

## Law Office of Leah B. Moody, LLC

235 East Main Street  
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Rock Hill, South Carolina 29731  
[lbinatty@comporium.net](mailto:lbinatty@comporium.net)

Phone: (803) 327-4192

Fax: (803) 329-1344

**RECEIVED**

MAY 02 2014

**S.C. SUPREME COURT**

April 23, 2014

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

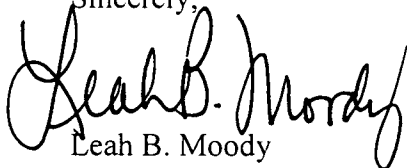
RE: Johnny W. Crockett v. State of South Carolina  
C.A. No.: 2013-CP-46-00607

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Johnny Crockett 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 clocked copy of the Order Dismissing Post-Conviction Relief Application.

Thank you for your assistance with this matter.

Sincerely,

  
Leah B. Moody

LBM/res

Enclosure

Cc Johnny Crockett  
Rutledge Johnson, Esq.  
David Hamilton, Clerk of Court, York County  
Sharon A. Graham, SCCID

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

**RECEIVED**

MAY 02 2014

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Case No. 2013-CP-46-00607

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**S.C. SUPREME COURT**

Johnny W. Crockett, ..... Appellant,

v.

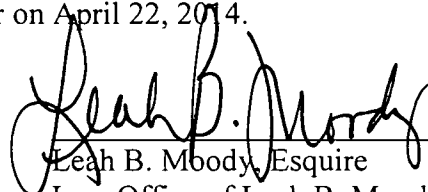
State of South Carolina, ..... Respondent.

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**NOTICE OF APPEAL**

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Johnny W. Crockett appeals the order of the Honorable John C. Hayes III, dated April 17, 2014, mailed on April 18, 2014, and postmarked April 21, 2014. Appellant received written notice of entry of the final order on April 22, 2014.

  
Leah B. Moody, Esquire  
Law Office of Leah B. Moody, LLC  
235 E. Main Street, Suite 115  
Post Office Box 1015  
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

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas

John C. Hayes, III, Presiding in York County

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Case No. 2013-CP-46-00607

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Johnny W. Crockett, ..... Appellant,

v.

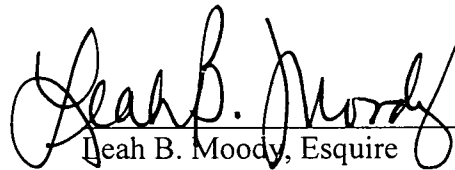
State of South Carolina, ..... Respondent.

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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 April 23, 2014, addressed to its attorney of record, J. Rutledge Johnson, Post Office Box 11549, Columbia, South Carolina, 29211-1549.



---

Leah B. Moody, Esquire  
Law Office of Leah B. Moody, LLC  
235 E. Main Street, Suite 115  
Post Office Box 1015  
Rock Hill, South Carolina 29731

Cc Johnny Crockett  
Rutledge Johnson, Esq.  
David Hamilton, Clerk of Court, York County  
Sharon A. Graham, SCCID

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP4600607

Johnny W Crockett	South Carolina State Of
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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**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: **ORDER**

**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.

*s/ John C. Hayes, III.*

2049

4/17/2014

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on April 18, 2014, and a copy mailed first class or placed in the appropriate attorney's box on April 18, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock Hill, SC 29730

James Rutledge Johnson PO Box 11549 Columbia, SC 29211

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

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

David Hamilton

**Court Reporter**

**David Hamilton - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 Johnny William Crockett, #243050 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP<sup>46</sup>/0607

ORDER

2014 APR 18 5 15 PM  
 YORK COUNTY, SC

This is a post-conviction relief application filed February 22, 2013. The case was heard by the undersigned on April 15, 2014, at the Moss Justice Center in York, South Carolina. Applicant was represented by Leah B. Moody, Esquire, the State by J. Rutledge Johnson, Esquire.

The Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The applicant was indicted by the February 2011 term of the York County Grand Jury for Possession of Stolen Goods (2011-GS-46-0625). The Applicant was represented by Jonathan Sullivan, Esquire. On March 17, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty. The Honorable Paul M. Burch sentenced the Applicant to confinement for ten (10) years for property offense, 3<sup>rd</sup> or subsequent.

A notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967). The remittitur was issued on September 11, 2012.

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

*Jc #171*

1. "Ineffective Assistance of Counsel"
2. "Violation Due Process"
3. "Prosecutorial Misconduct" <sup>1</sup>

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

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<sup>1</sup> This ground was withdrawn by Applicant at his PCR hearing

*Jc H#2*

The Applicant testified first at the PCR hearing. Applicant's trial counsel, Jonathan Sullivan, Esquire, also testified at the hearing.

As to the first ground raised in his PCR application, that being his claim of "Ineffective Assistance of Counsel," the Applicant alleges that his trial counsel was ineffective in that he failed to obtain an expert witness to testify on the Applicant's behalf and additionally that he failed to investigate and prepare the Applicant's case. The Court will first address the Applicant's claim in regards to trial counsel's failure to obtain an expert witness.

In *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998), the South Carolina Supreme Court held that:

This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); see also *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover v. State*, supra, 318 S.C. at 498-99, 458 S.E.2d at 540.

