

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

MAY 08 2014

S.C. SUPREME COURT

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas

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

---

Case No. 2013-CP-46-02310

---

Todd Eugene Smith, ..... Appellant,

v.

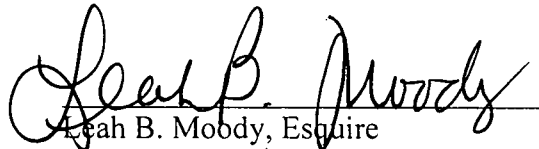
State of South Carolina, ..... Respondent.

---

NOTICE OF APPEAL

---

Todd Eugene Smith appeals the order of the Honorable John C. Hayes, III., dated April 16, 2014 and mailed on April 16, 2014. Appellant received written notice of entry of the final order on April 21, 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

---

Case No. 2013-CP-46-02310

---

Todd Eugene Smith, ..... Appellant,

v.

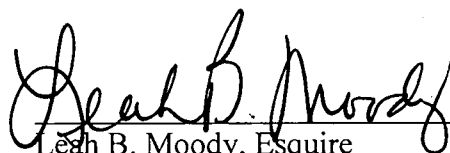
State of South Carolina, ..... Respondent.

---

PROOF OF SERVICE

---

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 1, 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 Todd Eugene Smith  
Rutledge Johnson, Esq.  
David Hamilton, Clerk of Court, York County  
Sharon A. Graham

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP4602310

Todd Eugene Smith

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 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: **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.*

Circuit Court Judge

2049

Judge Code

4/16/2014

Date

**For Clerk of Court Office Use Only**

This judgment was entered on **April 16, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **April 16, 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.

---

---

---

---

---

---

---

---

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 )  
 Todd Eugene Smith, #346915, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-2310

ORDER

FILED-RECEIVED  
 2014 APR 16 PM 4:02  
 CLERK OF COURT  
 YORK COUNTY, S.C.

This is a post-conviction relief application filed August 5, 2013. The case was heard before the Undersigned on April 15, 2014, at the Moss Justice Center in York, South Carolina. Applicant was represented by Leah Moody, Esq., and 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 applicant was indicted by the August 2011 term of the York County Grand Jury for Strong Arm Robbery (2011-GS-46-1847). The Applicant was represented by Phil Smith, Esquire. On August 23, 2011, the Applicant proceeded to a jury trial and was found guilty of Strong Arm Robbery. The Honorable Lee S. Alford sentenced the Applicant to confinement in the South Carolina Department of Corrections for a period of fifteen (15) years. A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence and issued a Remittitur on June 25, 2013. *State v. Smith*, 2013-UP-237 (Filed June 5, 2013).

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

1. "Ineffective Assistance of Trial Counsel"

*J. Rutledge Johnson*

- a. "Counsel failed to object to prosecutor's statement"
2. "Petitioner was making an omission (sic) of guilt in stating "I haven't robbed anyone."
3. "Counsel failed to subpoena 1<sup>st</sup> officer to encounter Petitioner and informed him that someone in the area had been robbed."

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).

At the PCR hearing held April 15, 2014, Applicant testified that Police Officer Smothers told him a robbery had taken place before the Applicant ever made the statement "I didn't rob anybody" to several police officers. (Trial Transcript - Page 51, Lines 9-10) Applicant alleges ineffective assistance of counsel in that trial counsel failed to call Officer Smothers as a witness in the case. Additionally, Applicant alleges ineffective assistance by trial counsel's failure to object to such statement being used against him at trial. Specifically, the Applicant alleges that the outcome of his trial would have been different if this statement would not have been introduced. The Applicant testified that he believed the statement he made to the second officer based on Officer Smother's earlier statement to him made it appear that he had committed the crime. He testified that the evidence "came across like he made statements concerning robbery out of the clear blue sky." The Applicant testified that he felt his attorney should have objected to this statement because he did not commit the robbery and should have called Officer Smothers as a witness on his behalf.

