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October 5, 2018

RECEIVED

OCT 05 2018

S.C. SUPREME COURT

**Hand Delivered**

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

RE: Michael P. Cornelius v. The State of South Carolina  
Case No. 2012-CP-40-7573

Dear Mr. Shearouse:

Enclosed please find the original and one copy of a Notice of Appeal in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier. Also enclosed is our check in the amount of \$100.00 as the required filing fee.

By copy of this letter to counsel of record, we are serving them with a copy of this notice.

With kind regards, I remain,

Very truly yours,

Adam J. Hegler

AJH:rd  
Enclosures  
cc: Lindsey A. McCallister, Esquire

**NOTICE OF APPEAL FROM AN ORDER OF DISMISSAL SIGNED BY  
THE COURT OF COMMON PLEAS**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2012-CP-40-7573

Michael P. Cornelius (SCDC  
# 210317),

Appellant,

v.

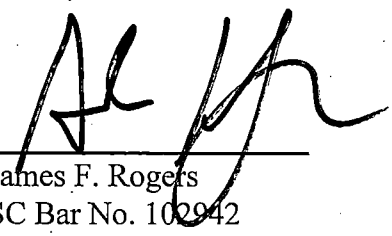
The State of South Carolina,

Respondent.

**NOTICE OF APPEAL**

Michael P. Cornelius appeals the court's order signed on September 5, 2018, dismissing his Application for Post-Conviction Relief. The order was received on September 8, 2018.

October 5, 2018

  
James F. Rogers  
SC Bar No. 102942

Adam Hegler

SC Bar No. 100115

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Attorneys for Appellant

**RECEIVED**  
OCT 05 2018  
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

HONORABLE JOCELYN NEWMAN, JUDGE  
Docket No: 2012-CP-40-7573

**MICHAEL P. CORNELIUS V. THE STATE OF SOUTH CAROLINA**

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY THAT THE FOREGOING NOTICE OF INTENT TO APPEAL filed by post-conviction relief counsel on behalf of MICHAEL P. CORNELIUS, who appeals from the court's order dismissing his Application for Post-Conviction Relief signed by the Honorable Jocelyn Newman on September 5, 2018. The Notice of Intent to Appeal, has been filed with the Honorable Richland County Clerk of Court, at the following address: Jeanette McBride, Clerk of Court, P.O. Box 2766, Columbia, SC 29202, and has been served upon opposing counsel, to wit: Lindsey A. McCallister, Assistant Attorney General, P. O. Box 11549, Columbia, SC 29211, by placing those documents in the United States Mail, postage prepaid, to the addresses listed above.



James F. Rogers

Federal Bar No. 5053

Adam Hegler

Federal Bar No. 11401

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Dated: October 5, 2018

NOTICE TO CLERK OF COURT: Notify S.C. Court Administration immediately upon receipt of this Notice of Appeal, so that the Court Reporter may be directed to prepare the transcript.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-40-07573

MICHAEL P. CORNELIUS (SCDC# 210317)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (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.  See Page 2 for additional information.
- 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 (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

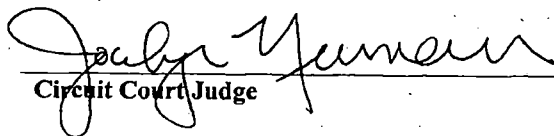
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
 Circuit Court Judge

2757  
 Judge Code

Sept. 5, 2018  
 Date

JEANETTE M. MORRIS  
 C.C.P. U.S.  
 2018 SEP -6 AM 11:15  
 RICHLAND COUNTY  
 FILED



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Michael P. Cornelius (SCDC #210317),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-40-7573

**ORDER OF DISMISSAL**

JEANETTE W. HARRISON  
C.C.P. & C.S.

