

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

RECEIVED

AUG 29 2014

S.C. SUPREME COURT

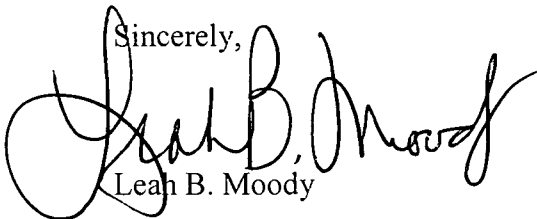
RE: Alex O. Davidson v. State of South Carolina
C.A. No.: 2013-CP-11-744

Dear Mr. Shearouse:

The Cherokee County Court of Common Pleas appointed my office to represent Alex O. Davidson 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 Alex O. Davidson
Suzanne White, Esq.
Brandy W. McBee, Clerk of Court, Cherokee County
Sharon Graham, SCCID

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Derham Cole, Presiding in Spartanburg County

Case No. 2013-CP-11-744

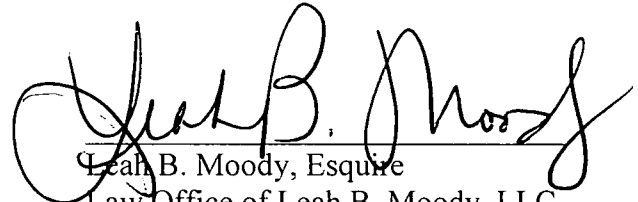
Alex O. Davidson, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Alex O. Davidson 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 August 4, 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
Attorney for Respondents
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

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AUG 29 2014

S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Derham Cole, Presiding in Spartanburg County

Case No. 2013-CP-11-744

Alex O. Davidson, Appellant,

v.

State of South Carolina, Respondent.

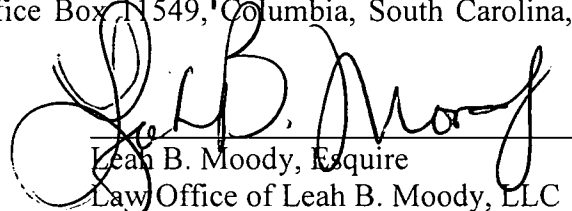
RECEIVED

AUG 29 2014

PROOF OF SERVICE

S.C. SUPREME COURT

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 Alex O. Davidson
Suzanne White, Esq.
Brandy W. McBee, Clerk of Court, Cherokee County
Sharon Graham, SCCID

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHEROKEE

CASE NO: 2012CP1100744

IN THE COURT OF COMMON PLEAS

Alex Oneal Davidson #322478 vs. State Of South Carolina

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 JUL 8 PM 9 41
BRANDY W. MCBEE

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.
- 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; Statement of Judgment by the Court:

Order of Dismissal

Dated at Gaffney, South Carolina, this the 28th day of July, 2014.

Court Reporter:

s/ J. Derham Cole

PRESIDING JUDGE - J. Derham Cole

This judgment was entered on the the 25th day of July, 2014, and a copy mailed first class this the 28th day of July, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Alex Oneal Davidson #322478 W-G-Gc Livesay
B.C.I Po Box 580 Una, SC 29378
Leah B. Moody 235 E. Main St., Ste 115 PO Box
1015 Rock Hill, SC 29730

Alan McCrory Wilson PO Box 11549 Columbia,
SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee
Brandy W. McBee - Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Alex O. Davidson, #322478,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-11-0748
 BRANDY W. MBBEE
 2014 JUL 28 PM 1 8 38
 FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 18, 2012. The Respondent made its Return on or about January 9, 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. Michael Berry, Esquire, testified on behalf of the State. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. He was indicted at the March 2012 term of the Cherokee County Grand Jury for distribution of crack cocaine (2012-GS-11-0184). Michael Berry, Esquire, represented Applicant. On July 27, 2012, Applicant pled

as indicted. He was sentenced by the Honorable Lee S. Alford, to confinement for seven (7) years. 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. Counsel failed to advise me of the nature of the plea,
 - b. Counsel failed to advise of the defective chain of custody,
 - c. Counsel failed to defend against the insufficient video,
 - d. Counsel failed to file a direct appeal,
2. Involuntary guilty plea;
3. Conflict of interest;
4. Denial of discovery;
5. Chain of custody.

