

Law Office of Leah B. Moody, LLC

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August 19, 2014

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

RE: Deangelo Young v. State of South Carolina
Case No.: 2013-CP-42-0338

RECEIVED

AUG 29 2014

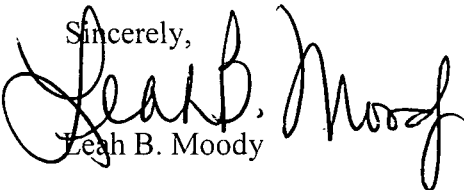
S.C. SUPREME COURT

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Deangelo Young in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal, Proof of Service and one (1) copy of the Order of Dismissal in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance with this matter.

Sincerely,


Leah B. Moody

Enclosure

cc Deangelo Young
Suzanne White, Esquire
Hope Blackley, Clerk of Court, Spartanburg County
Sharon Graham, SCCID

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Presiding in Spartanburg County

RECEIVED

Case No. 2013-CP-42-0338

AUG 29 2014

Deangelo Young, Appellant,

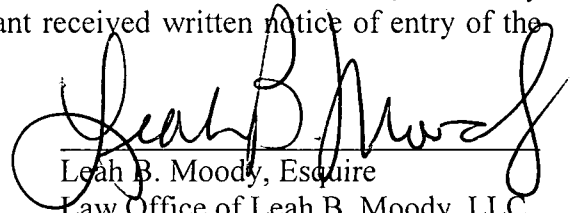
S.C. SUPREME COURT

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Deangelo Young appeals the order of the Honorable J. Derham Cole, dated July 25, 2014 and mailed on July 28, 2014. Appellant received written notice of entry of the final order on July 30, 2014.



Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
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Post Office Box 1015
Rock Hill, South Carolina 29731

Other Counsel of record:
Suzanne White, SC Attorney General's Office
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 SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Presiding in Spartanburg County

Case No. 2013-CP-42-0338

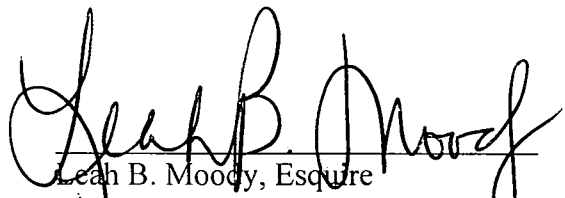
Deangelo Young, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Suzanne White by depositing a copy of it in the United States Mail, postage prepaid, on 8/25, 2014 addressed to its attorney of record, Suzanne White, 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

August 25, 2014

cc Deangelo Young
Suzanne White, Assistant Attorney General
Hope Blackley, Clerk of Court, Spartanburg County
Sharon Graham, SCCID

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
 DeAngelo Antonio Young, #352340,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2013-CP-42-0338

ORDER OF DISMISSAL

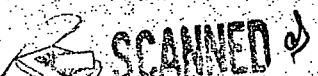
This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 25, 2013. The Respondent made its Return on or about March 3, 2014. An evidentiary hearing into the matter was convened on April 10, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Robert B. Hall, Esquire, testified on behalf of the State. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

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 SPARTANBURG COUNTY
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 M. HOPPEL-BOCKLEY

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the November 2009 term of the Spartanburg County Grand Jury for habitual traffic offender (2009-GS-42-6352), the January 2010 term for trafficking in crack cocaine 28-100 grams (2010-



GS-42-0630) and the November 2011 term for trafficking in cocaine over 100 grams (2011-GS-42-6659). James Cheek, Esquire, and Robert B. Hall, Esquire, represented Applicant. On September 11, 2012, Applicant pled guilty to trafficking in cocaine 28-100 grams, and the other two charges as indicted. Following a recommendation by the State, the Honorable Letitia H. Verdin sentenced Applicant to concurrent sentences of seven years on each trafficking charge and five years for habitual traffic offender. Applicant did not appeal his conviction and sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. "Failure to give me due process of law,"
 - b. "Did not fully advise me of my rights,"
 - c. "Erronies (sic) advice – unusual punishment."

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).

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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) (citing Rule 71.1E, SCRCP). Where ineffective assistance of counsel is alleged 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 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. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 86 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he never received any discovery materials. Applicant testified that he met with both Robert Hall and James Cheek on the day of his plea, but he originally understood Robert Hall to be his appointed attorney. Applicant testified that the first time he met with Hall was on the day of the guilty plea. Applicant testified that he had met with Cheek before and had received an offer of seven to twelve years, but Applicant did not want to accept that offer. Applicant testified that he was then informed of an offer for seven to ten years. However, on the day of the plea, Applicant testified that Hall informed him that his plea would

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be for a non-violent charge and that Applicant would only have to serve 50% or 3.5 years of his sentence. Applicant testified that he had originally talked with Cheek about going to trial on the charges. Applicant also testified that Counsel failed to inform him of his rights to file a motion for reconsideration. Applicant testified that he wanted a better and different outcome, including maybe a reduction of charges or to serve less than 65% or 85%.