2018 SEP -6 AM 11:16

RICHLAND COUNTY  
FILED

This matter comes before the Court upon Application for Post-Conviction Relief ("PCR") filed on November 9, 2012 by Applicant Michael P. Cornelius (Applicant). The State of South Carolina (Respondent) filed a Return on January 25, 2013, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on August 29, 2016, at the Richland County Judicial Center. Applicant was present along with his counsel, Adam J. Hegler, Esquire. Assistant Attorney General Jessica Kinard of the South Carolina Attorney General's Office appeared on behalf of the State.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

**FACTUAL AND PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During the April 2009 term, the Richland County Grand Jury indicted Applicant

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Order of Dismissal

*Michael P. Cornelius (SCDC#210317) v. State of South Carolina, 2012-CP-40-7573*

for Armed Robbery (2009-GS-40-1596). Tivis Sutherland, Esquire (“trial counsel”) represented Applicant. Assistant Solicitors Kathryn Luck Campbell and Kathryn Ashton, Esquires, of the Fifth Circuit Solicitor’s Office prosecuted the case. On June 7-9, 2010, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr.. At the conclusion of the trial, the jury convicted Applicant as indicted. Judge Cooper sentenced Applicant to a term of life imprisonment without the possibility of parole.

On April 5, 2011, Applicant filed a timely notice of appeal, and an Anders brief was filed on his behalf by Wanda Carter, Esquire, of the South Carolina Commission on Indigent Defense - Appellate Defense Division. Carter also petitioned to be relieved as counsel on the same day. On March 7, 2012, the South Carolina Court of Appeals dismissed Applicant’s appeal and granted Carter’s motion to be relieved. State v. Cornelius, 2012-UP-160, filed March 7, 2012. The Remittitur was issued on March 23, 2012.

**SUMMARY OF FACTS ADDUCED AT TRIAL**

Applicant was indicted in April 2009 in Richland County for an armed robbery that occurred on February 16, 2009. The case was called for trial on June 7, 2010. During jury selection, the State used peremptory strikes for four jurors, three of whom were African-American. Four of the jurors ultimately seated on the twelve person panel were African-American. One of the African-American jurors stricken by the State, Juror 124, went to church with one of the State’s witnesses, Margaret Jamison. Margaret Jamison is Applicant’s aunt. Trial counsel struck seven jurors on Applicant’s behalf, all of whom were white. Neither the State nor trial counsel contested the selection of the jury pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) or its progeny.

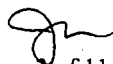


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Thereafter, pre-trial motions were heard, including Applicant's motion to suppress his identification pursuant to Neil v. Biggers, 409 U.S. 188 (1972), and to suppress Applicant's statement pursuant to Jackson v. Denno, 378 U.S. 368 (1964). Trial counsel argued the photo lineup shown to the State's witnesses was overly suggestive, and Applicant's statement was not voluntary because of Applicant's intoxication. The trial judge denied both motions. Trial counsel moved to suppress the results of a search warrant executed on a property where Applicant's father lived. The trial judge also denied that motion.

Thereafter, the State called fourteen witnesses, and the testimony and evidence presented established the following facts: A black male entered the Sharpe Shoppe convenience store in Blythewood armed with a butcher knife. The black male suspect demanded the cashier hand over all of the money in the register, and he left the store after the cashier complied with his demands. The cashier, Elizabeth Beltrami, identified Applicant as the individual who robbed her. Video surveillance footage of the robbery was also shown to the jury. Ricky Green described the car Applicant was driving and picked Applicant out of a photo lineup. Green also testified the vehicle Applicant was driving had the letters ANE on the license plate. Officer Andrew Caldwell of the Richland County Sheriff's Department searched the residence of Applicant's father and aunt. Officer Caldwell found a distinct checkerboard-patterned hoodie sweatshirt inside the residence that appeared to be what Applicant was wearing in the video surveillance footage of the robbery. Officer Caldwell also located a pickup truck on the property matching Green's description of the vehicle that he saw leave the scene of the robbery. The vehicle had the letters ANE on the license plate. Dr. Gray Amick of the Richland County Sheriff's Department testified that DNA from



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Applicant was present inside the vehicle found at Applicant's aunt's house. Finally, Officer Matthew Ellis of the Richland County Sheriff's Department interviewed Applicant and obtained a written confession of guilt from him.