At the beginning of the hearing, Applicant voluntarily withdrew his claims regarding conflict of interest and defective chain of custody.

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).

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, 186, 480 S.E.2d 733, 735 (1997) (*citing* Strickland).

Applicant testified that he initially proceeded to trial on all charges, but the first trial ended with a hung jury. Applicant testified that Counsel and Don Thompson, Esquire, both advised him to plead guilty instead of attempting another trial. Applicant testified that Counsel informed him that the State's confidential informant ("CI"), who was dressed in jail clothes for the first trial, would most likely be dressed in street clothes if they proceeded to a second trial,

which might affect the jury's verdict. Applicant also testified that he was on probation at the time of his arrest for these charges.

Applicant testified that both attorneys informed him that the charge Applicant would plead to would be for a distribution – 1st offense. Applicant testified that he never saw the sentencing sheet that indicated it was a 2nd offense. Further, Applicant testified that he only found out about the fact that he pled guilty to a negotiated plea when he discussed the case with his PCR attorney. Applicant testified that he always wanted a trial because he believed the fact that you never saw Applicant's face on the CI video was a good defense. Applicant testified that he never discussed the video with Counsel, but then testified that Counsel showed him the video. Applicant also testified that he did not receive a copy of his discovery until September 2012.

Counsel testified that he received discovery materials in April, prior to the trial scheduled for July. Counsel testified that he met with the Applicant several times prior to the trial and then again following the mistrial. Counsel testified that although the video tape did not show the Applicant's face, continued surveillance resulted in photos that showed Applicant in the same clothing/coat as in the video tape. Counsel testified that the video tape included a confidential buy which only lasted approximately thirty seconds. However, because the officers were still performing surveillance, they took additional photos following the buy. Counsel that he never discussed the possibility of Applicant pleading guilty to a 1st offense charge. Counsel testified that the offer was always for a negotiated plea to a 2nd offense for seven years. Counsel also testified that he discussed the effect the plea would have on Applicant's probation and discussed the negotiations regarding a concurrent probation revocation sentence. Further, Counsel testified that during the initial trial, the chain of custody was testified to and the chain was complete.

This Court finds the testimony of Counsel to be more credible than the testimony of Applicant and this Court finds no merit to the claims that Counsel was ineffective. The testimony at this hearing and the record speak to the fact that the Applicant was informed as to the charge he was pleading guilty to, the sentence he would receive, and the effect the plea would have on his probation by both Counsel and the plea court. This Court finds no merit to the allegation that Counsel was ineffective for failing to defend against an insufficient video. As discussed, following the initial mistrial, the Applicant accepted an offer to plead guilty to a negotiated seven years. A guilty plea generally constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. See Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (a plea of guilty constitutes a waiver of non-jurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981). Therefore the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. “Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment.” State v. Allen, 261 S.C. 448, 200 S.E.2d 684, 686 (1973). This is because the guilty plea “admits all matter of fact averments of the accusation.” Id. The defendant admits all circumstances described in the indictment, leaving only sufficiency of the indictment for review and waiving all other defenses. State v. Thomason, 341 S.C. 524, 534 S.E.2d 708, 709 (2000).

This Court finds that the Applicant presented absolutely no evidence to support his claim that Counsel was ineffective for failing to advise of a defective chain of custody. Further, this Court finds Counsel’s testimony credible that the chain was complete when it was presented at the initial trial, so there were no concerns prior to the plea. Additionally, this Court finds that

the Applicant presented no testimony in support of his claim that Counsel failed to file a direct appeal. Therefore, these claims are denied and dismissed.