Robert Hall testified that he never told the Applicant that he would only serve 3.5 years of a sentence. Cheek originally met with Applicant on August 22nd for an interview. Hall testified that he requested discovery, which was received on September 10th. Hall testified that he met with the Applicant to review the discovery materials, charges and discuss a possible plea. Hall stated that the State made an offer on the case because it was an older case. Hall testified that he discussed a possible trial with Applicant and showed Applicant a form he completed with all five charges and potential sentences listed. Hall testified that the Applicant did not want to take the risk of taking the cases to a possible trial, which had been scheduled for October 1, 2012. Hall testified that the plea involved the dismissal of two charges and pleading guilty to two counts of trafficking and one habitual traffic offender charge. Hall testified he did not and was able to get the Applicant credit for the time he served while on home detention. Hall also testified that the judge also informed the Applicant that he was pleading guilty to two charges that were considered violent and serious and Applicant chose to proceed with the plea (Tr. p. 4).

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CLERK

This Court finds Counsel's testimony to be more credible than Applicant's testimony. This Court further finds that the Applicant has failed to meet his burden of proof as to his claims of ineffective assistance of counsel. It is clear from the testimony presented at the hearing that although Applicant was advised that he could not receive a sentence reduction or modification,

the Applicant simply seeks a reduction in his sentence or some sort of reduction in the charges. Regardless, the Applicant presented no evidence to support his claims that Counsel failed to provide due process, failed to advise Applicant of his rights, or failed to give correct advice.

This Court finds Counsel most credible regarding discussions with the Applicant about possible sentencing and the plea offer. The Applicant was clearly aware of the charges he was pleading guilty to and the possible sentence he could receive as a result of the plea. The plea colloquy established the fact that the trafficking charges were both violent and serious. The Applicant chose to proceed with the guilty plea following any discussion regarding the charges and possible sentences. This Court also finds no evidence that the Applicant was denied due process in any way during the plea process.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's error, the defendant would not have pled guilty, but would have insisted on going to trial. *Ross v. State*, 345 S.C.16, 546 S.E.2d 417 (2001); *Richardson v. State*, 310 S.C. 360, 426 S.E.2d 795 (1993). This Court finds that the Applicant failed to meet his burden of proof and failed to establish any deficient conduct on counsel's behalf. Further, Applicant established no prejudice suffered as a result of any alleged deficiency. Accordingly, this allegation is dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

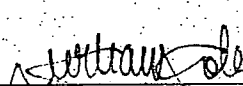
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M. HOPPER BLANKLEY

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of July, 2014.



J. Derham Cole
Presiding Judge

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M. HOPE BLACKLEY

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August 20, 2014

Suzanne White, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

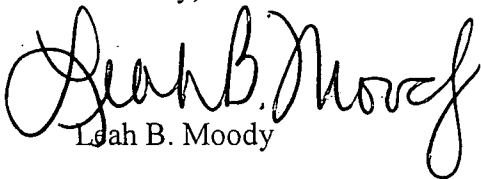
RE: Deangelo Young v. State of South Carolina
C.A. No.: 2013-CP-42-0338

Dear Ms. White:

The Spartanburg County Court of Common Pleas appointed my office to represent Deangelo Young 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 feel free to contact my office. Thank you.

Sincerely,



Leah B. Moody

LBM/res

Enclosures

Cc Deangelo Young
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Hope Blackley, Clerk of Court, Spartanburg County
Sharon Graham, SCCID

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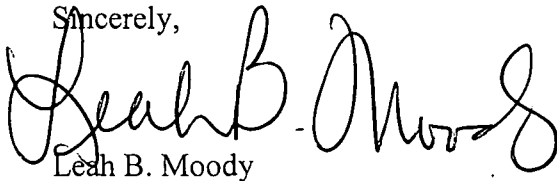
The Honorable Hope Blackley
Spartanburg County Clerk of Court
Post Office 3483
Spartanburg, South Carolina 29304

RE: Deangelo Young v. State of South Carolina
C.A. No.: 2013-CP-42-0338

Dear Ms. Blackley:

Please find enclosed the Notice of Appeal and the Proof of Service in the above-referenced matter.

Sincerely,



Leah B. Moody

Enclosures

cc Deangelo Young
Suzanne White, Assistant Attorney General
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

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

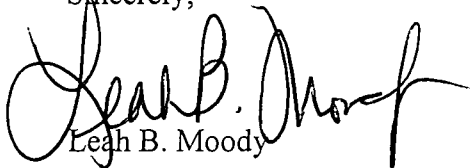
RE: Deangelo Young v. State of South Carolina
Case No.: 2013-CP-42-0338

Dear Ms. Graham:

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

Thank you for your attention in this matter.

Sincerely,


Leah B. Moody

Enclosures

cc Deangelo Young
Suzanne White, Assistant Attorney General
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Hope Blackley, Clerk of Court, Spartanburg County

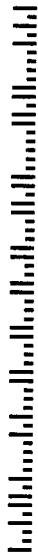
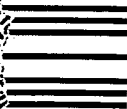
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