

Law Office of Leah B. Moody, LLC

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Telephone (803) 327-4192
Facsimile (803) 329-1344

January 21, 2016

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

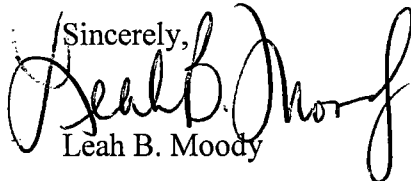
RE: Anthony Ogden v. State of South Carolina
Case No.: 2014-CP-46-4080

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Anthony Ogden 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 Anthony Ogden
Justin J. Hunter, Esquire
Sharon Graham, SCCID
David Hamilton, Clerk of Court, York County

RECEIVED

JAN 26 2016

S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 26 2016

APPEAL FROM YORK COUNTY S.C. SUPREME COURT
Court of Common Pleas

The Honorable Brooks Goldsmith, Presiding in Spartanburg County

Case No. 2014-CP-46-4080

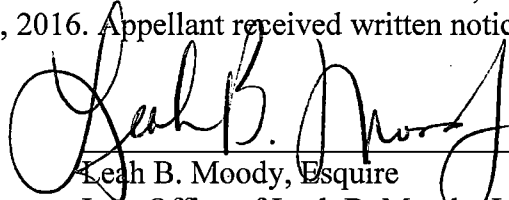
Anthony Ogden, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Anthony Ogden appeals the order of the Honorable Brooks Goldsmith, dated December 28, 2015 and mailed on January 15, 2016. Appellant received written notice of entry of the final order on January 20, 2016.



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:
Justin J. Hunter, 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

JAN 26 2016

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Brooks Goldsmith, Presiding in Spartanburg County

Case No.: 20014-CP-46-4080

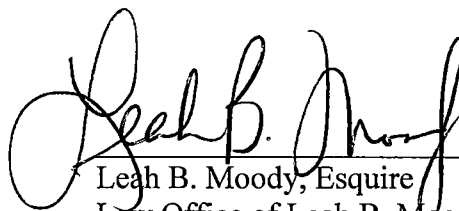
Anthony Ogden, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin J. Hunter by depositing a copy of it in the United States Mail, postage prepaid, on 1/21, 2016 addressed to its attorney of record, Justin J. Hunter, 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

January 21, 2016
cc Anthony Ogden
Sharon A. Graham

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10/10/10

BRAND

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January 21, 2016

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

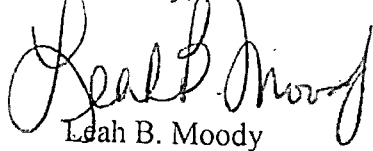
RE: Anthony Ogden v. State of South Carolina
C.A. No.: 2014-CP-46-4080

Dear Mr. Hunter:

The York County Court of Common Pleas appointed my office to represent Anthony Ogden 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 Anthony Ogden
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

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January 21, 2016

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

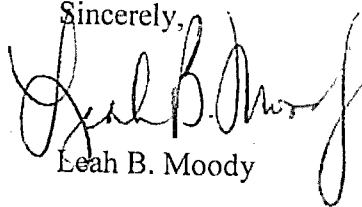
RE: Anthony Ogden v. State of South Carolina
Case No.: 2014-CP-46-4080

Dear Ms. Graham:

The York County Court of Common Pleas appointed my office to represent Anthony Ogden 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

Enclosures

cc Anthony Ogden
Justin J. Hunter, Esquire
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County

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January 21, 2016

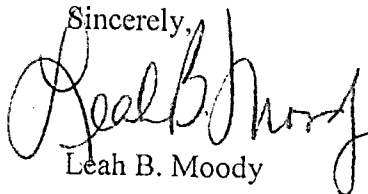
The Honorable David Hamilton
York County Clerk of Court
Post Office Box 649
York, South Carolina 29745

RE: Anthony L. Ogden v. State of South Carolina

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 Anthony Ogden
Justin J. Hunter, Assistant Attorney General
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4604080

Anthony L Ogden

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Justin J. Hunter

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; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- 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)

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.

