

Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

May 2, 2016

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

RECEIVED

MAY -9 2016

SC SUPREME COURT

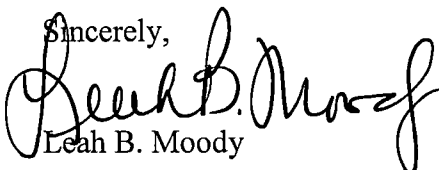
RE: Steven Spagnoli v. State of South Carolina
Case No.: 2013-CP-46-1662

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Steven Spagnoli 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 Steven Spagnoli
Justin Hunter, Esquire
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY -9 2016

SC SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Daniel D. Hall, Presiding in York County

Case No. 2013-CP-46-1662

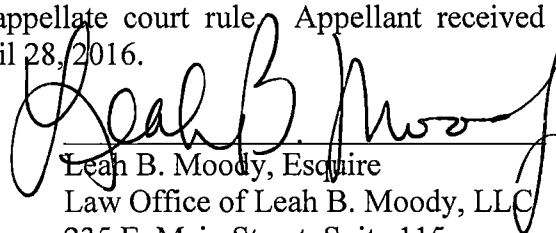
Steven Spagnoli, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Steven Spagnoli appeals for a belated review of direct appeal issues pursuant to *White v. State*, Rule 243(i) and the Order of the Honorable Daniel D. Hall dated April 22, 2016 and mailed on April 26, 2016. Per the Order, Rule 227(g) was inadvertently cited in error and Rule 243(i) is the appropriate appellate court rule. Appellant received written notice of entry of the final order on April 28, 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 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

MAY - 9 2016

APPEAL FROM YORK COUNTY
Court of Common Pleas

SC SUPREME COURT

The Honorable Daniel D. Hall, Presiding in York County

Case No. 2013-CP-46-1662

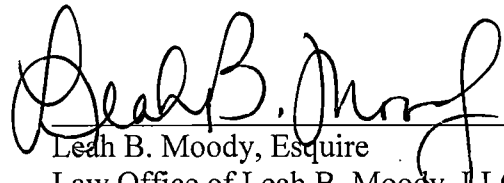
Steven Spagnoli, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin Hunter by depositing a copy of it in the United States Mail, postage prepaid, on May 2, 2016 addressed to its attorney of record, Justin 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, 29730
Post Office Box 1015
Rock Hill, South Carolina 29731

May 2, 2016

cc Steven Spagnoli
Justin Hunter, Esquire
David Hamilton, Clerk of Court, York County
Sharon A. Graham, SCCID

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Steven Spagnoli,)
 S.C.D.C. No. 350895,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-1662

RECEIVED
 MAY -9 2016
 SC SUPREME COURT

**ORDER OF DISMISSAL AND
 GRANT OF APPEAL PURSUANT TO
WHITE V. STATE**

This matter comes before the Court by way of an Application for post-conviction relief (PCR) filed June 6, 2013. Respondent made its Return on May 13, 2015.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. Applicant was indicted at the April 2011 term of the York County Grand Jury for Murder (2011-GS-46-1122), Attempted Murder (2011-GS-46-1123), two (2) counts of Possession of a Firearm during the Commission of a Violent Crime (2011-GS-46-1122A, 1123A), and Criminal Conspiracy (2011-GS-46-1124). James W. Hancock, Jr., Esquire, (hereinafter "Counsel") represented him. On April 19-26, Applicant proceeded to trial and was found guilty as indicted. The Honorable John C. Hayes, III sentenced him to life imprisonment for Murder, thirty (30) years for Attempted Murder, five (5) years for Criminal Conspiracy, and five (5) years each for count of Possession of a Firearm during the Commission of a Violent Crime, all running concurrently.

This Court has before it an affidavit from Counsel, signed May 29, 2012. In this affidavit, Counsel explains that a few days after the conviction, on Monday, April 30, 2012, Applicant fell

or jumped from the second floor of the Moss Justice Center and landed directly on his head. Applicant was on life support for a short time and was not capable of speaking or communicating with Counsel

On May 4, 2012, Counsel filed a notice of appeal on Applicant's behalf. On November 1, 2012, the South Carolina Court of Appeals sent a letter to Counsel notifying him that the transcript had not been ordered as required by Rule 207 SCACR. By Order filed January 30, 2013, South Carolina Court of Appeals dismissed the appeal for failure to timely order the trial transcript. Counsel filed a Motion on or about February 5, 2013, to reopen the appeal. In this motion, Counsel notifies the Court of Appeals that Applicant filed a notice of appeal through Counsel but was unable to take the necessary steps to perfect the appeal because Applicant was hospitalized for several months. The Remittitur was issued on February 25, 2013. On May 6, 2013, Applicant sent a pro se Motion to Reinstate Appeal.