Following closing arguments and the final jury charge, the jury returned a guilty verdict after thirty-one minutes of deliberations. Based on Applicant's prior record, the trial judge sentenced Applicant to a life sentence without the possibility of parole.


#### ALLEGATIONS RAISED

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

1. Ineffective assistance of counsel for failing to properly challenge the jury selection.
2. Ineffective assistance of counsel for failing to properly investigate Applicant's case and failing to properly advise Applicant whether he should proceed to trial in light of Applicant's prior record and his written statement admitting guilt.

#### SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and called trial counsel to testify as well. Applicant testified that J. Rhodes Bailey, Esquire, of the Richland County Public Defender's Office served as counsel for fourteen months before trial counsel became his attorney. Applicant testified he first met trial counsel about a month before trial and only met with him once or twice prior to trial. Applicant stated he discussed some evidence with trial counsel, but he did not receive any discovery from trial counsel. Applicant testified trial counsel tried to negotiate a plea agreement other than a life sentence, but the State would not agree to anything less. Applicant

  
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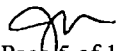
Order of Dismissal

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also testified trial counsel did not call Applicant's father as a witness, and generally alleged trial counsel did not do a good job in his cross examinations of the State's witnesses.

Trial counsel testified he was appointed to represent Applicant shortly after leaving his employment with the Richland County Public Defender's Office and beginning a solo private practice. He testified Applicant was previously represented by Attorney Bailey before he was appointed. Trial counsel further testified he met with Applicant on three occasions totaling around five to six hours over the five-to-six weeks between his appointment and trial. Trial counsel testified his notes indicated he reviewed discovery with Applicant, though trial counsel could not recall any specific topics he discussed with Applicant. Trial counsel testified he and Applicant discussed Applicant's version of the facts, which did not differ significantly from the evidence. Trial counsel also testified he had very limited opportunities in mounting a defense for Applicant because the robbery was caught on video and Applicant had admitted his guilt to law enforcement. Trial counsel testified he focused on excluding the evidence against Applicant, including Applicant's statement to law enforcement and the witnesses' identification of Applicant through a photo lineup. Trial counsel further testified this was a relatively simple case, without much discovery, and he had enough time to prepare the case before trial.

Trial counsel stated the State only offered for Applicant to plead to a life sentence, and therefore, trial counsel advised Applicant not to accept the State's offer. Trial counsel testified he went to speak directly with the elected Solicitor, Barney Giese, about rescinding the State's life sentence without parole notice. Trial counsel further testified he was unsuccessful in securing a meeting with Giese, and thus he tried to get a different plea offer from the Assistant Solicitor



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during every break of the trial, however, the State would not agree to withdraw the life sentence without parole.

Regarding jury selection, trial counsel testified he could not say whether the State's striking of three African-American jurors was done with a discriminatory motive, and he did not see a discriminatory pattern at the time. He recalled that at least one of the African-American jurors stricken by the State went to church with Applicant or one of his family members, which would have been a "feasible" reason for striking that juror. Trial counsel also candidly admitted every juror he struck on Applicant's behalf was white. Trial counsel also testified he made the motion in other cases and had never been successful. Accordingly, trial counsel did not make a Batson motion at the conclusion of jury selection.

#### **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 each witness who testified at the hearing and to closely pass upon their credibility. This Court has reviewed the trial court record and has heard the testimony of both Applicant and trial counsel. This Court has therefore 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).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the

  
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trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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). 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.” Id. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.



