

# Law Office of Leah B. Moody, LLC

Leah B. Moody  
William J. Nowicki

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Rock Hill, South Carolina 29730  
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NOV 20 2015

**S.C. Supreme Court**

Leah B. Moody

Lbmatty@comporium.net

November 17, 2015

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

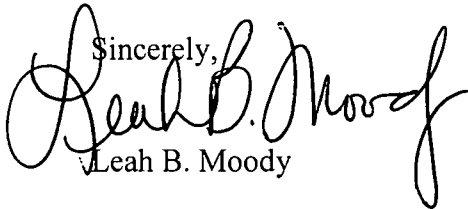
RE: Randy Lamont Mitchell v. State of South Carolina  
Case No.: 2014-CP-46-1048

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Randy Lamont Mitchell 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 Randy Lamont Mitchell  
Rutledge Johnson, Esquire/ Justin Hunter, Esquire  
Sharon Graham, SCCID  
David Hamilton, Clerk of Court, York County

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

NOV 20 2015

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S.C. Supreme Court

The Honorable Ernest J. Kinard, Presiding in York County  
The Honorable John C. Hayes, III, by assignment in York County

C.A. No.: 2014-CP-46-1048

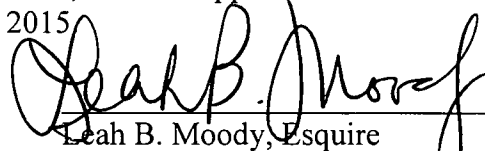
Randy Lamont Mitchell, ..... Appellant,

v.

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

NOTICE OF APPEAL

Randy Lamont Mitchell appeals the order of the Honorable John C. Hayes, III, dated October 12, 2015 and mailed on October 14, 2015. Appellant received written notice of entry of the final order on October 19, 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:  
Rutledge Johnson, SC Attorney General's Office  
Rembert C. Dennis Building  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-3970

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

NOV 20 2015

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S.C. Supreme Court

The Honorable Ernest J. Kinard, Presiding in York County  
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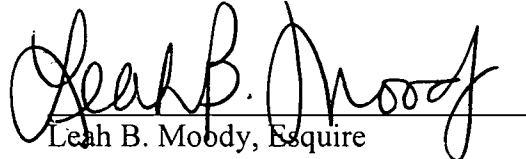
Randy Lamont Mitchell, ..... Appellant,

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 November 17, 2014 addressed to its attorney of record, Rutledge Johnson, Post Office Box 11549, Columbia, South Carolina, 29211-1549.



Leah B. Moody, Esquire  
Law Office of Leah B. Moody, LLC  
235 E. Main Street, Suite 115  
Post Office Box 1015  
Rock Hill, South Carolina 29731

November 17, 2015  
cc Randy Lamont Mitchell  
Sharon A. Graham

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2014CP4601048

Randy Lamond Mitchell	South Carolina State Of
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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

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

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)

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/ John C. Hayes, III.  
 Circuit Court Judge

2049  
 Judge Code

10/12/2015  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on **October 13, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **October 13, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

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

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

Justin James Hunter PO Box 11549 Columbia, SC 29211-1549

**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.

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Randy Lamont Mitchell, #247782, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent, )  
 )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-46-1048

FILED-RECEIVED  
 2015 OCT 13 PM 3:18  
 DAVID HAMILTON  
 C.C.P. & GS  
 YORK COUNTY, SC

ORDER

Applicant filed this Post-Conviction Relief application on April 3, 2014. The case was heard before the late Judge Ernest J. Kinard on April 14, 2015. Applicant was represented by Leah B. Moody, Esquire; the Respondent was represented by J. Rutledge Johnson, Esquire.

Due to the death of the Honorable Ernest J. Kinard, the undersigned assigned this case to himself pursuant to Rule 63, South Carolina Rules of Civil Procedure. The undersigned received the Transcript of the April 14, 2015 hearing on September 22, 2015. There is no reason for an additional hearing.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's Orders of Commitment. The applicant was indicted by the February 2011 term of the York County Grand Jury for Burglary, 1<sup>st</sup> degree (2011-GS-46-0506) and Armed Robbery (2011-GS-46-0507). Phillip Jamieson, Esquire, represented him on February 27-29, 2012; the Applicant proceeded to a jury trial and was found guilty as indicted.<sup>1</sup> The Honorable Robin Stillwell sentenced the Applicant to confinement for Life without Parole.

<sup>1</sup> This was a retrial. The initial trial resulted in a hung jury.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Mitchell, 2014-UP-104 (filed March 12, 2014). The Remittitur was issued on March 31, 2014.