On June 6, 2013, Applicant filed this PCR action, alleging several grounds of ineffective assistance of counsel, including that Counsel failed to communicate with the appellate court and properly file the direct appeal.

II.

This Court agrees that Applicant did not waive his right to a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues

pursuant to White v. State, See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

This Court affirmatively finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to White v. State can remedy Applicant's lack of a direct appeal.

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. That Applicant be remanded to the custody of Respondent

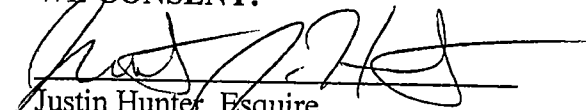
AND IT IS SO ORDERED



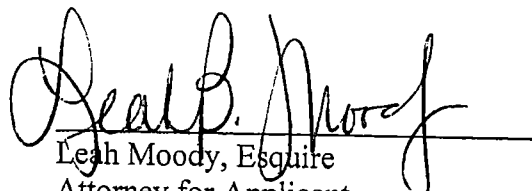
DANIEL D. HALL
Chief Administrative Judge
Sixteenth Judicial Circuit

4-22, 2016
York, South Carolina

WE CONSENT:



Justin Hunter, Esquire
Assistant Attorney General
Attorney for the Respondent



Leah Moody, Esquire
Attorney for Applicant



POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

RECEIVED APR 28 2016

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

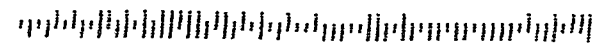
neopost®
04/26/2016
US POSTAGE

\$00.465



ZIP 29204
041L11237104

2973084891 CO14



Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

May 2, 2016

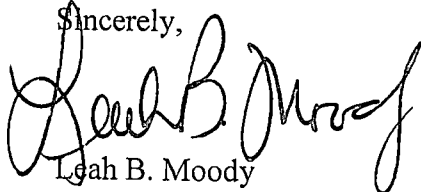
The Honorable David Hamilton
York County Clerk of Court
Post Office Box 649
York, South Carolina 29745

RE: Steven Spagnoli v. State of South Carolina
C.A. No.: 2013-CP-46-1662

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 Steven Spagnoli
Justin Hunter, Esquire
Daniel E. Shearouse, Clerk of Court, Supreme Court of South Carolina
Sharon Graham, SCCID

Law Office of Leah B. Moody, LLC

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

May 2, 2016

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

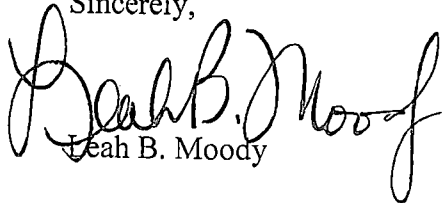
RE: Steven Spagnoli v. State of South Carolina
C.A. No.: 2013-CP-46-1662

Dear Mr. Hunter:

The York County Court of Common Pleas appointed my office to represent Steven Spagnoli 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 Steven Spagnoli
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

Leah B. Moody
Lbmatty@comporium.net

235 East Main Street, Suite 115
Post Office Box 1015 (29731)
Rock Hill, South Carolina 29730
Telephone (803) 327-4192
Facsimile (803) 329-1344

May 2, 2016

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

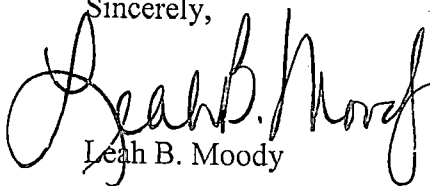
RE: Steven Spagnoli v. State of South Carolina
Case No.: 2013-CP-46-1662

Dear Ms. Graham:

The York County Court of Common Pleas appointed my office to represent Steven Spagnoli in his Post-Conviction Relief action. Please find enclosed the Notice of Appeal and Proof of Service the above-referenced matter.

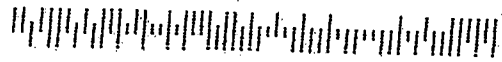
Thank you for your attention in this matter.

Sincerely,


Leah B. Moody

Enclosures

cc Steven Spagnoli
Justin Hunter, Esquire
Daniel E. Shearouse, Clerk of Court, Supreme Court of South Carolina
David Hamilton, Clerk of Court, York County



RECEIVED
MAY - 9 2016
SC SUPREME COURT



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

TO:

The Honorable Daniel E. Shearouse
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330