

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Ernest Kinard, Jr., Presiding in York County

Case No. 2013-CP-46-03507

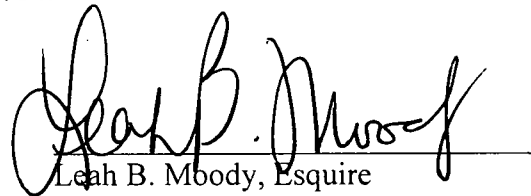
John Thomas Robinson, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

John Thomas Robinson appeals the order of the Honorable J. Ernest Kinard, Jr., dated September 3, 2014 and mailed on September 26, 2014. Appellant received written notice of entry of the final order on October 1, 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:
Rutledge Johnson, 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 YORK COUNTY
Court of Common Pleas**

J. Ernest Kinard, Jr., Presiding in York County

Case No. 2013-CP-46-03507

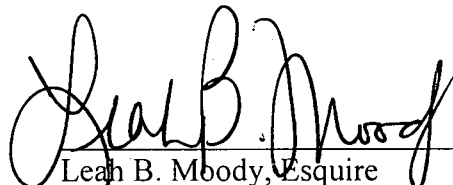
John Thomas Robinson, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Rutledge Johnson by depositing a copy of it in the United States Mail, postage prepaid, on 10/16, 2014 addressed to its attorney of record, 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

October 16, 2014

cc John Thomas Robinson
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 2013CP4603507

John Thomas Robinson	South Carolina State of
----------------------	-------------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: J. Rutledge Johnson	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> 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

ORDER OF DISMISSAL

This order ends does not end the case.
 Additional Information for the Clerk: _____

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)
n/a	n/a	n/a

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/g. Ernest Kinard Jr

Circuit Court Judge

2017

Judge Code

9/26/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on September 26, 2014, and a copy mailed first class or placed in the appropriate attorney's box on September 26, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Leah B. Moody
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.



ALAN WILSON
ATTORNEY GENERAL

September 22, 2014

FILED-RECEIVED
2014 SEP 26 AM 8:14
CLERK OF COURT
YORK COUNTY, SC

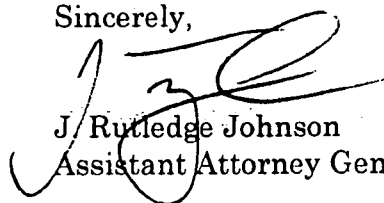
The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York SC 29745

Re: John T. Robinson v. State of South Carolina
2013-CP-46-3507

Dear Mr. Hamilton:

Enclosed please find an original and a copy of an Order of Dismissal in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,


J. Rutledge Johnson
Assistant Attorney General

JRJ:cey
Enclosures

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 John Thomas Robinson,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-3507

ORDER OF DISMISSAL

FILED-RECEIVED
 2014 SEP 28 AM 8:14
 DEBORAH HARRINGTON
 CLERK OF COURT & S.S.
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 15, 2013. Respondent made its Return on May 21, 2014. An evidentiary hearing into the matter was convened on August 5, 2014, at the Moss Justice Center in York, SC. Leah B. Moody, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Mark McKinnon, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant was indicted at the November 2012 term of the York County Grand Jury for Possession with Intent to Distribute (PWID) Crack Cocaine (2012-GS-46-4065)¹. Applicant was

¹ He was also indicted for Criminal Conspiracy and PWID within proximity which were dismissed by the State.

represented by Mark McKinnon, Esquire. On May 8, 2013, Applicant pled no contest before the Honorable Paul M. Burch and was sentenced, pursuant to a negotiated sentence, to ten (10) years suspended upon the service of eighteen (18) months' probation for PWID Crack Cocaine, 2nd offense as a lesser included offense. Applicant did not appeal his convictions or sentences.

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

1. "Ineffective Assistance of Counsel"
 - a. "Illegal search & seizure- USA constitutional violation; Attorney failed to show that claimed traffic stop (illegal u-turn) was not an illegal act and that search pursuant to the stop was pre-textual."
2. "United States of America Constitution"
3. "Pre-textual search-constitutional violation"

At the hearing, Applicant proceeded on his claims of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he pled to PWID cocaine, PWID cocaine within proximity and Criminal Conspiracy and that his wife was his co-defendant. Applicant claimed he did not think he should have pled guilty to any charges as all of the charges stem from one incident; he also claimed he was unlawfully arrested. Applicant testified all of his charges should have been dismissed at a preliminary hearing as he believed the police stop was pre-textual. Applicant additionally claimed that the "illegal U-turn", which was the basis of the traffic stop, was not illegal because it was not marked as illegal. Applicant claimed Counsel failed to raise this issue.

Applicant testified he and Counsel discussed the charges and other issues and that Counsel always told him to plead guilty. The State offered Applicant a plea deal of ten years suspended to

eighteen months' probation. Applicant also testified he and Counsel discussed the offenses with which he was charged.

Applicant further claims had Counsel argued against the "pre-textual" stop, the charges would have been dismissed. Applicant testified that based on Counsel's advice, he pled to these charges. Applicant additionally stated that he should not have been charged with proximity because he had no intent of stopping in a school zone/park area. Applicant lastly stated that there was not enough evidence to survive a preliminary hearing.

