

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

June 8, 2015

RECEIVED

JUN 12 2015

S.C. SUPREME COURT

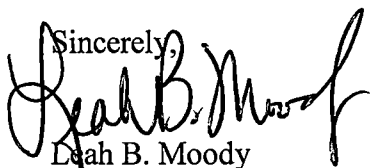
Mr. Daniel E. Shearouse
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29221

RE: David Beatson v. State of South Carolina
Case No.: 2014-CP-46-01538

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent David Beatson 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

Enclosure

cc David Beatson
Rutledge Johnson, Esquire
Sharon Graham, SCCID
David Hamilton, Clerk of Court, York County

**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM YORK COUNTY
Court of Common Pleas**

Allison Lee, Presiding in York County

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S.C. SUPREME COURT

Case No.: 2014-CP-46-01538

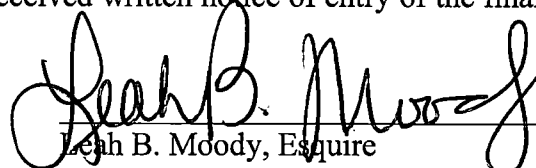
David Beatson, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

David Beatson appeals the order of the Honorable Allison Lee, dated May 8, 2015 and mailed on May 15, 2015. Appellant received written notice of entry of the final order on May 18, 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 YORK COUNTY
Court of Common Pleas

Allison Lee, Presiding in York County

Case No.: 2014-CP-46-01538

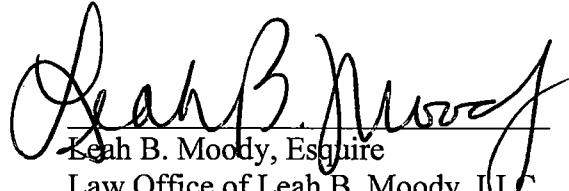
David Beatson, Appellant,

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 June 9, 2015, 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

June 9, 2015

Cc David Beatson
Rutledge Johnson, Esq.
David Hamilton, Clerk of Court, York County
Sharon A. Graham, SCCID

RECEIVED

JUN 12 2015

S.C. SUPREME COURT

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4601538

David Beatson

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for: Plaintiff Defendant
 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/ Alison Renee Lee

2118

5/14/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **May 14, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **May 14, 2015**, 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.

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF YORK

2015 MAY 14 PM 4:41

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

David R. Beatson,

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Case Number: 2014-CP-461538

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED-RECEIVED
MAY 14 PM 4:18
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

This matter came before the Court by way of an Application for Post-Conviction Relief filed May 9, 2014. The Respondent made its Return on August 13, 2014. An evidentiary hearing into the matter was convened on November 19, 2014, at the Moss Justice Center in York, South Carolina. Leah B. Moody, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Toni Johnson, Esquire, Applicant's trial counsel (Counsel), 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, and the State's Return.

PROCEDURAL HISTORY

The Applicant was charged with Assault and Battery, 3rd degree, on or around March 8, 2013. On August 6, 2013, the Applicant proceeded to a jury trial in magistrate's court and was found guilty. The Honorable Johnny Grason sentenced Applicant to a fine of \$400 or jail time. The Applicant appealed this verdict to the Sixteenth Judicial Circuit Court. The Honorable John C. Hayes III denied this appeal on January 13, 2014. The Applicant is not currently confined. At the hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court has also reviewed all relevant documents to assist in judging credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

mf

Summary of Testimony

At the evidentiary hearing, Applicant testified that he was convicted of Assault and Battery, 3rd degree in Magistrate's Court. He was represented by Counsel and communicated with Counsel by phone and email. Applicant told Counsel about the officer involved and that Victim was his neighbor. Applicant testified about his version of the facts of the case. Applicant claimed he was getting ready for work when he saw some kids vandalizing a mailbox, so he followed the kids. Applicant stated Victim came out of his house and threatened Applicant. Applicant then stated he pulled out his camera phone, which Victim did not appreciate. Applicant ran back to his house, pulled out a baton, and struck Victim. Applicant testified the officer who arrived on the scene gave Applicant attitude because of a previous incident. Applicant claims the video on his phone shows the officer threatening Victim to make a report. Applicant was then arrested for Assault and Battery, 3rd degree.

