

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

John C. Hayes, III., Presiding in York County

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Case No. 2012-CP-46-02269

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Antonio Patterson, ..... Appellant,

v.

State of South Carolina, ..... Respondent.

**RECEIVED**

JUN 04 2013

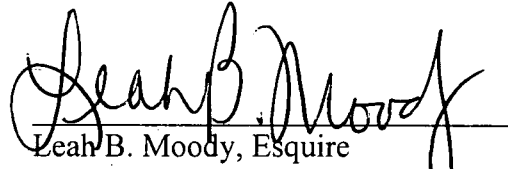
**S.C. SUPREME COURT**

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NOTICE OF APPEAL

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Antonio Patterson appeals the order of the Honorable John C. Hayes, III., dated May 16, 2013 and mailed on May 22, 2013. Appellant received written notice of entry of the final order on May 28, 2013.

  
Leah B. Moody, Esquire  
Law Office of Leah B. Moody, LLC  
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Rock Hill, South Carolina 29731

Other Counsel of record:  
J. Rutledge Johnson, SC Attorney General's Office  
Attorney for Respondents  
Rembert C. Dennis Building  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-3970

**IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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**APPEAL FROM YORK COUNTY  
Court of Common Pleas**

**John C. Hayes, III., Presiding in York County**

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**v.**

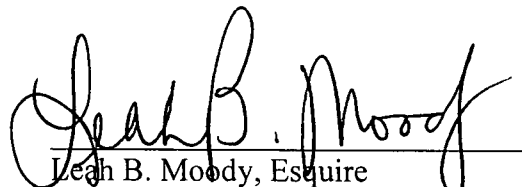
**State of South Carolina, ..... Respondent.**

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on J. Rutledge Johnson by depositing a copy of it in the United States Mail, postage prepaid, on May 30, 2013, addressed to its attorney of record, J. Rutledge Johnson, Post Office Box 11549, Columbia, South Carolina, 29211-1549.

  
Leah B. Moody, Esquire  
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cc Sharon A. Graham  
Antonio Patterson

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May 30, 2013

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JUN 04 2013

Mr. Daniel E. Shearouse  
The Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29221

**S.C. SUPREME COURT**

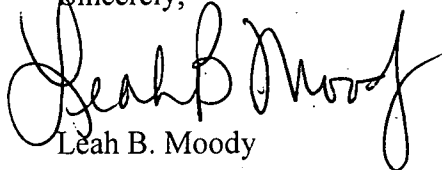
RE: Antonio Patterson v. State of South Carolina  
C.A. No.: 2012-CP-46-2269

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Antonio Patterson in his Post Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal and Proof of Service in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope. Also enclosed is a copy of the Order of Dismissal.

Thank you for your assistance with this matter.

Sincerely,



Leah B. Moody

LBM/jow

Enclosures

cc: Antonio Patterson  
J. Rutledge Johnson, Esquire

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Antonio Patterson, #275449,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-46-2269

ORDER

FILED-RECEIVED  
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Applicant filed a Post-Conviction Relief application on June 18, 2012. This matter was heard by the undersigned on May 15, 2013. Applicant was represented by Leah B. Moody, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for Distribution of Crack Cocaine within proximity of a school (2010-CP-46-4111) and Distribution of Cocaine Base (2010-CP-46-4112). The Applicant was represented by Michael Matthews, Esquire.

On October 5, 2011, the Applicant pled guilty to Distribution of Cocaine Base, 2<sup>nd</sup> offense and Distribution of Crack Cocaine within proximity of a school. The Honorable Lee S. Alford sentenced the Applicant to confinement for five (5) years for Distribution of Cocaine Base, 2<sup>nd</sup> offense, and ten (10) years, concurrent, provided upon the service of five (5) years. The Applicant did not appeal his conviction or sentence.

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

1. "Due Process"



2. "Trial Court Error"
  - a. "Court didn't try my case right"
3. "lawyer didn't inform my(sic) of everything"

At his hearing, Applicant testified that his only issue was that after his plea trial counsel told him his sentence was not a no-parole sentence and that he would only have to serve two and one-half years in prison.

Applicant's claim against plea counsel appears to be one of ineffective assistance of counsel, although Applicant stated he was pleased with trial counsel's representation. The Respondent asserts that the Applicant's allegation of ineffective assistance of plea counsel is without merit. The Court treats this as a claim of ineffective assistance of counsel, while as seen below; the claim does not quite fit this category.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong,

*J. H. H. 2*

attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

In the over twenty years that the undersigned has been hearing post-conviction relief cases, this is a first. Applicant's position fails on its own basis. Applicant argues he is entitled to relief for a statement by his attorney after he had entered a plea, the plea had been accepted by the Court and he had been sentenced. I find this presents no cognizable issue for the Court. Even though I find no cognizable issue, certain observations are warranted.

Applicant, no stranger to our judicial system nor the parameters of a no-parole offense, claims, post his plea, trial counsel told Applicant that his sentence was not a no-parole offense and Applicant could expect to serve two and one-half years in jail. Trial counsel disputes that he made any such statement and trial counsel's testimony and the plea transcript wholly support trial counsel.

Trial counsel acknowledges that some confusion existed at the time of Applicant's plea as to what offenses fell in the no-parole category. Trial counsel testified as to his diligent efforts to resolve this concern. Trial counsel testified he visited a South Carolina Department of Corrections (SCDC) website for a definitive answer as to the no-parole possibility of the charge to which Applicant pled and trial counsel testified to telephone conversations with SCDC regarding the no-parole issue.

Trial counsel, in Applicant's presence, related to the Court his concern and his inability to definitely resolve the no-parole question. (Plea Transcript p. 14, LL 4-13). This excerpt also establishes that relative to the possibility of his sentence being a no-parole offense, trial counsel and Applicant discussed the no-parole community supervision. This latter concept was not foreign to Applicant as he had previously (and the Court is not clear on this next point) perhaps was still on community supervision at the time of the plea. Regardless of whether or not he was or was not on community supervision at the time of the plea, he was fully cognizant of the effects of a no-parole sentence.

Applicant would not affirmatively state in cross examination by the State that he would not have pled when he did had he been clear on the no-parole issue. Applicant's complaint is solely that post-plea trial counsel told him he would only have to serve two and one-half years of his five year sentence.

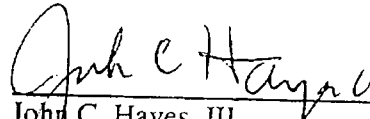
The testimony by Applicant and his issue in this post-conviction relief application do not implicate Strickland, supra; Butler, supra; or Cherry, supra. There are no allegations of pre-plea ineffective assistance so a fortiori there is no such allegation for the Court to analyze.

Wherefore, 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 Rule 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.

*Ge H 4*

IT IS SO ORDERED.



John C. Hayes, III  
Presiding Judge

At 5

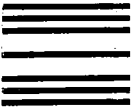
May 16<sup>th</sup>, 2013  
York, South Carolina

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ROCK HILL, SC 29730

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