On cross-examination, Applicant refused to believe that if he were successful in this action that the State could take him to trial and if found guilty, could face up to fifty years in prison until this Court advised him of such.

Counsel testified he was appointed to Applicant's case as a public defender. Counsel stated he met with Applicant around ten times and reviewed discovery with him. Counsel advised Applicant there was a witness who would have testified that he bought crack cocaine from Applicant. Counsel stated there was an initial offer for an active-time sentence, but when the aforementioned witness died, the State offer Applicant a sentence of ten years suspended upon eighteen months' probation. Counsel testified he did not threaten or force Applicant to accept the plea offer and was preparing for trial.

Counsel additionally testified that the disputed U-turn Applicant complains about could have been argued either way, but based on Counsel's risk assessment for Applicant, he advised Applicant to accept the plea offer. Counsel testified he did not request a preliminary hearing based on his professional judgment and that even if the charges had been dismissed at a preliminary hearing, the State could have directly indicted Applicant. Counsel testified if Applicant was convicted at trial, he

would face a minimum of ten years on the PWID crack cocaine, 3rd offense charge. (not to mention, the other charges).

On cross-examination, Counsel testified Applicant understood the charges he was facing, that Applicant wanted to accept the plea offer and that Applicant failed to mention any witnesses to Counsel which could be called at trial. Concerning Applicant's prior convictions, Counsel testified he received copies of two of Applicant's prior certified crack cocaine convictions from the 1990's. Counsel stated he explained the enhancement process to Applicant. Counsel lastly testified he advised Applicant concerning the "pre-textual" argument, how a judge could rule, and the ramifications of such a ruling.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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 71.1(e), 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 (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. 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 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has

failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

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 notifies the 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!



J. Ernest Kinard, Jr.
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9/3, 2014
Bluffton, South Carolina

Law Office of Leah B. Moody, LLC

235 East Main Street
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lbmatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

October 16, 2014

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OCT 20 2014

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

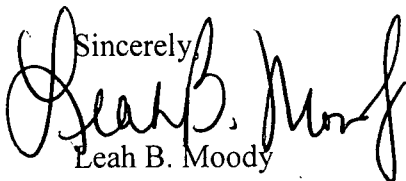
S.C. SUPREME COURT

RE: John Thomas Robinson v. State of South Carolina
Case No.: 2013-CP-46-03507

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent John Thomas Robinson 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

LBM/srm

Enclosures

cc John Thomas Robinson
Rutledge Johnson, Esquire
Sharon Graham, SCCID
David Hamilton, Clerk of Court, York County

Law Office of Leah B. Moody, LLC

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October 16, 2014

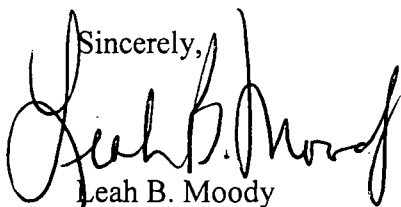
The Honorable David Hamilton
York County Clerk of Court
Post Office Box 649
York, South Carolina 29745

RE: John Thomas Robinson v. State of South Carolina
Case No.: 2013-CP-46-03507

Dear Mr. Hamilton:

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

Sincerely,



Leah B. Moody

LBM/srm

Enclosures

cc John Thomas Robinson
Rutledge Johnson, Assistant Attorney General
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

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October 16, 2014

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

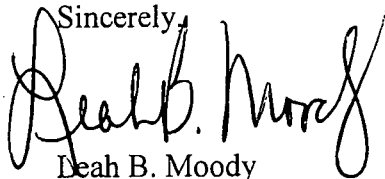
RE: John Thomas Robinson v. State of South Carolina
C.A. No.: 2013-CP-46-03507

Dear Mr. Johnson:

The York County Court of Common Pleas appointed my office to represent John Thomas Robinson 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/srm

Enclosures

cc John Thomas Robinson
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

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October 16, 2014

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

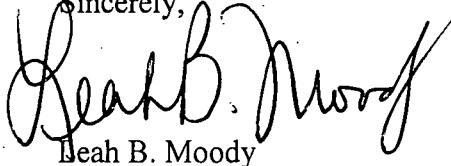
RE: John Thomas Robinson v. State of South Carolina
Case No.: 2013-CP-46-03507

Dear Ms. Graham:

The York County Court of Common Pleas appointed my office to represent John Thomas Robinson in his Post-Conviction Relief action. Please find enclosed 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

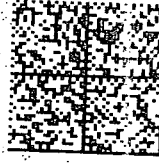
LBM/srm

Enclosures

cc John Thomas Robinson
Rutledge Johnson, Esquire
Daniel Shearouse, Clerk of Court, Supreme Court
David Hamilton, Clerk of Court, York County



CHARLOTTE
NC 282
CLERK OF COURT'S OFFICE
Post Office Box 649, York, South Carolina 29730-0649



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Leah B. Moody
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