Involuntary Guilty Plea

The Applicant also alleged that his plea was involuntary. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

This Court finds that the Applicant failed to meet his burden of proof as to this claim. Applicant's testimony that he believed he pled to a 1st offense is not credible in light of the record, which shows that the Applicant was informed of the 2nd offense charge before and during his plea several times. (Tr. pp. 4; 5; 17). The Applicant indicated at his plea that he was satisfied with Counsel and that he and Counsel had fully discussed the charges he faced. (Tr. p. 8). This Court finds that the Applicant failed to offer any testimony or evidence to support his

claim that he did not plead freely and voluntarily and the record directly refutes that claim. Therefore, this claim is denied and dismissed.

Denial of Discovery

The Applicant alleged in his application that he was denied the right to his discovery materials. The Applicant testified that he did not receive a copy of his discovery materials until September 2012. However, Applicant also testified that he had reviewed the video tape of the confidential buy. Counsel testified that he received discovery materials in April prior to the July scheduled trial. Counsel testified that he met with Applicant several times and reviewed discovery materials, including the video tape and still photos, with Applicant. This Court finds Counsel's testimony to be credible. Applicant failed to meet his burden of proof of demonstrating any deficiency on Counsel's behalf. The Applicant proceeded to and completed an initial trial before a mistrial was issued. This Court finds that prior to his plea, Applicant was informed of and shown all discovery materials. Therefore, this claim is denied and 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.

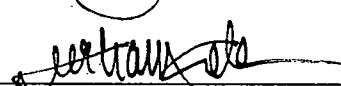
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCRCP, 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 05 day of July, 2014.



J. Derham Cole
Presiding Judge

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 JUL 28 AM 8 38
BRANDY W. MCBEE

Law Office of Leah B. Moody, LLC

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August 19, 2014

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

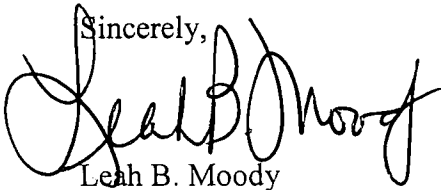
RE: Alex O. Davidson v. State of South Carolina
C.A. No.: 2013-CP-11-744

Dear Ms. White:

The Cherokee County Court of Common Pleas appointed my office to represent Alex Davidson 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 Alex O. Davidson
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Brandy W. McBee, Clerk of Court, Cherokee County
Sharon Graham, SCCID

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August 19, 2014

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

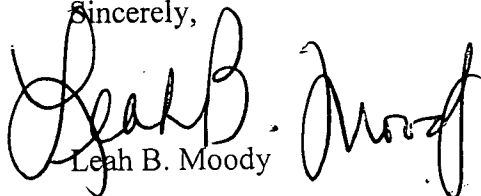
RE: Alex O. Davidson v. State of South Carolina
C.A. No.: 2013-CP-11-744

Dear Ms. Graham:

The Cherokee County Court of Common Pleas appointed my office to represent Alex O. Davidson 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 Alex O. Davidson
Suzanne White, Esq.
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Brandy W. McBee, Clerk of Court, Cherokee County

Law Office of Leah B. Moody, LLC

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August 19, 2014

The Honorable Brandy W. McBee
Cherokee County Clerk of Court
Post Office Drawer 2289
Gaffney, South Carolina 29342-2289

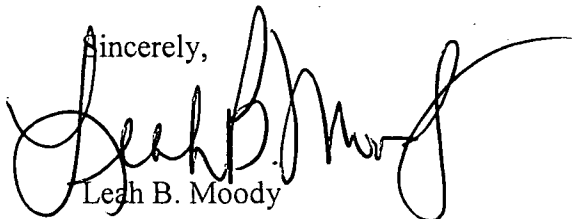
RE: Alex O. Davidson v. State of South Carolina
C.A. No.: 2013-CP-11-744

Dear Ms. McBee:

The Cherokee County Court of Common Pleas appointed my office to represent Alex O. Davidson 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,



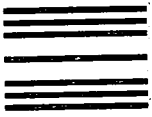
Leah B. Moody

LBM/res

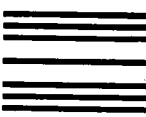
Enclosures

cc Alex O. Davidson
Suzanne White, Esq.
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

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