

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

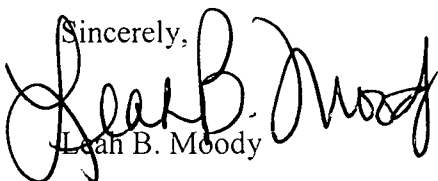
RE: Christina Hudson v. State of South Carolina  
Case No.: 2012-CP-42-5133

**S.C. SUPREME COURT**

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Christina Hudson in her 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 Christina Hudson  
Suzanne White, Esquire  
Sharon Graham, SCCID  
Hope Blackley, Clerk of Court, Spartanburg County

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Presiding in Spartanburg County

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Case No. 2012-CP-42-5133

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Christina Hudson, ..... Appellant,

v.

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

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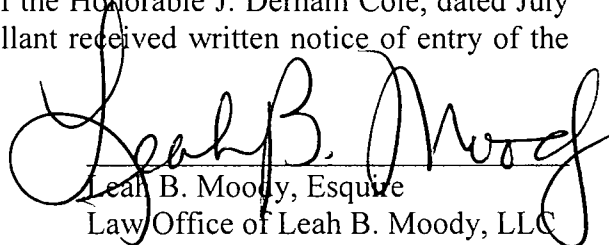
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NOTICE OF APPEAL

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**S.C. SUPREME COURT**

Christina Hudson appeals the order of the Honorable J. Derham Cole, dated July 25, 2014 and mailed on July 29, 2014. Appellant received written notice of entry of the final order on July 31, 2014.



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

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Presiding in Spartanburg County

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Case No. 2012-CP-42-5133

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Christina Hudson, ..... Appellant,

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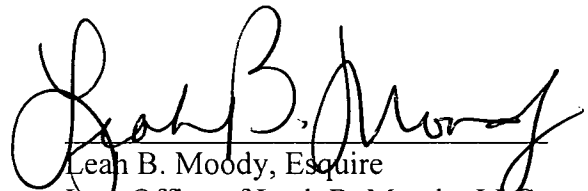
State of South Carolina, ..... Respondent.

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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on 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  
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August 25 2014  
cc Christina Hudson  
Suzanne White, Esquire  
Sharon Graham, SCCID  
Hope Blackley, Clerk of Court, Spartanburg County

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Christina Hudson, #3522<sup>4</sup>7, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-5133

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 14, 2012. 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. Hood Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

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At the hearing, the Applicant testified on her own behalf. Pamela Beth Earnhardt Applicant's stepsister, testified on Applicant's 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 plea transcript.

**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. She was indicted at the February 2012 term of the Spartanburg County Grand Jury for two counts of felony DUI –



great bodily injury (2012-GS-42-1000, -0999), and felony DUI – resulting in death and reckless homicide (2012-GS-42-0998(A)). Robert B. Hall, Esquire, represented Applicant. On August 31, 2012, Applicant pled guilty to two counts of felony DUI – great bodily injury and one count felony DUI – resulting in death. The charge of reckless homicide was *nolle prossed*. She was sentenced by the Honorable R. Ferrell Cothran to confinement for concurrent terms of twenty years for felony DUI – resulting in death and two concurrent fifteen year terms for each count of felony DUI – great bodily injury. Applicant did not appeal her conviction and sentence.

### ALLEGATIONS

In her current Application, the Applicant alleged that she was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
  - a. “Counsel did not represent to my satisfaction,”
  - b. Poor counseling resulting in Applicant being coerced into pleading guilty with an open plea.

At the hearing, Applicant indicated that she would proceed on claims of ineffective assistance of counsel for counsel’s failure to meet with Applicant enough and failure to review discovery materials with Applicant.

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### 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 she 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 the first 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 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 she was represented by Robert Hall at her guilty plea. Applicant testified that she originally retained attorney E. Joshua Schultz, but he returned the retainer and stated that he could not represent. Applicant testified that she only saw Counsel twice within the

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two weeks prior to her court date. At the time she met with Counsel, Applicant testified that they discussed the fact that Applicant was facing up to fifty-five years. Applicant testified that she never received any discovery materials and did not see any of the State's evidence. Applicant testified that she had no memory of the day of the accident and only knew things that other people told her. Applicant testified that Beth Earnhardt and "Corey," were the last people to witness Applicant riding in the car with her passenger; however, Applicant was unsure if she provided those names to Counsel. Applicant testified that she pled guilty because she was scared of proceeding to trial originally. Applicant testified that she wants to have a trial because she wants to know what happened.