At the PCR hearing the Applicant did not produce the testimony of an expert witness to establish prejudice from any expert witness's failure to testify at trial. The Applicant alleges his trial counsel was ineffective by failing to obtain an expert on the basis that an expert would have

JHA3

testified that the Applicant's DNA or fingerprints were not found on the stolen goods that were recovered and/or that the value of the stolen goods was actually less than the State alleged. The Court cannot rely on hearsay or mere speculation as to what an expert witness's testimony could or would have been at the time of trial. Additionally, there was no question that the goods in this case were stolen. Rather, there was a jury question as to whether the goods actually belonged to the victim(s) in this case. Any DNA or fingerprint evidence offered at trial would have been of no value to the State or defense in trying this case. Additionally, the Applicant failed to present any expert testimony concerning this issue at the PCR hearing. Therefore, the Court finds that the Applicant failed to meet his burden of establishing prejudice and finds that trial counsel was not ineffective in his failure to obtain an expert witness in this case.

Applicant also testified that trial counsel was ineffective by failing to investigate and prepare the Applicant's case. Specifically, Applicant testified that trial counsel failed to object to a "false" warrant. After reviewing the record and testimony presented at the PCR hearing the undersigned finds that there is nothing to support the claim of a "false" warrant.

Applicant also testified that the police did not fully investigate his case. The undersigned finds that this is not an issue for Post-Conviction Relief and will not address this issue at this time.

The Applicant also testified that trial counsel was ineffective by failing to investigate and object to his indictment. The Applicant was directly indicted and even though the case appears to have been dismissed by the Magistrate at some prior point in time, the State has a right to directly indict him, which they did. The undersigned finds no fault on the part of trial counsel in failing to attack the indictment.

*Jc 2d #4*

Applicant also testified that trial counsel was ineffective for failing to object to the property value he was charged with under the crime of Receiving Stolen Goods. The undersigned finds that the property value in this case was of no importance as Applicant was subject to the enhanced penalty under the Property Crimes Enhancement Act, regardless of the value of the property that was stolen.

Applicant's trial counsel, Jonathan Sullivan, Esquire, also testified in this matter. Trial counsel testified that he met with the Applicant on several occasions prior to trial in order to discuss the case strategy and options with the Applicant. Trial counsel testified that he discussed a plea deal of time served and two years with the Applicant. He also testified that it was Applicant's decision to go to trial and that it appeared to him that the Applicant understood everything. The undersigned finds trial counsel's testimony credible and it appears to the undersigned that trial counsel did a thorough investigation into the Applicant's case. Therefore, the undersigned finds that the Applicant has failed to meet his burden of proof in alleging that trial counsel was ineffective by failing to investigate and prepare for the Applicant's case.

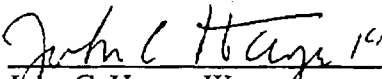
As to the second ground raised in his PCR application, that being "Due Process Violation," the Applicant failed to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." (Section 17-27-50, SC Code of Laws, 1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Court finds that this allegation

JCHAS

should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

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.

IT IS SO ORDERED.

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge #6

April 17<sup>th</sup>, 2014  
York, South Carolina

## Law Office of Leah B. Moody, LLC

235 East Main Street  
Post Office Box 1015  
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April 23, 2014

Rutledge Johnson, Esquire  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211

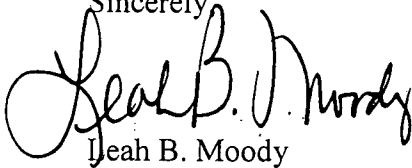
RE: Johnny W. Crockett v. State of South Carolina  
C.A. No.: 2013-CP-46-00607

Dear Mr. Johnson:

The York County Court of Common Pleas appointed my office to represent Johnny Crockett in his Post Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

If you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



Leah B. Moody

LBM/res

Enclosure

Cc Johnny Crockett  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
David Hamilton, Clerk of Court, York County  
Sharon A. Graham, SCCID

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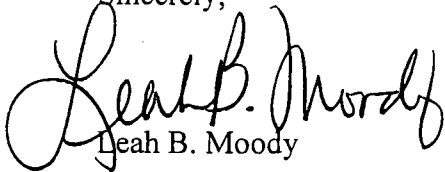
The Honorable David Hamilton  
York County Clerk of Court  
Post Office Box 649  
York, South Carolina 29745

RE: Johnny W. Crockett v. State of South Carolina  
C.A. No.: 2013-CP-46-00607

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Enclosures

cc Johnny Crockett  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
Rutledge Johnson, Esq.  
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April 23, 2014

Ms. Sharon A. Graham  
SC Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11433  
Columbia, South Carolina 29211-1433

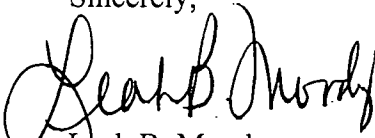
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Sincerely,



Leah B. Moody

LBM/res

Enclosures

Cc Johnny Crockett  
Rutledge Johnson, Esq.  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
David Hamilton, Clerk of Court, York County

LAW OFFICE OF LEAH B. MOODY, LLC

235 E. MAIN ST., SUITE 115

ROCK HILL, SC 29730

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