

# Law Office of Leah B. Moody, LLC

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April 15, 2015

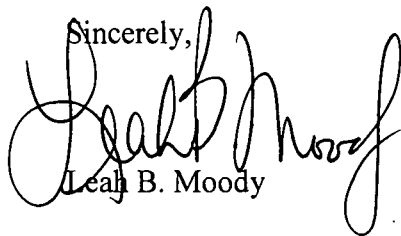
The Honorable Daniel E. Shearouse  
The Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29221

RE: Keith Johnson v. State of South Carolina  
Case No.: 2013-CP-42-2150

Dear Mr. Shearouse:

The Spartanburg County Court of Common Pleas appointed my office to represent Keith Johnson 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

LBM/scm  
Enclosure

cc Keith Johnson  
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**

**Deadra L. Jefferson, Presiding in Spartanburg County**

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**Case No. 2013-CP-42-2150**

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**Keith Johnson, ..... Appellant,**

**v.**

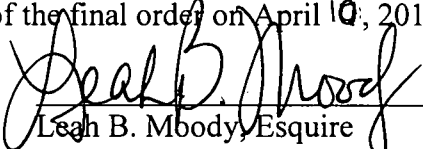
**State of South Carolina, ..... Respondent.**

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**NOTICE OF APPEAL**

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Keith Johnson appeals the order of the Honorable Deadra L. Jefferson, April 6, 2015. Appellant received written notice of entry of the final order on April 10, 2015.

  
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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:  
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**

**Deadra L. Jefferson, Presiding in Spartanburg County**

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**Case No. 2013-CP-42-2150**

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**Keith Johnson, ..... Appellant,**

**v.**

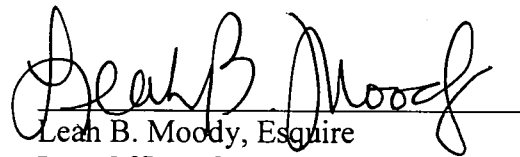
**State of South Carolina, ..... Respondent.**

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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 4/17, 2015 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

April 15, 2015

cc Keith Johnson  
Suzanne White, Esquire  
Hope Blackley, Clerk of Court, Spartanburg County  
Sharon A. Graham, SCCID

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Keith Anthony Johnson, #252251,  
Applicant,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2150

**ORDER OF DISMISSAL**

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Leah B. Moody, Esquire
Respondent's Attorney:	Suzanne H. White, Esquire
Plea Counsel:	John G. Reckenbeil, Esquire
Date of Hearing:	January 14, 2015
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 9, 2013. The Respondent made its Return on or about March 20, 2014. An evidentiary hearing into the matter was convened on January 14, 2015, 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. The Applicant's fiancé, Shena Anderson also testified on the Applicant's behalf. John G. Reckenbeil, Esquire, testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

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## 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 April 2012 term of the Spartanburg County Grand Jury for Attempted Murder<sup>1</sup> and Possession of a Weapon During the Commission of a Violent Crime<sup>2</sup> (2012-GS-42-1808, count 1 and count 2). The Applicant was represented by John G. Reckenbeil, Esquire. On June 28, 2012, the Applicant pled guilty to the lesser-included offense of Assault and Battery of a High and Aggravated Nature (ABHAN).<sup>3</sup> The Honorable Larry B. Hyman, Jr. sentenced Applicant to twenty (20) years' imprisonment, suspended to fifteen (15) years' imprisonment and five (5) years of probation, to be run concurrently. The Applicant did not appeal his conviction or sentence.

## ALLEGATIONS

<sup>1</sup> A person who commits Attempted Murder "is guilty of a [violent, most serious] felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted." S.C. CODE ANN. § 16-3-29 (2011); S.C. CODE ANN. § 16-1-60 (2011); S.C. CODE ANN. § 17-25-45 (2011).

<sup>2</sup> The offense of Possession of a Firearm During the Commission of a Violent Crime provides:

(A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five [(5)] years, in addition to the punishment provided for the principal crime. This five-year [(5)] sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.

(B) Service of the five-year [(5)] sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year [(5)] sentence to run consecutively or concurrently.

(C) Except as provided in this subsection, the person sentenced under this section is not eligible during this five-year [(5)] period for parole, work release, or extended work release. The five [(5)] years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits, but may earn credits during this period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three [(3)] years of release from imprisonment.