The Applicant's trial counsel, Phil Smith Esq., also testified at the PCR hearing. Trial counsel testified that the Applicant never informed him of the statement Officer Smothers allegedly made to the Applicant before the Applicant made the statement that "he didn't rob anybody" to the other officers. Trial counsel also testified that during the trial Sgt. Culbreath stated that nobody had said anything to the Applicant about a robbery before he made the statement to the officers. Trial counsel also testified that his trial strategy was to contest the identification of the Applicant and that he would not have called an extra member of law enforcement for his case and provided the State with a chance to cross examine the officer and

"end on a bad point." Trial counsel also testified that he did not have any legal grounds to object to the Applicant's statement being introduced at trial. Trial counsel testified that the statement Applicant made was not in response to any question posed by members of law enforcement.

The record was left open after the hearing in order to have Officer Smothers come testify. Leah Moody, Esq., checked with Officer Smothers, who after reviewing his notes and incident report, could not recall anything that would substantiate the Applicant's testimony regarding his initial consultation with Officer Smothers.

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.

Here, the Applicant could not produce the testimony of Officer Smothers to establish prejudice from Officer Smother's failure to testify at trial. In fact, it now appears Officer Smothers at this time could not substantiate Applicant's allegation. The Court cannot rely on hearsay or mere speculation as to what Officer Smother's testimony would have been at the time of trial.

Therefore, the Court finds that trial counsel was not ineffective in his failure to subpoena Officer Smothers.

In *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002), the South Carolina Supreme Court held:

Where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992); *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). However, counsel cannot assert trial strategy as a defense for failure to object to comments which constitute an error of law and are inherently prejudicial. See *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001)(Counsel's failure to object to prejudicial hearsay because he did not want to "confuse or upset the jury" was not valid strategy); *Gallman v. State*, 307 S.C. 273, 414 S.E.2d 780 (1992)(Trial counsel's failure to object to judge's comments inviting jury to prematurely discuss the case was not "strategic" where error of law involved and such comments are inherently prejudicial).

The Court finds that trial counsel was not ineffective by failing to object to the statement "I didn't rob anybody," as such statement was not an error of law.

Additionally, Applicant alleged that trial counsel was ineffective by failing to object to the solicitor's statement "The State doesn't have to show you, ladies and gentlemen, that he devised his plan right there. All we have to do is show to you and prove to you beyond a reasonable doubt that he did, in fact, go and steal from Daisy Shankle." (Trial Transcript – Page 234, Lines 4-8). Trial counsel testified that there was nothing objectionable in the solicitor's statement and he believed that this was a correct statement concerning the law. The Court finds that trial counsel's failure to object to this statement does not constitute ineffective assistance of counsel as there is nothing in this statement amounting to an error of law.

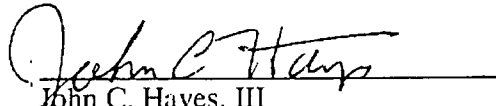
Applicant also alleges that trial counsel was ineffective for making the following statement during his closing argument: "And what's it on? A photo they grab off the internet." (Trial Transcript – Page 246, Lines 11-12). The Court has reviewed trial counsel's closing argument and finds no error of law in trial counsel's statement. This statement appears to be a

valid and good argument, and at worse would be considered trial strategy. The Court finds that such strategy does not constitute any error of law.

Based on the record and the testimony at the Post-Conviction Relief hearing, the Court finds that Applicant has failed to carry his burden of proof and failed to prove that, when the appropriate standards set forth hereinabove are applied, trial counsel's representation of him was ineffective to any degree.

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice. This Court hereby advises Applicant that she 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  
A-6

April 16<sup>th</sup>, 2014  
York, South Carolina

## Law Office of Leah B. Moody, LLC

235 East Main Street  
Post Office Box 1015  
Rock Hill, South Carolina 29731  
[lbmatty@comporium.net](mailto:lbmatty@comporium.net)

Phone: (803) 327-4192

Fax: (803) 329-1344

May 1, 2014

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

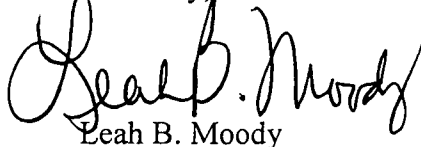
RE: Todd Eugene Smith v. State of South Carolina  
C.A. No.: 2013-CP-46-02310

Dear Mr. Johnson:

The York County Court of Common Pleas appointed my office to Todd Eugene Smith 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. Thank you.