Applicant testified he did not meet with Counsel at the initial appearance because Counsel was not there, so he asked for another attorney. Applicant stated he thought he was supposed to speak with Counsel about the video and the officer and to discuss a plea or trial. Applicant stated when his case was called for trial, the judge denied a continuance and instructed him and the attorney that appeared with him to strike a jury. Applicant testified he discussed a plea to pay the fine and not spend 30 days in jail. Applicant believed he had a good case and rejected the offer. Applicant testified his next court appearance was for trial. Prior to trial, Applicant, through Counsel, filed a motion for the judge to recuse himself, which was denied. Applicant stated he emailed a copy of the video to Counsel prior to trial, and Counsel copied the video onto a DVD. Applicant claims Counsel did not bring the video to trial and that he wanted this video to be "heavily emphasized" at trial, which Counsel did not do. Applicant testified because the video was short, he wanted it played a couple of times. Applicant also testified he expected the video to be used during Counsel's closing argument and that he expressed this concern to Counsel.

Applicant further testified the Sheriff's Office possessed a "Dashcam" video and a video from the officer's supervisor, along with several audio recordings, which were entered into evidence. Applicant stated his video was also entered into evidence. Lastly, Applicant testified that he believes Counsel did not have sufficient time to prepare for trial, that the video was not available for the jury during deliberations, and that the video was not emphasized during his trial.

On cross-examination, Applicant admitted that both he and Victim testified at his trial. Applicant admitted that the jury saw all of the videos during his trial and still found him guilty.

Counsel testified she was appointed to Applicant's case as a public defender. Counsel stated she received Applicant's emails and spoke with him on the phone. Counsel stated she filed and received discovery, including the incident report and the videos. Counsel testified she reviewed the videos with Applicant. Counsel then testified Applicant wanted a trial. Counsel stated she discussed with Applicant the issues concerning the officer, Victim, and the presiding judge. Counsel also stated she filed a motion for the judge to recuse himself based on the information Applicant supplied to her.

Counsel testified the defense strategy was that Applicant did not assault Victim even though Applicant presented a baton. She based this defense theory on her experience as an attorney and the facts of the case. Counsel testified that at trial the defense put up its case, and Applicant testified. Counsel stated she cross-examined all of the witnesses, and the jury viewed the video. Counsel stated she requested Applicant provide a copy of the video, which he did. Counsel further testified she emphasized the video during her closing argument, and if the jury wanted to see the video again, it could have requested to do so, but it did not. Counsel lastly testified she had sufficient time to prepare this case and did prepare it by meeting with Applicant, talking to the officer, viewing the video, filing the motion and cross-examining the witnesses.

On cross-examination, Counsel testified she filed the motion for the judge to recuse himself based on information from Applicant that the judge presided over a previous case in which Applicant was involved. The information that Applicant supplied was that Victim had been coming to Applicant's residence and that Applicant wanted a restraining order against Victim. Counsel stated she did not have a copy of the video because Applicant had emailed the video and she could not copy it, but Applicant brought a copy to trial. Counsel also stated she did not bring copies of the officers' videos, but they brought copies to trial. Additionally, Counsel testified she met with Applicant three to four times and communicated via email and phone prior to trial. Counsel stated she felt prepared for trial and that Applicant was prepared.

Upon questioning from the Court, Counsel testified the Magistrate Judge told Applicant the restraining order was not filed in the proper venue and because of this, Applicant thought the judge would be against him at trial. Therefore, Counsel filed the motion for the judge to recuse himself

based on this information supplied by Applicant.

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), SCRPC). 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, supra. 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, supra). 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.

This Court finds that Applicant’s allegation that Counsel did not conduct an adequate pre-trial investigation is without merit. The “brevity of time spent in consultation, without more, does not establish that counsel was ineffective.” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel’s alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); United States v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant did not point to any specific matters Counsel failed to discover that would change the outcome of his trial. Additionally, Counsel testified she had adequate time to prepare for trial, met with Applicant on multiple occasions, reviewed all of the State’s evidence, including the various videos, and prepared Applicant for trial. This Court finds Counsel’s testimony

concerning her preparation for trial credible and Applicant's testimony concerning Counsel's preparation not credible. Therefore, this Court finds this allegation meritless.

Regarding the use of the video, Counsel stated she did not forget to bring the video to the trial. She stated that she knew Applicant was going to bring his video. She said there was a video she neglected to bring to trial, but it was a different video, from the officers, and it was not necessary for their defense. The jury did watch Applicant's video, and Counsel stated she emphasized the video in her closing statements. It is the jury's decision whether they wanted to rewatch the video during deliberations, and they did not choose to do so. Based on this information, there is no basis to the allegations that Counsel acted ineffectively with respect to using the video at trial.