S.C. CODE ANN. § 16-23-490 (2011).

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

1. Ineffective assistance of counsel, in that;
  - i. Counsel failed to investigate the case,
  - ii. Counsel failed to prepare for trial,
  - iii. Counsel gave erroneous advice, which persuaded Applicant to give up his right to a trial by jury.

### **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 his or her 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).

#### **Summary of the Testimony**

The Applicant testified that he retained three (3) attorneys to represent him on his Attempted Murder and Possession of a Firearm During the Commission of a Violent Crime (PFDCVC) charges on April 2nd, before his plea on June 28th but that Counsel represented him along with no other lawyers. The Applicant testified that Counsel met with him only three (3) times briefly. The Applicant testified that he received an offer from the State to plead to ABHAN and that the first time Counsel came to see the Applicant was one (1) week before his guilty plea. The Applicant alleged that his fiancé paid Counsel and spoke with him, but that Counsel only talked about his fees. The Applicant testified he wanted to hire Counsel to represent him only for his preliminary hearing and did not want to pay his full three thousand five hundred dollar

<sup>3</sup> ABHAN is a violent, serious felony punishable by imprisonment for not more than twenty (20) years. S.C. CODE

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(\$3,500.00) retainer fee. The Applicant testified that he paid Counsel two thousand five hundred dollars (\$2,500.00), but because he did not forward the additional one thousand dollars (\$1,000.00) Counsel would not represent him at his preliminary hearing and was not present.

The Applicant testified that he thereafter paid Counsel the additional one thousand dollars (\$1,000.00) and saw Counsel for the second time in the courtroom. The Applicant testified that Counsel then approached him. The Applicant testified that the third time he met with Counsel was when he learned of the State's ABHAN plea offer. The fourth time he met with Counsel, the Applicant testified, was during his guilty plea hearing. The Applicant testified that he would plead to a lesser charge only if it was considered a non-violent offense. The Applicant testified that the deal was off the table if he did not sign the PFDCVC sentencing sheet. The Applicant alleged that when Counsel brought the sentencing sheets to him prior to the plea, the sentencing sheets reflected all non-violent charges. The Applicant testified that he was concerned about the fact that he was listed as violent in the South Carolina Department of Corrections. The Applicant testified that he was also facing a fifteen (15) year sentence on a Driving Under the Influence—Great Bodily Injury charge in Cherokee County and the maximum sentence of ten (10) years on a Trafficking Marijuana charge. The Applicant alleged that his signature on the sentencing sheets was not authentic. The Applicant further testified that he did not believe he committed the offense of Attempted Murder by shooting the victim in the leg. The Applicant alleged that Counsel summarized the video evidence of the offense and said that "you couldn't really see anything from the video."

After his guilty plea, the Applicant testified, he wrote a letter to Counsel about filing a motion to reconsider sentence and sending his motion to the sentencing judge and the clerk of court. The Applicant testified that Counsel wrote him a response, but did not communicate with

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him after that time. The Applicant stated that he asked Counsel for a direct appeal on the day of his plea hearing but that Counsel did not file an appeal on his behalf. The Applicant asserted that he was prejudiced by Counsel's failure to distinguish between violent and non-violent offenses and failure to offer any rehabilitation programs because he will be fifty (50) years old when released from prison and is not eligible for work release or to return to society.

The Applicant testified to the other charges he was facing—eleven (11) in total—and that he hired three (3) lawyers in total to represent him. He testified that even considering his Trafficking Marijuana charge, his potential sentences were four (4) or five (5) years different and that he could be released from prison at the age of forty-five (45). The Applicant testified that his fiancé spoke with attorney Jack Swerling, who said he could negotiate a fifteen (15) year sentence on non-violent offenses. He testified that ultimately his attorneys hampered plea negotiations because even after writing a letter, he still could not get in touch with his attorneys. He testified that at the time he was required to submit to a Buccal swab, he got into a heated discussion with his attorneys. The Applicant testified he gave a television interview to Channel 7 local news without his attorneys present and that after the Solicitor saw his interview, he made no further offers or negotiations.