David Hamilton

2099

1/15/2016

Clerk of Court

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **January 15, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **January 15, 2016**, 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

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

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.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Anthony L. Ogden,)
S.C.D.C. No. 361018,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-4080

ORDER OF DISMISSAL

2015 JAN 13 PM 1:58

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 16, 2014. Respondent made its Return on or about March 5, 2015. An evidentiary hearing into the matter was convened on November 3, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Harry Dest, Esquire, testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the June 2014 term of the York County Grand Jury for DUI Felony Causing Death (2014-GS-46-1879). Applicant was represented by Harry Dest, Esquire (hereinafter "Counsel"). On July 17, 2014,

Applicant pled under North Carolina v. Alford¹ before the Honorable Frank R. Addy, Jr. and was sentenced on August 11, 2014 to confinement for fifteen (15) years.

A Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) SCACR. The Remittitur was issued on January 23, 2015.

In this PCR action, Applicant alleged he was being held unlawfully for the following reasons:

1. "Just want to see about a time reduction"
2. "No useable bloodwork (Alpha Plea) also took the plea in York County – sentenced in Cherokee County. Jurisdiction problem"
3. Counsel did not know the definition or seriousness of dementia and did not properly present Applicant's dementia to the Court.

II. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified that he did not recall how many times he met with Counsel. Applicant testified that he watched the video from the accident with Counsel and that it depicted him to be disoriented. Applicant testified that he took issue with the police saying that he was drunk and further testified that he did not have any alcohol. Applicant testified that he did not remember driving on the night of the incident. He testified that he did not tell Counsel his entire story including his assertion that there was no alcohol in the vehicle.

Applicant testified that Counsel told him that he would receive only a single-digit sentence. Applicant also testified that Counsel did not know the definition of dementia or the seriousness of dementia and believes that that would have helped his case. He testified that he told Counsel that he suffered from seizures and that Counsel should have asked for his medical records.

¹ North Carolina v. Alford, 40 U.S. 25, 91 S.Ct. 160 (1970).

Counsel's Testimony

Counsel testified that he had numerous conversations with Applicant prior to the plea. He testified that he believed it was in Applicant's best interest to plead. Counsel also testified that he received full discovery from the State including videos and audio from the accident and Applicant's mirandized statement from the Highway Patrol. He testified that he reviewed Applicant's medical records and history. Counsel further testified that he talked to a forensic psychologist, Dr. Harold Morgan, about Applicant's depression, anxiety, and dementia and gave this report to the plea court.

Counsel testified that he went over the witness statements with Applicant. He testified that the witness statements stemming from Applicant's felony DUI asserted that Applicant had alcohol and Xanax that day. Counsel testified that he was more concerned with Applicant's use of Xanax. He testified that Applicant told him that he had memory of drinking that day and taking more Xanax than prescribed. He testified that from the video, it was clear that Applicant was not coherent as the responding officer had to put Applicant's car in "park" for him. Counsel testified that the case was difficult because Applicant could not remember anything from the accident.

Counsel testified that he explained to Applicant that the SLED blood alcohol report would have definitively exonerated him at trial as it would have been one factor out of many for the jury to consider.

Counsel testified that Applicant wanted a single-digit sentence but Counsel did not promise him that he would receive such a sentence. Counsel testified that he believed that the plea judge gave him the best deal he could receive. He testified that he argued mitigating factors such as the unusual nature of the accident and Applicant's cognitive deficiencies. Counsel

testified that he had no concerns about Applicant's understanding of what was going on during the plea hearing.

Counsel testified that he explained to Applicant that there was no jurisdiction issue, involving the sentencing taking place in Cherokee County. He testified that Applicant understood what was occurring during the plea and sentencing. The record shows that the plea judge had a scheduling conflict and the parties agreed to accommodate his schedule by having the sentencing hearing several weeks after the plea in a neighboring county.

III. APPLICABLE LAW

In a post-conviction relief action, the 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, 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, 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. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). 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. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscœ v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

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 plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, 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.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Sentence Reduction/Counsel promised single-digit sentence

This Court finds that Applicant failed to meet his burden of proving that his plea counsel was ineffective. This Court finds Applicant's attorney 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, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813.

First, to the extent that Applicant seeks a time reduction on his sentence, this Court finds that PCR is not the appropriate venue for an inmate seeking a reduction in a lawful sentence arising from his plea. This Court can find nothing in the record to indicate Applicant's sentence was unlawful. The sentence was well within the statutory range provided for the crime to which Applicant pled. See State v. Hall, 224 S.C. 546, 80 S.E.2d 239 (1954). Furthermore, this Court finds Applicant waived his right to challenge his sentence by failing to contemporaneously object to his sentence or raise the issue on direct appeal. See Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). See Also Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979).