Last, Appellant claims that Counsel submitted the motion for recusal of the judge on the wrong basis. Counsel testified she submitted the motion based upon her understanding of the situation between Appellant and the presiding judge as Appellant had described it. Appellant testified that in his opinion, the basis for the recusal should have been his filing a complaint against the presiding judge for not allowing him to file a civil lawsuit in the past. The basis in the motion instead was about the restraining order. Counsel testified that she did not think the basis Appellant preferred for the motion was sufficient, and used a different, accurate basis for the motion. This Court finds that Applicant has not proven that he was sufficiently prejudiced by Counsel's actions. Regardless of the reason, Counsel did move for the presiding judge to recuse himself, and the judge declined to do so. This Court does not find that Applicant has successfully proven ineffective assistance of counsel on this allegation.

CONCLUSION

Based on 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.

ORDER

IT IS THEREFORE ORDERED that the Application for Post-Conviction Relief must be denied and dismissed with prejudice.

AND IT IS SO ORDERED.



Alison Renee Lee
Presiding Judge

May 8, 2015
Columbia, South Carolina

arl
#6



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

ALISON RENEE LEE
JUDGE

1701 MAIN ST., ROOM 324
POST OFFICE BOX 192
COLUMBIA, SOUTH CAROLINA 29202-0192
TELEPHONE: (803) 576-1765
FAX: (803) 576-1768

May 8, 2015

David Hamilton
York County Clerk of Court
P.O. Box 649
York, South Carolina 29745

Re: Case Nos. 2014-CP-46-01538

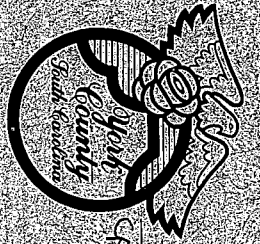
Dear Mr. Hamilton:

Please clock and file the enclosed Order and provide copies to counsel.

Sincerely,

Kathryn Mansfield
Law Clerk to the Honorable Alison Renee Lee

FILED - RECEIVED
2015 MAY 14 PM 4:18
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

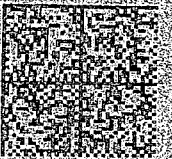


Post Office Box 649, York, South Carolina 29745-0649

CLERK OF COURT'S OFFICE

RECEIVED
MAY 18 2015

Leah B. Moody
PO Box 1015
Rock Hill, SC 29730



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June 8, 2015

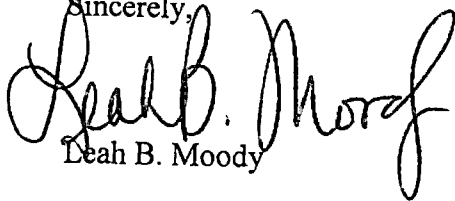
The Honorable David Hamilton
York County Clerk of Court
Post Office Drawer 649
York, South Carolina 29745

RE: David Beatson v. South Carolina
C.A. No.: 2014-CP-46-01538

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/ts

Enclosures

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

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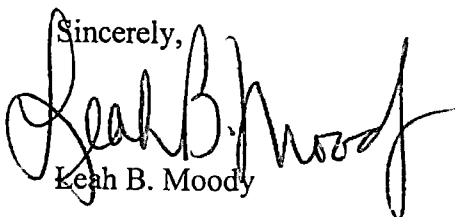
Rutledge Johnson, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

RE: David Beatson v. State of South Carolina
C.A. No.: 2014-CP-46-01538

Dear Mr. Johnson:

The York County Court of Common Pleas appointed my office to represent David Beatson 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/ts

Enclosures

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

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June 8, 2015

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

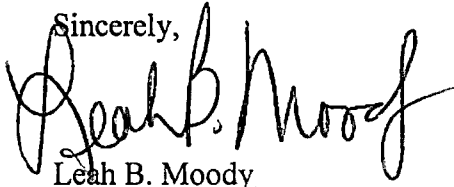
RE: David Beatson v. State of South Carolina
Case No.: 2014-CP-46-01538

Dear Ms. Graham:

The York County Court of Common Pleas appointed my office to represent David Beatson 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

Enclosures

cc David Beatson
Rutledge Johnson, Esquire
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County