OF APPEAL**

Appellant appeals the Honorable John C. Hayes, III's Order dismissing Appellant's application for post-conviction relief. On December 7, 2016, the Honorable John C. Hayes, III 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, 2017. A copy of the Honorable John C. Hayes, III's Order is attached.



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Attorney for Karl Lane

Greenville, South Carolina  
February 10, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.2015-CP-39-729

RECEIVED

FEB 14 2017

S.C. SUPREME COURT

Karl Ryan Lane,..... 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 10, 2017, 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:

**Patrick Schmeckpeper, Esq.**  
**Assistant Attorney General**  
**PO Box 11549**  
**Columbia, SC 29211**

**Pickens County Clerk's Office**  
**Pickens County Courthouse**  
**214 East Main Street**  
**Pickens, SC 29671**

**Karl Lane SCDC# 349514**  
**Perry Correctional Institution**  
**430 Oaklawn Road**  
**Pelzer, SC 29669**

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

*Denise Tanner LaBeck*  
Denise Tanner LaBeck

February 10, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF PICKENS )  
 )  
 Karl Ryan Lane, )  
 SCDC No. 349514, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-39-0729

ORDER

2017 JAN 4 PM 9 17  
 CLERK OF COURT  
 PICKENS COUNTY  
 SOUTH CAROLINA

Applicant filed this application for Post-Conviction Relief June 10, 2015. This matter was heard December 5, 2016. Applicant was represented by Mills Ariail, Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the January 2012 term of General Sessions for first-degree burglary (2011-GS-39-1496) and grand larceny (2011-GS-39-1497). John W. DeJong, Esquire represented the Applicant at trial.

After the State called the case to trial, the Applicant was found guilty of first-degree burglary. On January 26, 2012, the Honorable G. Edward Welmaker sentenced the Applicant to 215 months imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire and Carmen V. Ganjehsani, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, represented the Applicant on Appeal. The Court of

Appeals reversed the Applicant's conviction and sentence on October 9, 2013. *State v. Lane*, 406 S.C. 118, 749 S.E.2d 165 (S.C. Ct. App. 2013). The Respondent filed a petition for writ of certiorari to the South Carolina Supreme Court. This petition was granted, and the parties submitted briefs. On November 12, 2014, the Supreme Court reversed the decision of the Court of Appeals and reinstated the Applicant's conviction and sentence. *State v. Lane*, 410 S.C. 505, 765 S.E.2d 557 (2014). The Remittitur was sent on December 2, 2014.

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

1. Ineffective Assistance of Counsel
  - a. Failure to object to the trial judge's jury instructions "that impermissibly commented on the facts of the case and prematurely directed a verdict for the State."
  - b. Failure to conduct any pretrial investigation and to retain an expert witness "to rebut the State's only piece of 'circumstantial evidence' that very remotely at least suggest suspicion of Petitioner's presence in the vicinity of the incident in question."
2. Denial of due process.

This Court will address grounds for relief as they were presented at the post-conviction relief hearing. Any grounds mentioned in the Application and not addressed at the post-conviction relief hearing are deemed abandoned.

Applicant alleges ineffective assistance of counsel as a ground for relief. 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 on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). 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*, 466 U.S. at 688, 104 S. Ct. at 2052).

Applicant testified, first, that he only met with Trial Counsel twice prior to trial. Applicant further testified that Trial Counsel discussed the facts of the case and the evidence the State would present to prove the charges against him. While he could not recall the exact dates or duration of his representation of Applicant, Trial counsel testified that he met with Applicant at least once, and possibly more than once, to go over discovery with Applicant. Trial Counsel also testified that he discussed the elements of the charges with Applicant during these pre-trial meetings.

As to the allegations that Trial Counsel was ineffective for failing to call an expert witness to explain how a piece of paper implicating Applicant made its way to the alleged crime scene, the Court finds this argument without merit. A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence. *Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). A finding of prejudice due to counsel's failure to offer expert testimony is merely speculative, and thus not grounds for ineffective assistance of counsel, where Applicant does not have an expert testify at his post-conviction relief hearing. See *id* at 370, 458 S.E.2d at 814-15.

Both Applicant and Trial Counsel testified that Applicant did not discuss hiring an expert to explain the piece of paper's presence prior to trial. Trial Counsel further testified that the thought of hiring an expert witness to address the issue never crossed his mind, as he knew of no such expert that could testify as to how a piece of paper made its way from Point A to Point B under a particular set of circumstances. Admittedly, this Court likewise knows of no such expert witness. However, Trial Counsel did testify that, had he thought an expert would have been beneficial, that he would have hired one. Applicant did not offer any evidence as to what area of expertise the purported expert would be qualified under, nor did Applicant testify as to the existence of any such witness. Further, Applicant did not bring an expert witness to testify as to the issue at the PCR hearing. As such, there was not a sufficient showing that failing to call an expert witness to address this issue constitutes ineffective assistance of counsel.

Applicant also takes exception to the testimony of a Deputy Torres, of the Pickens County Sheriff's Department, concerning the weather conditions on the day of the alleged

crimes. Specifically, Applicant believes that Deputy Torres should not have been allowed to testify as to the weather conditions because Deputy Torres was not an expert in the field of weather and because a substantial amount of time had passed between the incident in question and the time at which Deputy Torres offered the testimony. Deputy Torres did, in fact testify as to the weather conditions on the day of the incident in question (Trial Record p. 126, ll. 9-13; p. 129, ll. 11-18; p. 133, ll. 8-18). At no point did Deputy Torres's testimony go beyond general descriptions of the weather on the day in question. As Rule of Evidence 701 and Bob Dylan remind us: "you don't need a Weatherman to know which way the wind blows." See S.C. Rule of Evidence 701; Bob Dylan, Subterranean Homesick Blues (Columbia 1965). Further, the amount of time that elapsed between the incident in question and the date of Deputy Torres's testimony would go to weight, not admissibility, with the jury being the arbiter of the Deputy Torres's credibility. Therefore, this argument does not provide grounds to support a claim of ineffective assistance of counsel.

Next, Applicant claims ineffective assistance of counsel, alleging that Trial Counsel should have objected to the Trial Judge's jury charge. Specifically, Applicant claims that the Trial Judge's use of examples of deadly weapons - including firearms - was an improper comment on the facts of the case. This Court finds this argument without merit. Trial Counsel testified that he found nothing objectionable about the Trial Judge's charge. It is commonplace for judges to give examples when charging the jury on the law. Providing examples does not, on its own, transform a charge on the law into a comment on the facts of the case. Further, the fact that the examples included firearms does not change the Trial Judge's charge into an improper comment on the facts of the case - firearms are obvious and relatable examples of deadly

weapons. Therefore, Trial Counsel's failure to object to the Trial Judge's jury charge does not serve as a ground for ineffective assistance of counsel.


Based on the above, the Court finds that Trial Counsel represented Applicant well within prevailing professional norms and that Applicant has failed to carry his burden of proof as to his claim of ineffective assistance of counsel.

Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

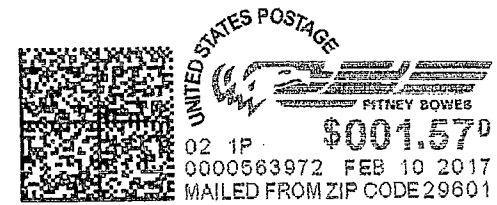
This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

December <sup>14</sup> 2016  
Greenville, South Carolina

  
John C. Hayes, III  
Presiding Judge #6

2017 JAN 4 AM 9 17  
CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA



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