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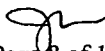
*Michael P. Cornelius (SCDC#210317) v. State of South Carolina, 2012-CP-40-7573*

**I. INEFFECTIVE ASSISTANT OF COUNSEL FOR FAILURE TO PROPERLY CHALLENGE THE JURY SELECTION**

Applicant asserts trial counsel was ineffective for failing to properly challenge the jury selection pursuant to Batson. Specifically, Applicant contends trial counsel should have challenged the State's use of three of their four peremptory strikes on African-American jurors.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a juror on the basis of race. Batson, 476 U.S. at 89; State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); State v. Cochran, 369 S.C. 308, 313, 631 S.E.2d 294, 297 (Ct. App. 2006). "Once a peremptory challenge is opposed, the trial court must, upon request, conduct a Batson hearing and adhere to the procedures set forth in Purkett v. Elem, 514 U.S. 765, 767 (1995), and adopted by our Supreme Court in State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996)." Cochran, 369 S.C. at 314, 631 S.E.2d at 297-98. The United States Supreme Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. Inman at 26, 760 S.E.2d at 108; See Purkett, 514 U.S. at 767-68 (1995).

First, the party asserting the Batson challenge must make a prima facie showing that the challenge was based on race. Inman at 26, 760 S.E.2d at 108. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the party opposing the Batson challenge to provide a race-neutral explanation for the challenge. Id. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the [party asserting] the challenge has proved purposeful discrimination. Id.

  
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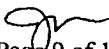
*Michael P. Cornelius (SCDC#210317) v. State of South Carolina, 2012-CP-40-7573*

The ultimate burden always rests with the [party asserting the Batson challenge] to prove purposeful discrimination. Id.

Here, trial counsel did not make a Batson motion; therefore, the aforementioned three-step inquiry cannot be applied to the facts of Applicant's case. Moreover, trial counsel articulated clear strategic reasons why he chose not to make a Batson motion, and even if trial counsel had made an appropriate motion, this Court does not find trial counsel could have made a prima facie showing that the State's challenges were based on race. Additionally, this Court notes that while the State did use three out of their four peremptory strikes on African-American jurors, the State did not strike all African-American jurors. In fact, the State agreed to sit four African-American jurors. Furthermore, trial counsel struck seven white jurors and candidly admitted at the evidentiary hearing that he had done so. Trial counsel appropriately considered that a Batson motion may have been reciprocally made by the State. This Court finds trial counsel made an appropriate strategic decision to not make a Batson motion, and trial counsel was not deficient in his representation of Applicant in this regard. Therefore, Applicant's PCR application is denied as to this allegation.

**II. INEFFECTIVE ASSISTANT OF COUNSEL FOR FAILURE TO PROPERLY INVESTIGATE APPLICANT'S CASE**

Applicant alleges trial counsel was ineffective for failing to fully investigate his case and for failing to properly advise him to plead guilty. This Court finds trial counsel made appropriate motions to exclude all inculpatory evidence against Applicant. Specifically, trial counsel moved to suppress the photo lineups used to identify Applicant, Applicant's confession to law enforcement, and the results of a search warrant executed at the residence of Applicant's father

  
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Order of Dismissal

*Michael P. Cornelius (SCDC#210317) v. State of South Carolina, 2012-CP-40-7573*

and aunt. The trial judge denied each of trial counsel's motions. Additionally, trial counsel made multiple attempts before and during trial to obtain Applicant a better plea deal than life without parole. The State was not willing to offer such a plea, nor were they required to do so. This Court finds that trial counsel was not deficient in his defense of Applicant at trial, nor was he deficient in his attempts to obtain a plea deal for Applicant. Therefore, this allegation must be denied under Applicant's PCR application.

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Trial counsel was not deficient, nor was Applicant prejudiced by trial counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (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), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

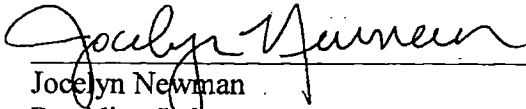
IT IS FURTHER ORDERED that Applicant Michael P. Cornelius be REMANDED to the custody of the State of South Carolina.



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*Michael P. Cornelius (SCDC#210317) v. State of South Carolina, 2012-CP-40-7573*

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Jocelyn Newman  
Presiding Judge

September 5, 2018  
Columbia, South Carolina.