Shena Anderson, the Applicant's fiancé and mother of his child, testified that she hired Counsel and two (2) additional attorneys, including Jack Swerling, to represent the Applicant on the numerous charges he faced. She testified that she relayed information to the attorneys from the Applicant. Anderson testified that from her conversation with Counsel, she understood the Applicant was receiving a fifteen-year (15) non-violent sentence for the plea. She testified that Counsel never mentioned that the offense was violent and always represented that the charge was non-violent. She testified that Counsel said she could see the Applicant shortly before his plea

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right before he went to court. She further testified that the Applicant did not want to plead to violent offenses.

Counsel testified that he worked with two other attorneys—Jack Swerling and Larry Crane—in representing the Applicant against numerous charges and that in February 2012 the Applicant retained him and in April 2012, he filed a notice of appearance on behalf of the Applicant. Counsel testified that he was in constant contact with the other attorneys at all times, that he attended most of the meetings with the Solicitor, and that the goal was to obtain a global offer on all charges. Counsel testified that because he was located in Spartanburg, he essentially served as the main point of contact with the attorneys and the Solicitor's office. Counsel testified that after the Applicant's arrest on the charges, on May 28, 2012, he gave a news interview to WSPA a local television station, in which he was forthcoming and which "really hurt" any ongoing negotiations and the Applicant's case. Counsel testified that after the Applicant's interview, the Assistant Solicitor was no longer willing to go forward with any negotiations. Counsel could not recall whether he was informed about the Applicant's interview beforehand and that he was not provided with a copy of that broadcast.

Counsel testified that he discussed each charge and indictment with the Applicant, the sentence ranges, the potential jail time, the fact that the charge was considered violent, the South Carolina Department of Corrections time calculations, and the fact that the Applicant would have to serve his time at eighty-five percent (85%). Counsel was adamant that he did not tell the Applicant the plea would be to a non-violent offense because a non-violent offense would have never been an option for the Applicant. Counsel likewise testified that he and the Applicant discussed the facts of the offenses, the victim's injuries—especially since the nurse victim's civil attorney spoke on her behalf during the plea hearing—his and Attorney Swerling, sentencing

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sheets, a recitation of the sentencing ranges, and the “crystal ball” of sentencing hearings. Counsel elaborated that he showed the Applicant the actual calculations of his time on the ABHAN charge, which they discussed before the Applicant signed the sentencing sheets and that they were “hopeful” that the plea judge would run all charges concurrent. At the time of the plea, Counsel testified that he had no concerns that Applicant was pleading freely and voluntarily and that he had no doubts the Applicant knew the substance of his plea and that he was clear about the length of time he would spend in prison. Counsel testified that the Applicant had to know the consequences of his plea because all charges were contingent on the "global offer."

Counsel further testified about his discussions with the Applicant’s other attorneys and their goal to avoid “piecemeal” guilty pleas in favor of a global offer. Counsel testified that the plea negotiations included discussions of reducing numerous drug charges from second offenses to first offenses and switching the Applicant’s statutory escape charge, which is usually run consecutively to other offenses, to a common law version in order to run the Applicant’s time concurrently.<sup>4</sup> Ultimately, Counsel testified that the offer was the Applicant’s “best case scenario.” He further testified it would have been the Assistant Solicitor's intention to “have picked [the Applicant] off one case at a time” for years in order to seek the possibility of a life without parole sentence if he didn’t accept a global offer. He further testified that “it would be Barry Barnette's pleasure” to obtain consecutive or LWOP sentences based on what happened with the Applicant’s case. Counsel further testified that the Solicitor would have pursued the

<sup>4</sup> The statutory crime of escape provides:

(A) It is unlawful for a person, lawfully confined in a prison or local detention facility or while in the custody of an officer or another employee, to escape, to attempt to escape, or to have in his possession tools, weapons, or other items that may be used to facilitate an escape.

(B) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not less than one [(1)] year nor more than fifteen [(15)] years.

(C) The term of imprisonment is consecutive to the original sentence and to other sentences previously imposed upon the escapee by a court of this State.

S.C. CODE ANN. § 24-13-410 (2011).

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Applicant at trial, beginning with the Applicant's Felony Driving Under the Influence—Great Bodily Injury charge and obtain a verdict on “each and every crime.” Counsel summarized that the Applicant was “looking at twenty (20) years” on all eleven (11) charges, including Possession of Marijuana, PFDCVC, ABHAN, Trafficking Marijuana, and Escape.