In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"

By letter dated January 5, 2015, Applicant, through Ms. Moody, amended his application to include the additional ground of "Prosecutorial Misconduct."

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. 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 v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)). 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. at 690. The applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. at 118.

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 (quoting Strickland, 466 U.S. at 694). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that

*Jack 2*

“counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland, 466 U.S. at 691; see also Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

A review of the Transcript of Applicant’s Post-Conviction Relief hearing indicates Applicant claims trial counsel was ineffective for not having a gun suppressed,<sup>2</sup> failing to advise Applicant that he faced life without parole, failing to object to the display to the jury of a pair of black gloves, failing to object to State witness’s “false testimony,” and failing to object to the introduction of certain State’s exhibits.

Applicant testified at his hearing that the gun introduced at trial had a different serial number from the gun found at the scene of the burglary for which he was on trial. However, the Trial Transcript reflects that the handgun introduced at trial was the handgun, identified by serial number, which was found in the proximity of the alleged burglary. (Trial Tr. p. 131, LL 18-23). In fact, trial counsel objected to the gun being entered into evidence. (Trial Tr. p. 132, L 9).<sup>3</sup> Applicant testified at the PCR hearing at great length as to the “gun issue.” In spite of his lengthy arguments about the gun, the Trial Transcript reflects trial counsel objected to its introduction, which is all he could do at the time.

Applicant testified at the PCR hearing that Officer George Weeks offered false testimony regarding the gun and that trial counsel should have objected to this testimony. There is nothing in the record to support this claim. Trial counsel testified he did not know of any false testimony to which he could object. (PCR Tr. p. 57, LL 7-8).

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<sup>2</sup> At his PCR hearing, Applicant testified that the gun charge had been dismissed at a preliminary hearing. (PCR Tr. p. 8, LL 15-21). This is true. (See PCR Tr. p. 57, LL 14-24).

<sup>3</sup> Trial counsel objected by stating, “I move to renew my earlier objection.” This “earlier” objection cannot be found in the Trial Transcript. In any event, trial counsel objected to the introduction of the gun.

9011 133

Applicant testified at length that he was not aware he was facing life without parole and that, had he known, he would have accepted a plea bargain. However, in spite of his somewhat rambling explanation of why he was not subject to life without parole, he was aware the State's position was that he was subject to such a sentence. (PCR Tr. p. 13, L 1—p. 18, L 21).

Trial counsel testified he discussed with Applicant the fact he was facing life without parole (PCR Tr. p. 54, LL 12-15, 19-22) and that Applicant seemed to understand this (PCR Tr. p. 58, L 25—p. 59, L 6; p. 60, LL 1-4). Trial counsel also testified he showed Applicant his "rap sheet." (PCR Tr. p. 66, LL 24-25). At his PCR hearing, Applicant testified broadly that trial counsel was ineffective for not keeping him informed regarding the State seeking life without parole. As noted herein, trial counsel testified Applicant was aware he faced a life without parole sentence even though Applicant disputed he was subject to such a sentence.

Applicant testified at his PCR hearing that trial counsel was also ineffective for not objecting to the admission into evidence of the pair of black gloves, or objecting to the gloves being shown to the jury. The record reflects that the gloves were shown to State's witness, Christopher Rowe, who testified that they were recovered from Applicant's co-defendant, Gregory Crawford. The gloves were not offered into evidence, and therefore, there was nothing to which trial counsel could object. (Trial Tr. p. 236, LL 14-21).

Trial counsel testified he saw no reason to make a motion for a mistrial based on the displaying of the gloves. (PCR Tr. p. 69, L 16—p.70, L 10). Trial counsel further testified that he chose not to ask for any curative instruction regarding the gloves because it would not have been a smart thing to do as it would emphasize the gloves to the jury. Id. Trial counsel testified that such a decision was a trial strategy decision (PCR Tr. p. 70, LL 8-9).

*Handwritten signature*

At Applicant's trial, the State introduced a Rock Hill Police Department Property Evidence Inventory as Exhibit 23. Applicant testified he had not received the exhibit through discovery, and that it was therefore inadmissible. Trial counsel testified he received evidence sheets pursuant to his Rule 5 discovery request, and while he could not identify the sheet entered as Exhibit 23, he received a sheet listing the items on Exhibit 23. (PCR Tr. p. 55, LL 21-23). Trial counsel testified he showed the Applicant all of the evidence produced by the State in discovery. (PCR Tr. p. 68, LL 15-p. 69, L 3).