Pamela Beth Earnhardt testified that she was the Applicant's step-sister. Earnhardt testified that the only information she knew was that the passenger of the car, Heidi West, was originally driving and came to pick the Applicant up at her home earlier that day. However, Earnhardt testified that she is not aware of anything related to the accident because she never saw Applicant or Heidi again once they left her home.

Counsel testified that Applicant completed her interview with the public defender's office on February 10, 2012. Counsel testified that he met with the Applicant several times, including in the magistrate courtroom at the jail, in Pod 1, Cell 5, and also at city court when some charges were dismissed. Counsel testified that he also met with the Applicant several times in August 2012. Counsel testified that he received discovery materials at the end of March and into April 2012. Counsel testified that he could not recall if he showed the Applicant pictures of the wrecked vehicle, but did review discovery materials with the Applicant as Counsel received them. Counsel testified he and the Applicant reviewed the toxicology report that indicated her blood alcohol content, as well as the presence of marijuana and Klonopin, as well as the MAIT

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report from the SC Highway Patrol. Counsel testified that he also reviewed various witness statements with her, in particular the statements indicating that the passenger had to be cut out of the passenger side of the vehicle and statements identifying the Applicant as the driver of the vehicle at the time of the accident. Counsel testified that he did have a list of different names of potential witnesses, but all other witnesses that could have testified on Applicant's behalf could have only testified to seeing the Applicant prior to the accident and Heidi driving the vehicle at that time. Counsel testified that he also spoke with the Applicant's mother.

Counsel testified that he attempted to get some sort of offer from the State, but all they were willing to do was dismiss the charge of reckless homicide. Counsel testified that he discussed the consequences of the plea, including the status as violent and no parole. Counsel testified that he discussed the options with the Applicant and advised her as to his opinion, but never told her that she must plead guilty. Counsel also reviewed with Applicant the letter she wrote and ultimately read to the victims' families at the plea. Counsel also testified that he spoke with the Applicant's step-father a good bit and talked with Applicant about her preparation for mitigation at the plea. Counsel testified that Applicant appeared to understand the potential sentence she faced and Counsel understood Applicant to be pleading guilty freely and voluntarily.

This Court finds that the Applicant's allegation that trial counsel did not conduct an adequate pre-trial investigation or spend enough time with her is without merit. This Court finds Counsel's testimony to be more credible than Applicant's testimony. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have

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been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

It is clear to this Court that Counsel met with the Applicant and reviewed discovery materials with her, including various reports and witness statements, in preparation for either a trial or plea. The Applicant could not point to any specific matters counsel failed to discover, or any defenses that could have been pursued had counsel been more fully prepared, such that she would have proceeded with a jury trial instead of pleading guilty. Furthermore, the Applicant failed to show any prejudice that may have resulted from counsel's alleged inadequate preparation. 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 her application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that she 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

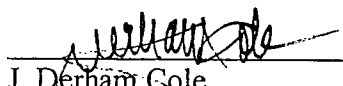
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denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 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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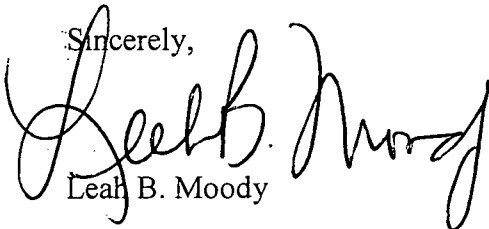
The Honorable Hope Blackley  
Spartanburg County Clerk of Court  
Post Office 3483  
Spartanburg, South Carolina 29304

RE: Christina Hudson v. State of South Carolina  
C.A. No.: 2012-CP-42-5133

Dear Ms. Blackley:

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

Sincerely,

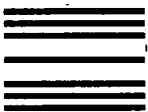


Leah B. Moody

Enclosures

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

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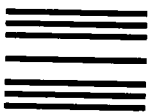


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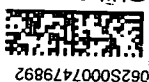
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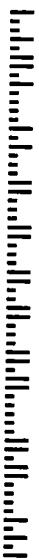


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