### **Ineffective Assistance of Counsel**

In a PCR action, “the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its “‘reasonableness under prevailing professional norms.’” Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at

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668, 104 S. Ct. at 2052). 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." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

The Applicant alleges he received ineffective assistance of counsel.<sup>5</sup> This Court finds the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations. This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant and discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's version of the facts, the penalty ranges associated with the charged offenses, and the potential time the Applicant could serve incarcerated. The record reflects that Counsel effectively explained the charges, their associated penalty ranges, and the consequences of pleading guilty. The record is completely devoid of any evidence that Counsel promised or guaranteed the Applicant a specific sentence. The record further reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney

<sup>5</sup> Although the Applicant and Counsel provided relevant, background testimony regarding all of the Applicant's charges and his global guilty plea arrangement negotiated among three (3) attorneys, the Applicant alleges that only Counsel, John G. Reckenbeil, Esquire was ineffective. Therefore, the Applicant challenges only his ABHAN and PFDCVC convictions on collateral review before this Court.

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demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

#### **Failure to Advise of Sentencing Consequences**

Regarding the Applicant's allegation that Counsel was ineffective for guaranteeing him that his plea was to a non-violent offense, this Court finds that the Applicant failed to meet his burden of proof. Counsel's testimony was most credible in that he discussed the nature of the offenses, potential sentences, and the State's position on negotiating with the Applicant prior to the plea. This Court finds that the Applicant's testimony that Counsel never informed the Applicant that he was pleading guilty to violent offenses is not credible. Although this Court considered Ms. Anderson's testimony that she and the Applicant understood the plea agreement to be a fifteen (15) year sentence on non-violent offenses, this Court finds Ms. Anderson ultimately would not have been privy to confidential and attorney-client privileged conversations between Counsel and the Applicant. This Court further finds she has no firsthand knowledge of the actual plea negotiations in this case. Moreover, the Applicant pled guilty to Possession of a Firearm During the Commission of a *Violent Crime*, which, as an element of the offense, references violent crimes as defined in S.C. CODE ANN. § 16–1–60 (2011). See S.C. CODE ANN.

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§ 16-23-490 (2011); S.C. CODE ANN. § 16-1-60 (2011). Therefore, based on Counsel's credible testimony that he explained the elements of each of the charged offenses to the Applicant, logically, Counsel would have also explained that ABHAN is the violent crime connected to the Applicant's PFDCVC charge. See S.C. CODE ANN. § 16-3-320 (2011); S.C. CODE ANN. § 16-23-490 (2011).

This Court finds that the Applicant has failed to meet his burden of proving that his guilty plea was rendered involuntary based on Counsel's failure to advise him of the consequences of pleading to a violent offense. See generally Randall v. State, 356 S.C. 639, 641-42, 591 S.E.2d 608, 609-610 (2004) (citing Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002)) (failure to advise of collateral consequences of parole eligibility before the applicant proceeds to trial not ineffective assistance of counsel); Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), *overruled on other grounds*, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (counsel is not ineffective for failing to advise a defendant regarding parole eligibility in connection with his guilty plea because it is a collateral consequence of sentencing); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997) (unless counsel gives erroneous advice, parole information is not a ground for collateral attack of a guilty plea); Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence). "A defendant must be advised of a mandatory punishment for the offense to which he is pleading." State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Cf. Smith v. State, 329 S.C. 280, 284-85, 494 S.E.2d 626, 628-29 (1997) (enumerating collateral consequences of burglary conviction and holding that guilty plea not rendered invalid for counsel's failure to advise of each consequence associated with violent crimes).

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**Altered or Forged Sentencing Sheets**

This Court finds that the Applicant's argument that his signature on the sentencing sheets is inauthentic is without merit. Sentencing sheets are printed from a computer and presented to the attorneys, the defendant, and, ultimately, the sentencing judge to affix the required signatures. The sentencing judge and the clerk of court also make notations, such as providing special conditions in addition to the sentence. Only after the defendant signs the sentencing sheets may the court and clerk execute sentencing sheets with finality. Thereafter, the original sentencing sheets are scanned and sent to the South Carolina Department of Corrections and maintained in their original file, in the defendant's original file by the clerk of court. Based on this Court's review of the applicable sentencing sheets, this Court finds that the Applicant's argument that his signature is not genuine and authentic or that the sentencing sheets were somehow altered is without support. Specifically, the ABHAN sentencing sheet includes a digital box checked next to "violent" and "serious," which notation could have been made only by a computer print out prior to the Applicant affixing his signature. Accordingly, this Court finds that the Applicant has failed to meet his burden of proof as to this allegation.

