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April 24, 2013

**Via Regular Mail**

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

**Re:** MICHAEL JONES 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.

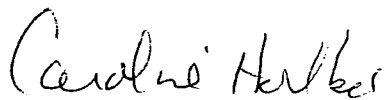
These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,

**RECEIVED**

APR 29 2013



Caroline M. Horlbeck, Esq.

**S.C. SUPREME COURT**

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 W. Jeffrey Young

CA No. 2011-CP-23-2916

MICHAEL JONES,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

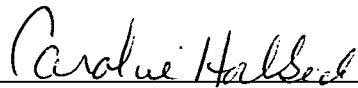
Appellant MICHAEL JONES, appeals from the Order of the Honorable W. Jeffrey Young, Circuit Court Judge clocked April 2, 2013.

**RECEIVED**

APR 29 2013

**S.C. SUPREME COURT**

Respectfully submitted,



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

Date: April 13, 2013

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

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2013 APR 17 A 9:14

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

COUNTY OF GREENVILLE

C.A. No. 2011-CP-23-2916

Michael Jones,

Appellant,

-vs-

CERTIFICATE OF SERVICE

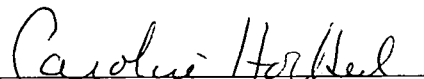
State of South Carolina,

Respondent.

This is to certify that I am an employee in the law office of Caroline M Horlbeck, attorney 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. Loriene French  
S.C. Office of Appellate Defense  
PO Box 11433  
Columbia, SC 29201

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

  
Caroline M. Horlbeck

Greenville, South Carolina

April 24, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Michael Lee Jones, )  
 S.C.D.C. No. 296273, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2011-CP-23-2916

**ORDER OF DISMISSAL**

FILED  
 GREENVILLE COUNTY  
 PAUL B. WICKENS  
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This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 29, 2011. The Respondent made its return on August 18, 2011. An evidentiary hearing into the matter was convened on February 14, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing 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 plea counsel, C. Timothy Sullivan, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

**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 December 2009 term of the Greenville County Grand Jury for armed robbery (2009-GS-

23-1685), assault and battery with intent to kill (ABIK) (2009-GS-23-4855, count 1), and possession of a weapon during commission of a violent crime (2009-GS-23-4855, count 2). He was represented by C. Timothy Sullivan, Esquire.

On September 15, 2010, the Applicant pled guilty to armed robbery and ABIK. The Honorable Edward W. Miller levied concurrent sentences of twenty (20) years for armed robbery and twenty (20) years for ABIK. The Applicant did not appeal.

### **ALLEGATIONS**

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

1. Ineffective assistance of counsel.

### **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). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he had three meetings with plea counsel and they discussed his version of events, the State's evidence, and his statement. The Applicant stated the armed robbery case had previously ended in a mistrial so he knew the case was back on the trial docket. The Applicant stated he told plea counsel he would plead guilty if he would receive a sentence less than twenty years. The Applicant stated he did not know he was pleading guilty without a sentence recommendation and believed – based on his conversation with plea counsel – that he would definitely receive less than twenty years. The Applicant stated the plea transcript indicates plea counsel asked the plea judge to sentence him to twenty years and that he did not stop the proceeding at that point because he did not know he could do so.

Plea counsel testified he filed discovery motions, gave a copy of the State's evidence to the Applicant, and reviewed that evidence with him prior to the trial. Plea counsel testified he reviewed the Applicant's statement with him, discussed the Applicant's version of events, and explained the minimum and maximum sentences for the charges. Plea counsel testified he told the Applicant the case was placed back on the trial docket after the mistrial. Plea counsel testified the Applicant wanted a sentence less than twenty years but he did say the Applicant would receive such a sentence. Plea counsel testified he told the Applicant there was no

sentence recommendation. Plea counsel testified he asked the plea judge – in an attempt to try and cap the sentence – to levy a twenty year sentence on the ABIK charge and run the armed robbery charge concurrent.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.6; p.10). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty and had not been coerced in any way. (Plea transcript, pp.5-6).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly explain the sentence he could receive at the plea hearing. Plea counsel testified he told the Applicant the sentence ranges on his charges. Plea counsel testified he told the Applicant there was no sentence recommendation prior to the plea hearing. This Court finds plea counsel's testimony is credible. This Court notes the plea judge explained the charges and sentence ranges during the plea hearing. (Plea transcript, pp.4-5). This Court also notes the Applicant signed the sentencing sheets, which clearly indicated there was no sentence recommendation. While plea counsel did ask the plea judge to levy the maximum sentence on the ABIK charge, this Court finds plea counsel articulated this was a strategic decision and further finds it was a valid attempt to have the judge cap the overall sentence at twenty years. (Plea transcript, pp.13-14). See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel

articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea 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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

#### **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 guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

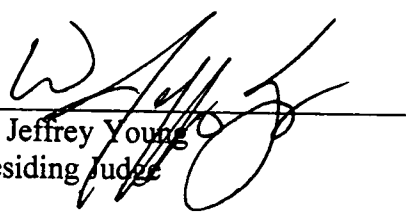
This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(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
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 13 day of March, 2013.

  
\_\_\_\_\_  
W. Jeffrey Young  
Presiding Judge

Santa, South Carolina.

CAROLINE M. HORLBECK

*Attorney At Law*

101 WHITSETT ST.  
GREENVILLE, SOUTH CAROLINA 29601

Via Regular Mail

Mr. Daniel E. Shearouse  
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