

Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
lbmatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

May 14, 2015

RECEIVED

MAY 19 2015

SC SUPREME COURT

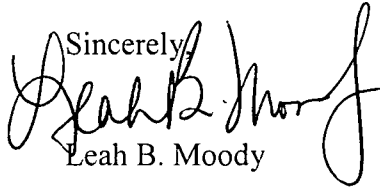
The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29221

RE: Kenneth W. Chiles v. State of South Carolina
Case No.: 2012-CP-42-01824

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Kenneth W. Chiles 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/srm

Enclosures

cc Kenneth W. Chiles
Suzanne White, Esquire
Sharon Graham, SCCID
Hope Blackley, Clerk of Court, Spartanburg County

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Presiding in Spartanburg County

Case No. 2012-CP-42-01824

RECEIVED

MAY 19 2015

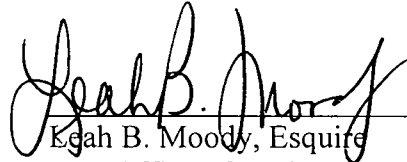
Kenneth W. Chiles, Appellant, **SC SUPREME COURT**

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Kenneth W. Chiles appeals the order of the Honorable Roger L. Couch, May 8, 2015 and mailed on May 11, 2015. Appellant received written notice of entry of the final order on May 13, 2015.



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

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Honorable Roger L. Couch, Presiding in Spartanburg County

Case No. 2012-CP-42-01824

Kenneth W. Chiles, Appellant,

v.

State of South Carolina, Respondent.

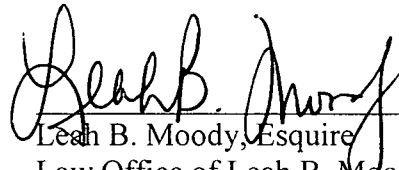
RECEIVED

MAY 19 2015

SC SUPREME COURT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Suzanne White by depositing a copy of it in the United States Mail, postage prepaid, on 5/14, 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

May 14, 2015

cc Kenneth W. Chiles
Suzanne White, Esq.
Hope Blackley, Clerk of Court, Spartanburg County
Sharon A. Graham, SCCID

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Kenneth Wayne Chiles, #167250,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1824

ORDER OF DISMISSAL

SPARTANBURG COUNTY
2015 MAY -8 PM 4:01
M. HOPE BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief filed April 30, 2012. Respondent filed its Return on March 1, 2013. A hearing was convened at the Spartanburg County Courthouse on September 17, 2014, at which time Applicant was present in court and represented by Leah B. Moody, Esquire. J. Clayton Mitchell of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, J. Roger Poole, Esquire. The Court had before it the Spartanburg County Clerk of Court records', Applicant's South Carolina Department of Corrections records, the PCR application, Respondent's Return, Applicant's appellate records, and the trial transcript.

I. PROCEDURAL HISTORY

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 September 2008 term of the Spartanburg County Grand Jury for armed robbery (2008-GS-42-5630). Applicant was represented by Counsel Poole. On July 6, 2009, Applicant proceeded to trial after which a jury convicted him of the charges as indicted. He was sentenced by the Honorable J. Derham Cole to confinement for eighteen (18) years.

SCANNED

Handwritten initials/signature

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Chiles, Op. No. 2011-UP-336 (S.C. Ct. App. filed June 28, 2011). The remittitur was issued on July 14, 2011.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in failing to move to sever the case from codefendant Norris's.
2. Ineffective assistance of counsel in failing to investigate and present witnesses at trial.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he was convicted of armed robbery and was sentenced to eighteen (18) years' imprisonment. He testified he was represented by Counsel Poole. He was tried jointly with codefendant Carnie Norris III. Applicant testified at trial in his own defense. Applicant explained that his codefendant, Norris, came to his house and told him it looked like someone was breaking into a building across the street. The two went to see what was going on, and Norris had taken the wallets of one of the men. Applicant testified that he was not robbing the victim in the case, but that he was making a citizen's arrest as he believed the victim was attempting to break into a nearby building. Applicant testified he did not have any intent to steal the victim's wallet and that Norris had the knife.