**Failure to File Motion for Reconsideration and Appeal**

The Applicant asserts that Counsel was ineffective for failing to file a motion to reconsider the Applicant's sentence and failing to perfect an appeal.<sup>6</sup>

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "A judge or other

<sup>6</sup> The Applicant filed two (2) *pro se* letters on July 17, 2012 and August 1, 2012 with the Spartanburg County Clerk of Court seeking reconsideration of his sentence.

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sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” Hicks, 377 S.C. at 325, 659 S.E.2d at 500.

“[A]bsent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). The South Carolina Appellate Court Rules provide the procedure for appealing a guilty plea and sentence from the Circuit Court:

If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed

SCACR 203(d)(1)(B)(iv). See Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); State v. Thrift, 378 S.C. 70, 661 S.E.2d 373 (2008).

The Applicant offers no corroborating evidence in support of his assertion that he requested Counsel file a motion for reconsideration and appeal of his guilty plea immediately after the proceedings. Additionally, this Court finds that based on Counsel’s credible testimony and a review of the transcript, there is no evidence or indication that had Counsel filed a motion for reconsideration, he would have been successful. Further, based on the transcript of the colloquy, this Court finds that no evidence indicates that the Applicant would have prevailed on appeal. Rather, it appears that had the Applicant filed an appeal, it likely would have been dismissed pursuant to an Anders brief. Anders v. California, 386 U.S. 738, 741-42, 87 S. Ct. 1396, 1398-99 (1967). Accordingly, this Court finds that Counsel was not deficient in this

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regard.

### Involuntary Guilty Plea

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, 20, 546 S.E.2d 417, 419 (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, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 443, 543 S.E.2d 805 (1994)). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S.

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238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). "Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat." Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

Moreover,

a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and

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signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors indicate that the Defendant had notice of the charges to which he chose to plead guilty.

State v. Smalls, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005).

This Court finds that the Applicant failed to meet his burden of proof as to this claim. This Court finds most compelling the transcript of the Applicant's plea hearing. The Solicitor read each of the eleven (11) indictments and published for the record that the Applicant's plea was "straight up" (Tr. 4:15-6:5). The Applicant affirmed that he had the opportunity to discuss the nature of the crimes, the elements of the offenses, and the facts underlying each offense with his attorneys (Tr. 7:8-8:24). The Applicant told the court that he understood the potential penalties associated with each charge (Tr. 8:25-10:12). The Applicant told the court that he had an opportunity to review the discovery and evidence against him with his lawyers and discuss his right to a jury trial (Tr. 10:20-11:9). The Applicant affirmed that, after discussing them fully with his attorneys, he understood and waived his constitutional rights (Tr. 11:5-13:12). The Applicant affirmed that it was his decision to plead guilty freely and voluntarily, free of force, threat, intimidation, coercion, or promise (Tr. 13:14-22; 32:20-33:4). He also told the court that he was fully and completely satisfied with his lawyers' services, had no further questions for his lawyers or the court, and required no additional time to speak with his attorneys or to make up his mind (Tr. 13:23-14:16; 33:8-18). During the plea, the Applicant acknowledged that his attorney had discussed all of the charges and relevant discovery materials with him. Further, the Applicant indicated to the court that he had earned his G.E.D. and he did not suffer from any

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mental illness or substance abuse, had not taken any drugs or alcohol in the last twenty-four (24) hours, and was fully able to understand the plea proceedings (Tr. 16:14-25). The Applicant allocuted to the facts of each offense and admitted his guilt (Tr. 23:21-24:2; 26:4-15; 31:3-15; 33:5-7). The Applicant was also advised on the record of his right to appeal (Tr. 33:19-34:9).

Therefore, this Court finds that the Applicant failed to meet his burden of proving that his plea was involuntary.

### All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

### CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, the Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct did not fall below an objective standard of reasonableness. This Court finds that the Applicant failed to meet his burden of proof to support his claims. Therefore, they are denied and dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the

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Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation.

See id.