Sincerely,



Leah B. Moody

LBM/res

Enclosures

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

# Law Office of Leah B. Moody, LLC

235 East Main Street  
Post Office Box 1015  
Rock Hill, South Carolina 29731  
[lbnatty@comporium.net](mailto:lbnatty@comporium.net)

Phone: (803) 327-4192

Fax: (803) 329-1344

May 1, 2014

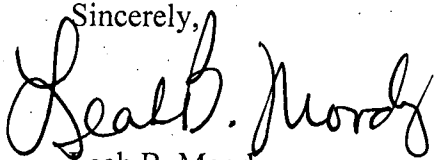
The Honorable David Hamilton  
York County Clerk of Court  
Post Office Box 649  
York, South Carolina 29745

RE: Todd Eugene Smith v. State of South Carolina  
C.A. No.: 2013-CP-46-02310

Dear Mr. Hamilton:

The York County Court of Common Pleas appointed my office to represent Todd Eugene Smith in his Post Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and the Proof of Service in the above-referenced matter. Thank you.

Sincerely,



Leah B. Moody

LBM/res

Enclosures

cc Todd Eugene Smith  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
Rutledge Johnson, Esq.  
Sharon A. Graham, SCCID

Law Office of Leah B. Moody, LLC

235 East Main Street  
Post Office Box 1015  
Rock Hill, South Carolina 29731  
[lbmatty@comporium.net](mailto:lbmatty@comporium.net)

Phone: (803) 327-4192

Fax: (803) 329-1344

May 1, 2014

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

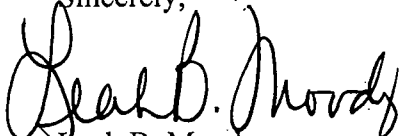
RE: Todd Eugene Smith v. State of South Carolina  
C.A. No.: 2013-CP-46-02310

Dear Ms. Graham:

The York County Court of Common Pleas appointed my office to represent Todd Eugene Smith in his Post Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in the above-referenced matter.

Thank you for your attention in this matter.

Sincerely,

  
Leah B. Moody

LBM/res

Enclosures

Cc Todd Eugene Smith  
Rutledge Johnson, Esq.  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
David Hamilton, Clerk of Court, York County

PCR

# Law Office of Leah B. Moody, LLC

235 East Main Street  
Post Office Box 1015  
Rock Hill, South Carolina 29731  
[lbmatty@comporium.net](mailto:lbmatty@comporium.net)

Phone: (803) 327-4192

Fax: (803) 329-1344

May 1, 2014

**RECEIVED**

MAY 08 2014

**S.C. SUPREME COURT**

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

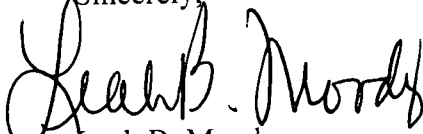
RE: Todd Eugene Smith v. State of South Carolina  
C.A. No.: 2013-CP-46-02310

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Todd Eugene Smith 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 Dismissing Post-Conviction Relief Application.

Thank you for your assistance with this matter.

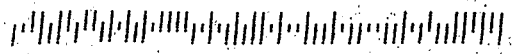
Sincerely,

  
Leah B. Moody

LBM/res

Enclosures

Cc Todd Eugene Smith  
Rutledge Johnson, Esq.  
David Hamilton, Clerk of Court, York County  
Sharon A. Graham, SCCID



\$2.030  
US POSTAGE  
FIRST-CLASS  
FROM 29730  
MAY 01 2014  
stamps.com



06250007479892



LAW OFFICE OF LEAH B. MOODY, LLC  
POST OFFICE BOX 1015  
ROCK HILL, SOUTH CAROLINA 29731

The Honorable Daniel E. Shearouse  
The Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211-1330