Applicant testified that there was another officer that he spoke to before he was arrested that may have provided helpful testimony in his defense. Applicant testified at trial that his statement to investigators was that the victim's bank cards and identification fell out of his wallet



CLERK OF COURT
SPARTANBURG COUNTY
2015 MAY - 8 PM 4: 01
M. H. PEACOCK
M. H. PEACOCK

and he picked it up. Applicant acknowledged that Counsel mentioned the contradictory statements made by the State's witnesses in his closing argument.

Counsel J. Roger Poole's Testimony

Counsel testified he represented Applicant on the charges currently before the Court. Counsel testified he met with Applicant multiple times and reviewed discover with him. Counsel testified Applicant told him he thought he was making a citizen's arrest and never had any intent to rob the victim.

Counsel testified he did not move to sever the trial because he did not believe a severance motion would be successful and saw no meritorious grounds to move for a severance. He believed the defenses of the two defendants were consistent and not antagonistic. He testified that no specific rights would be compromised with the trial proceeding jointly. He explained that Norris was also going to claim that he was making a citizen's arrest in order to negate the *mens rea* element of armed robbery. Counsel noted that he attempted to point out that Applicant kept a distance from Norris and that he was at least less culpable than Norris.

Counsel testified he investigated the other responding officers to see if they would be helpful and decided not to call them as witnesses in his defense. Counsel noted that law enforcement officers are generally not good witnesses for defendants. He explained that the first responding officer did testify and was cross examined on his testimony.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial



CLERK OF COURT
SOUTH CAROLINA
2025 MAY -8 PM 4:01
MAHOPE BLACKKILBY

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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the appellate records, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

CLERK OF COURT
SPARTANBURG COUNTY
2012 MAY - 8 PM 4: 31
M. OPE BLACKLE

Ineffective Assistance of Counsel

Failure to Move for a Severance

This Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to move to sever the case. This Court finds trial counsel's credible and persuasive testimony that there were no grounds to move for a severance and agrees with his analysis. "Criminal defendants who are jointly tried [...] are not entitled to separate trials as a matter of right." State v. Dennis 337 S.C. 275, 281, 523 SE2d 173, 176 (1999) (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972)). Instead, a court should only grant a severance "when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent a jury from making a reliable judgment about a co-defendant's guilt." Id. at 282, 523 S.E.2d at 176. This Court finds Counsel was not deficient in his decision to not move for severance. Counsel testified there was no basis to move to sever the cases. Applicant and codefendant Norris were arrested and charged with armed robbery. Applicant and Norris presented nearly identical defenses. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). This Court finds that the legal and strategic decision to not move for a severance was reasonable in this situation. This Court further finds no specific trial right was violated by trying Applicant and codefendant Norris together.

Regardless, Applicant was not prejudiced by the joint trial with Norris. A cautionary instruction as to multiple defendants is sufficient to protect each co-defendant from prejudice that might result from a joint trial. See State v. Holland, 261 S.C. 488, 494, 201 S.E.2d 118, 121 (1973). Here, the trial court gave an instruction on the jury's duties regarding multiple

Handwritten signature and initials

CLERK OF COURT
SPARTANBURG COUNTY
2012 MAY 8 PM 4:01
M. ROPELAK
KLE

defendants. (Trial Tr. p. 311, lines 16-22; p. 327, lines 1-14). These instructions negated any prejudice that may have resulted from the joint trial. Furthermore, Applicant has failed to show that a motion for severance would have been successful. Accordingly, Applicant has failed to prove prejudice from trial counsel's decision.

