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Law Office of Leah B. Moody, LLC

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May 1, 2014

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

RECEIVED

MAY 08 2014

RE: Jamar Lavert Belk v. State of South Carolina
C.A. No.: 2013-CP-46-02984

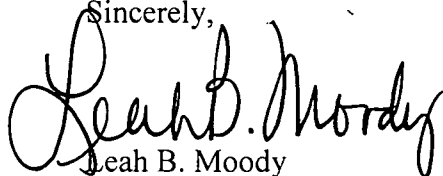
S.C. SUPREME COURT

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Jamar Belk 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 Jamar Belk
Rutledge Johnson, Esq.
David Hamilton, Clerk of Court, York County
Sharon A. Graham, SCCID

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-46-02984

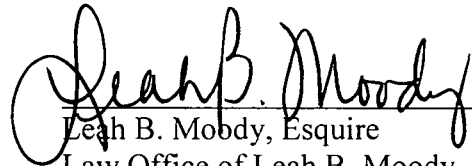
Jamar Lavert Belk, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Jamar Lavert Belk 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-46-02984

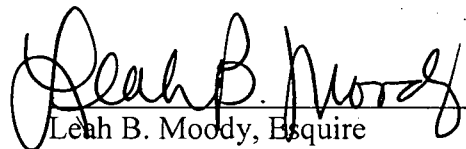
Jamar Lavert Belk, Appellant,

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 Jamar Belk
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 2013CP4602984

Jamar Lavert Belk

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)

Jamar Lavert Belk, #353088,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-2984

ORDER

DAVID HAMILTON
C.D.P. & G.S.
YORK COUNTY, SC

2014 APR 16 PM 4:02

FILED-RECEIVED

This Post-Conviction Relief case was heard by the undersigned on April 15, 2014. The applicant was represented by Leah B. Moody, Esquire; the Respondent by J. Rutledge Johnson, Esquire.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the August 2010 term of the York County Grand Jury for Murder (2010-GS-46-3072), Armed Robbery (2010-GS-46-3074), Possession of a Firearm During the Commission of a Violent Crime (2010-GS-46-3074A), and Criminal Conspiracy (2010-GS-46-3075). Michael Brown, Esquire, represented him. On October 4, 2012, the Applicant pled guilty before the Honorable Michael G. Nettles to all charges as indicted. On November 7, 2012, the Honorable Lee S. Alford sentenced the Applicant, pursuant to a negotiated sentence, to thirty (30) years for Murder, thirty (30) years, concurrent, for Armed Robbery, five (5) years, concurrent, for Possession of a Firearm During the Commission of a Violent Crime, and five (5) years, concurrent, for Criminal Conspiracy. The Applicant did not appeal his conviction and sentence.

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

1. Ineffective Assistance of Counsel"
 - a. "Counsel refused to prepare Petitioner's case for trial against Petitioner's wishes; counsel instead seeked(sic) to plead"
 - b. "Counsel failed to offer alibi"
 - c. "Counsel failed to use co-defendant conflicting statement as evidence towards Petitioner's innocence"
 - d. "Counsel verbally admitted that since Petitioner was not paying he would not be fully represented"
 - e. "Counsel's representation fell below standard"
2. "Prosecutorial Misconduct"¹

Respondent's claims are claims of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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).

¹ This ground withdrawn by Applicant at commencement of his hearing.

Je H # 2

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, he 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).

As to ground 1a, Applicant's testimony at the PCR hearing and the Transcript of his plea and sentencing, clearly establish that at the time he entered his plea, Applicant did so freely, voluntarily, knowingly and intelligently. The thrust of Applicant's argument here is that trial counsel strongly recommended Applicant plead guilty, especially after his two brothers (co-defendants) "rolled" on him and agreed to testify for the prosecution.

Applicant moved for a continuance prior to the hearing on the grounds that there exists statements of his brothers in which they stated they did not know part of their plea deal was to testify against Applicant. Applicant has had plenty of time to obtain any such statement and bringing up this unsupported suggestion at the time of his hearing is simply unacceptable.

The record establishes, whether the brothers knew they had agreed in signed statements to testify against Applicant or not, Applicant knew they had agreed to testify against him. He was informed by trial counsel and the prosecuting solicitor stated in the record at the time of Applicant's plea that the two had, as part of their guilty plea, agreed to testify against Applicant

(10/4/12 Plea Transcript, p. 8, L 25 through p. 9, L5). Applicant, at the plea, agreed to the accuracy and truth of the fact regarding the brothers intentions to testify against him (10/4/12 Plea Transcript, p. 9 LL 6-8).