Although the Applicant testified that he was prejudiced by Counsel's erroneous advice and ineffective assistance, he merely claimed that if he would have pled to non-violent offenses and his length of incarceration was reduced, he would be released from prison sooner. The Applicant has failed to meet his burden of proving prejudice in connection with an involuntary guilty plea. Roscoe, 345 S.C. at 21, 546 S.E.2d at 419 (citing Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991); Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) (applicant failed to show any "evidence supporting a finding that the defendant's plea was induced such that, but for the erroneous advice, the defendant would not have pled guilty but would have insisted on going to trial"); see also Roscoe, 345 S.C. at 20 n.6, 546 S.E.2d at 419 n.6 (citing Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997); Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)) ("Although we have consistently held a defendant must have a full understanding of the consequences of his plea and of the charges against him, . . . the defendant must also demonstrate prejudice to be entitled to relief on PCR.")

Accordingly, The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

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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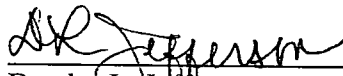
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This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 454, 409 S.E.2d 395, 396 (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. The Applicant's 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 31<sup>st</sup> day of March, 2015.

  
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Deadra L. Jefferson  
Presiding Judge  
Seventh Judicial Circuit

Charleston, South Carolina  
At Chambers

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**M. HOPE BLACKLEY**  
Clerk of Court, Spartanburg County  
Post Office Box 3483  
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**Dennis J. Jefferson, Judge**  
The Circuit Court of the Fifth Judicial Circuit  
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100 Broad Street, Suite 336  
Charleston, SC 29401-2236

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Leah B. Moody, Esq.

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Law Office of Leah B. Moody, LLC

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[lbmatty@comporium.net](mailto:lbmatty@comporium.net)

Phone: (803) 327-4192

Fax: (803) 329-1344

April 15, 2015

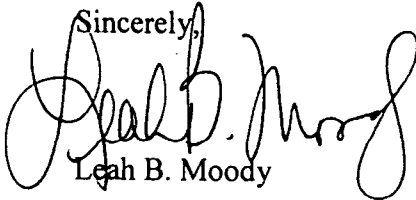
The Honorable M. Hope Blackley  
Spartanburg County Clerk of Court  
Post Office Box 3483  
Spartanburg, South Carolina 29304

RE: Keith Anthony Johnson v. State of South Carolina  
Case No.: 2013-CP- 42-2150

Dear Ms. Blackley:

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

Sincerely,



Leah B. Moody

LBM/scm

Enclosures

cc Keith Johnson

Suzanne White, Assistant Attorney General

Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court

Sharon Graham, SCCID

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S.C. Supreme Court

Law Office of Leah B. Moody, LLC

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[lbmatty@comporium.net](mailto:lbmatty@comporium.net)

Phone: (803) 327-4192

Fax: (803) 329-1344

April 15, 2015

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

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RE: Keith Johnson v. State of South Carolina  
C.A. No.: 2013-CP-42-2150

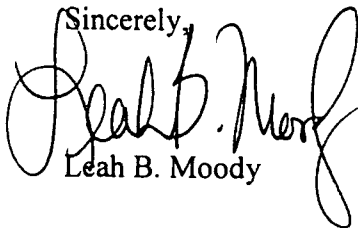
**S.C. Supreme Court**

Dear Ms. White:

The Spartanburg County Court of Common Pleas appointed my office to represent Keith Johnson 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/scm

Enclosures

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

Law Office of Leah B. Moody, LLC

235 East Main Street  
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Fax: (803) 329-1344

April 15, 2015

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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APR 21 2015

RE: Keith Johnson v. State of South Carolina  
Case No.: 2013-CP-42-2150

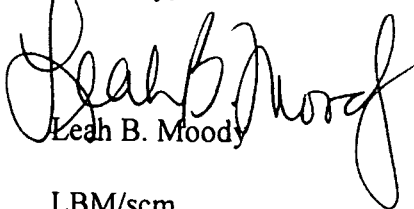
**S.C. Supreme Court**

Dear Ms. Graham:

The Spartanburg County Court of Common Pleas appointed my office to represent Keith Johnson 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

LBM/scm  
Enclosures

cc Keith Johnson  
Suzanne White, Esquire  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
Hope Blackley, Clerk of Court, Spartanburg County

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TO:
<p>The Honorable Daniel E. Shearouse The Supreme Court of South Carolina P.O. Box 11330 Columbia, SC 29211-1330</p>