Failure to Investigate and Call Witnesses

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to investigate and to call the other responding officers as witnesses. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). In light of Counsel's credible testimony that he evaluated and apprised Applicant on the matter, Applicant has produced no reliable testimony that would even remotely diminish his culpability in the armed robbery charge. Regardless, the allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to present any evidence or testimony from the officers. This Court finds Counsel articulated a reasonable trial strategy in not calling law enforcement officers in support of his defense as the officers were not likely to provide beneficial testimony. Thus, this allegation is readily denied and dismissed as Applicant has failed to meet his burden in proving deficiency and resulting prejudice.

CLERK OF COURT
SPARTANBURG COUNTY
2018 MAY 8 AM 4:01
M. JOPEBLAKLEY

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

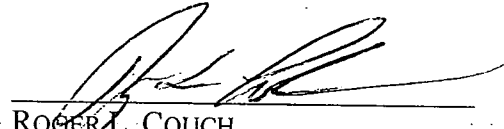
Blc
21

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAY -8 PM 4:01
M. HOPE BLACKLEY

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 9th day of May, 2015.



ROGER L. COUCH
Presiding Judge

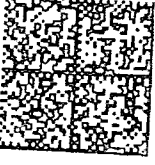
Spartanburg, South Carolina

CLERK OF COURT
SPARTANBURG COUNTY
2015 MAY -8 PM 4:01
M. HOPE BLACKLEY

M. HOPE PLACKEY
Clerk of Court, Spartanburg County
Post Office Box 3483
Spartanburg, South Carolina 29304-3483

RETURN SERVICE
REQUESTED

PRESORTED
FIRST CLASS



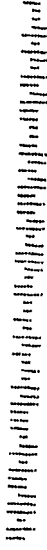
02 1P \$ 00.460
0006556657 MAY 11 2015
MAILED FROM ZIP CODE 29303

Leah B. Moody
235 E. Main St., Ste 115 PO Box 1015
Rock Hill, SC 29730

RECEIVED MAY 13 2015

CFS 2012-1824

26 W-DUNN 29730



Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
lbmatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

May 14, 2015

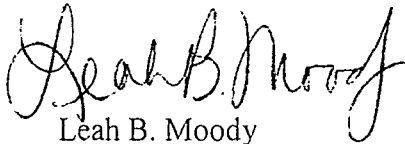
The Honorable Hope Blackley
Spartanburg County Clerk of Court
Post Office 3483
Spartanburg, South Carolina 29304

RE: Kenneth Wayne Childs v. State of South Carolina
C.A. No. 2012-CP-42-01824

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/srm

Enclosures

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

Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
lbinatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

May 14, 2015

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

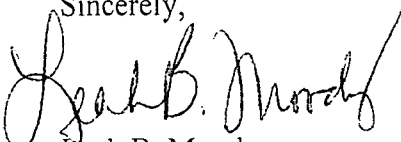
RE: Kenneth W. Chiles v. State of South Carolina
C.A. No.: 2012-CP-42-01824

Dear Ms. White:

The Spartanburg County Court of Common Pleas appointed my office to represent Kenneth W. Chiles 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 Kenneth W. Chiles
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
Post Office Box 1015
Rock Hill, South Carolina 29731
lbnatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

May 14, 2015

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

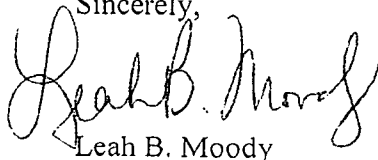
RE: Kenneth Wayne Chiles v. State of South Carolina
Case No.: 2012-CP-42-01824

Dear Ms. Graham:

The York County Court of Common Pleas appointed my office to represent Kenneth Wayne Chiles 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 Kenneth W. Chiles
Suzanne White, Esquire
Daniel Shearouse, Clerk of Court, Supreme Court
David Hamilton, Clerk of Court, York County

US POSTAGE
FIRST-CLASS
29730 MAY 14 2015
96250007479892
\$1.610
stamps.com



Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, South Carolina 29730

TO: THE HONORABLE DANIEL SHEAROUSE

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