At Applicant's PCR hearing, he testified trial counsel was ineffective for not objecting to the introduction of Exhibit 22, another Rock Hill Police Department's Evidence Inventory. Trial counsel did not object to the admission into evidence of Exhibit 22. (Trial Tr. p. 235, 4-12). Applicant claims trial counsel should have objected to the introduction of Exhibit 22 based on "the custody of the sheet" (PCR Tr. p. 28, LL 12-14), and the "chain of custody" of the sheet (PCR Tr. p. 29, LL 9-12). Trial counsel testified he found nothing wrong with the chain of custody of the evidence introduced at trial. (PCR Tr. p. 71, LL 7-12).

At his PCR hearing, applicant testified trial counsel was ineffective for not objecting to the introduction into evidence of Exhibits 17, 18, 19 and 20 based on the State's Rule 5 SCRCMP violation. Trial counsel did object to the introduction of these exhibits based on a lack of foundation, not on the basis of a Rule 5 violation (Trial Tr. p. 248, LL 6 11), and practically withdrew the objection thereafter (Trial TR, p. 248, LL 24-25). Trial counsel testified he received the pictures entered as Exhibits 17-20 in discovery. (PCR Tr. p. 56, LL 4-9).

At Applicant's PCR hearing, he testified trial counsel was ineffective for failing to move to suppress an in court identification of him by the victim. This claim is without merit. See State v. Lewis, 363 S.C. 37, 609 S.E.2d 515 (S. Ct. 2004).

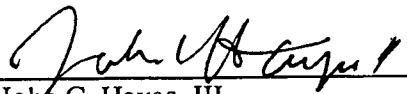
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Wherefore, I find Applicant has not carried his burden of proof, and has neither proven trial counsel was ineffective, nor proven any prosecutorial misconduct.

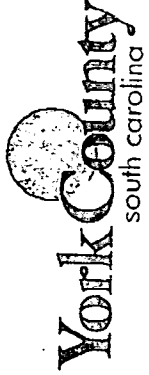
Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

  
\_\_\_\_\_  
John C. Hayes, III  
Judge  
HC

October 12<sup>th</sup>, 2015  
York, South Carolina



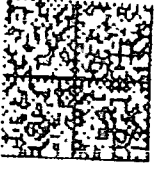
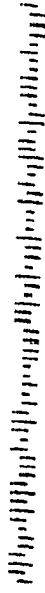
CLERK OF COURT'S OFFICE

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

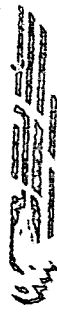
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Rock Hill, SC 29730

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Leah B. Moody

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November 17, 2015

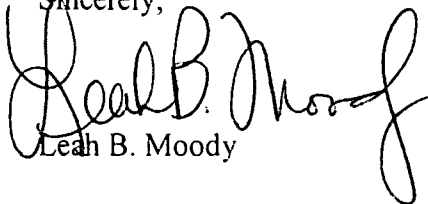
The Honorable David Hamilton  
York County Clerk of Court  
Post Office 649  
York, South Carolina 29745-0649

RE: Randy Lamont Mitchell v. South Carolina  
C.A. No.: 2014-CP-46-1048

Dear Mr. Hamilton:

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

Sincerely,



Leah B. Moody

Enclosures

cc Randy Lamont Mitchell  
Rutledge Johnson, Esquire/ Justine Hunter, Esquire  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
Sharon Graham, SCCID

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Justin Hunter, Esquire  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211

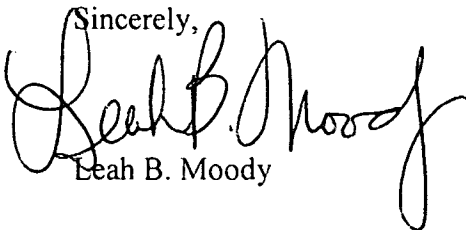
RE: Randy Lamont Mitchell v. State of South Carolina  
C.A. No.: 2014-CP-46-01048

Dear Mr. Johnson:

The York County Court of Common Pleas appointed my office to represent Randy Lamont Mitchell 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

Enclosures

Cc Randy Lamont Mitchell  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
David Hamilton, Clerk of Court, York County  
Sharon Graham, SCCID

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Leah B. Moody

Lbmatty@comporium.net

November 17, 2015

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

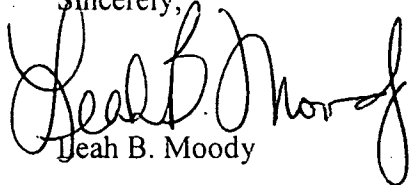
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Case No.: 2014-CP-46-1048

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Sincerely,



Leah B. Moody

Enclosures

cc Randy Lamont Mitchell  
Rutledge Johnson, Esquire/Justin Hunter, Esquire  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
David Hamilton, Clerk of Court, York County



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Post Office Box 1015  
Rock Hill, South Carolina 29730

TO:

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

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