Save Applicant's testimony that his brothers would state they were "not fully aware of what they signed" saying they would testify against him and there is no evidence in the record to support such assertion. Applicant did not testify that his brothers would not have complied with their plea agreement and testify against Applicant, but rather that they were unaware of their having so committed. At any rate, as set forth above, at the time of the Applicant's plea, the brothers had agreed to testify against Applicant as a contractual obligation of their plea bargain and Applicant was aware of this. Unfortunately for Applicant, his brothers, acting in their own, and not his, best interest, in common criminal arena parlance, "rolled" on the Applicant.

Applicant testified that trial counsel failed to investigate and failed to call alibi witnesses on his behalf.

Applicant alleges a co-defendant, Joshua Squires, had given a statement exonerating Applicant and the existence of such statement was favorable to his defense. Trial counsel testified that he has never found such a statement and the well-organized file he received from Applicant's prior appointed attorney did not contain any such statement. Absent the statement for the Court's review and in the absence of any evidence that trial counsel ever had possession of or ever saw such statement, the Court finds no ineffective assistance of counsel regarding the Squire statement.

Applicant testified his mother and sisters would have provided him an alibi. Applicant's mother and sisters did not testify at his PCR hearing. Trial counsel testified that his investigator interviewed Applicant's mother and sisters and they would not have provided alibi defense

testimony on behalf of Applicant. Applicant has failed to carry his burden of proof and trial counsel was not only not ineffective for not presenting alibi witnesses, but had none to call to testify.

Applicant testified in addition to the matters set forth above that his arrest warrants were “wrong” and that there was a “delay” in his indictment. Applicant offered no evidence on either of these issues save his assertion that these are issues he had regarding trial counsel’s representation. These allusions to the warrant’s problem and the delayed indictment are facially without merit.

Applicant complains that trial counsel strongly recommended that Applicant accept a plea to murder for a negotiated thirty year sentence. Trial counsel acknowledges that he did strongly so advise, but it was Applicant who freely, voluntarily, knowingly and intelligently entered his plea of guilty. Applicant acknowledges repeatedly that he accepted the plea bargain and entered his plea of guilty because he was “scared” of receiving a life sentence, which he did not want.

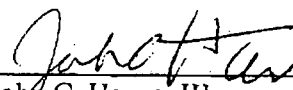
The hearing testimony establishes that trial counsel represented Applicant within reasonable professional norms and without any deficiency.

I find Applicant has failed to carry his burden of proof and has failed to prove his allegations of ineffective assistance of counsel as I find that his application for post-conviction should be, and hereby 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 Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant’s attention

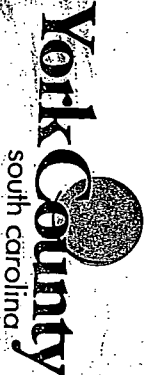
is directed to Rule 243, SCACR, for the procedures following the filing and service of the
Petition.

IT IS SO ORDERED.



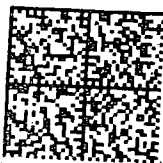
John C. Hayes, III
Presiding Judge

April 16th, 2014
York, South Carolina



CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29745-0649

Leah B Moody
PO Box 1015
Rock Hill, SC 29730



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May 1, 2014

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South Carolina Attorney General's Office
Post Office Box 11549
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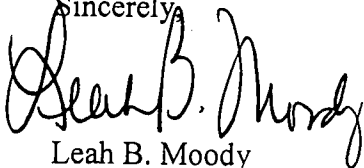
RE: Jamar Lavert Belk v. State of South Carolina
C.A. No.: 2013-CP-46-02984.

Dear Mr. Johnson:

The York County Court of Common Pleas appointed my office to represent Jamar Belk 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 Jamar Belk

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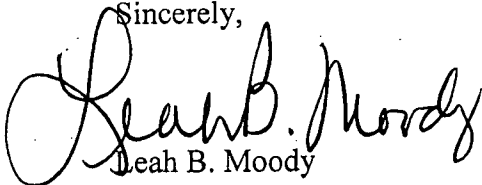
The Honorable David Hamilton
York County Clerk of Court
Post Office Box 649
York, South Carolina 29745

RE: Jamar Lavert Belk v. State of South Carolina
C.A. No.: 2013-CP-46-02984

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Sincerely,



Leah B. Moody

LBM/res

Enclosures

cc Jamar Belk
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Rutledge Johnson, Esq.
Sharon A. Graham, SCCID

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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

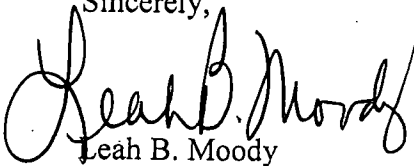
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C.A. No.: 2013-CP-46-02984

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David Hamilton, Clerk of Court, York County

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Rock Hill, South Carolina 29731

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