Next, to the extent that Applicant alleged that Counsel promised him a single digit sentence, this Court finds that such an allegation to be without merit. This Court finds that Counsel did not promise Applicant a single digit sentence. This Court also finds the record clearly shows that this was not the case. It is clear that Applicant was told many times during the

plea hearing that the State was recommending a cap of fifteen years. Additionally, when asked by the plea judge if he was promised anything, he answered that he was not. (Plea Tr. p. 21, ll. 2-5). Moreover, the plea waiver form initialed and signed by Applicant shows that he understood that the charge carried a sentence of one year to fifteen years, the recommendation was for a cap of fifteen years, and the judge was not required to accept the recommendation. Accordingly, this Court finds that Applicant has failed to show that Counsel was deficient in this regard and this allegation must be dismissed.

*Counsel failed to understand Applicant's dementia
and present this information to the plea court*

This Court finds that Applicant's allegation that Counsel failed to present Applicant's dementia to the plea court is without merit. First, the record reflects that Counsel did bring these issues to the Court. During the plea, Counsel testified:

I've obtained the records from the jail. He's taking several different types of medication, Spiriva, which is an inhaler, Qvar, which is also an inhaler, but he's also taking Trazodone, Citalopram and Namenda. And as I indicated, Your Honor, in chambers earlier, that Namenda is a drug dealing with memory loss and dementia and the other ones, from what I've told by Dr. Morgan, deal with mental health issues for mood swings to depression.

(Plea Tr. p. 7, ll. 1-9). Additionally, Counsel testified extensively at the sentencing hearing during mitigation that Applicant suffered from and was treated for a variety of mental ailments including dementia. (See Sentencing Tr. pp. 21-24). Additionally, Counsel testified at the PCR hearing, and the record reflects, to the fact that he consulted a forensic psychologist who evaluated Applicant and prepared a report on his findings. Counsel testified, and the record reflects, that he provided this evaluation to the plea judge. Thus, this Court finds that Counsel was more than thorough in understanding Applicant's dementia and in presenting this information to the plea judge. Accordingly, Applicant has failed to carry his burden of proving

that Counsel was deficient in this regard. Even more, Applicant has failed to prove prejudice as he has made no showing that but for Counsel's alleged errors he would not have pled but instead gone to trial.

Jurisdiction Issue

Applicant's claim that the plea court lacked jurisdiction to sentence him in Cherokee County after accepting his guilty plea in York County is meritless. Essentially, Applicant is referring to the sentencing court's venue and not jurisdiction. This Court notes Applicant pled guilty on June 17, 2014 in York County in front of the Honorable Frank R. Addy, Jr. Following the acceptance of his guilty plea, all parties agreed to defer sentencing and reschedule in Cherokee County due to a scheduling conflict. (Plea Tr. pp. 4-5). On August 11, 2014, all parties reconvened in Cherokee County and Judge Addy issued his sentence. This Court notes at no point in time did Applicant object to sentencing being deferred or venue being moved to Cherokee County. This Court finds Applicant's acquiescence to sentencing being deferred, venue being moved to Cherokee County, and then further failing to object at any point in time during the proceedings amounts to a waiver of venue. Additionally, this Court finds, and the record reflects, that all parties involved appeared to understand that sentencing was deferred because of the plea judge's scheduling issue. (See Plea Tr. pp. 4-5; Sentencing Tr. p. 4, ll. 5-12). Clearly, the plea court had the appropriate jurisdiction to accept the plea and sentence.

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

V. CONCLUSION

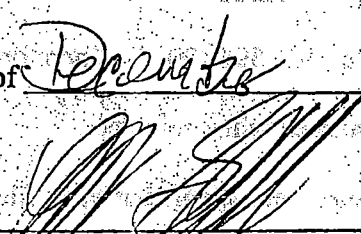
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 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.

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 28 day of December, 2015.



BROOKS GOLDSMITH
Presiding Judge
Sixteenth Judicial Circuit

2
_____, South Carolina

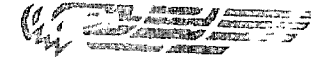
York County
south carolina

CLERK OF COURT'S OFFICE

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



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

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