

# Law Office of Leah B. Moody, LLC

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May 13, 2016

**RECEIVED**

MAY 20 2016

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

**S.C. SUPREME COURT**

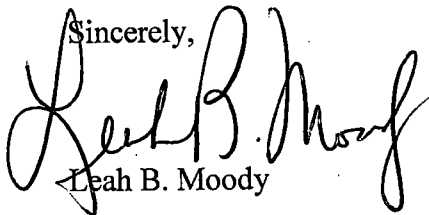
**RE: Chad Edward Hollingsworth v. State of South Carolina**  
**Case No.: 2014-CP-42-5026**

Dear Mr. Shearouse:

The Spartanburg County Court of Common Pleas appointed my office to represent Chad Edward Hollingsworth 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/jh

Enclosure

cc Chad Edward Hollingsworth  
Alicia White, Esquire  
Hope Blackley, Clerk of Court, Spartanburg County  
Sharon Graham, SCCID

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

MAY 20 2016

Keith Kelly, Presiding in Spartanburg County, S.C. SUPREME COURT

Case No.: 2014-CP-42-5026

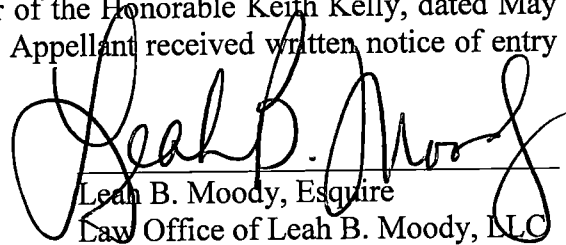
Chad Edward Hollingsworth, ..... Appellant,

v.

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

NOTICE OF APPEAL

Chad Hollingsworth appeals the order of the Honorable Keith Kelly, dated May 9, 2016 and mailed on or about May 9, 2016. Appellant received written notice of entry of the final order on May 13, 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 29730

Other Counsel of record:  
Alicia Olive, 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**

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

**Kelly Keith, Presiding in Spartanburg County**

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**Case No.: 2014-CP-42-5026**

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**Chad Edward Hollingsworth, ..... Appellant,**

**v.**

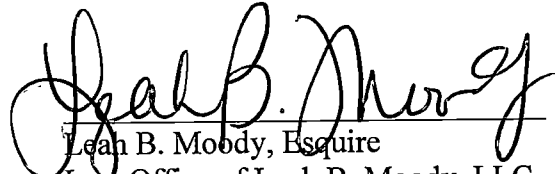
**State of South Carolina, ..... Respondent.**

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on Alicia Olive by depositing a copy of it in the United States Mail, postage prepaid, on 5/16, 2016 addressed to its attorney of record, Alicia Olive, Post Office Box 11549, Columbia, South Carolina, 29211-1549.



---

Leah B. Moody, Esquire  
Law Office of Leah B. Moody, LLC  
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Rock Hill, South Carolina 29730

May 16, 2016

cc Chad Edward Hollingsworth  
Alicia Olive, Esquire  
Hope Blackley, Clerk of Court, Spartanburg County  
Sharon A. Graham, SCCID

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Chad Edward Hollingsworth, #258392, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 IN THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-42-5026

**ORDER OF DISMISSAL**

2016 MAR -9 AM 9:10  
 M. HOE BUCKLEY  
 CLERK OF COURT  
 SPARTANBURG COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) December 8, 2014. Respondent made its Return on May 19, 2015, requesting that an evidentiary hearing be held. An evidentiary hearing into the matter was convened at the Spartanburg County Courthouse before the undersigned on March 23, 2016. Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Alicia A. Olive, Esquire, represented Respondent.

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony via telephone from M. Claire Hall, Esquire. This Court also had before it the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the pleadings.

**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. The Applicant was indicted at the December 2013 term of the Spartanburg County Grand Jury for attempted murder (2013-GS-42-5338); carjacking (2013-GS-42-5285); resisting arrest with a deadly weapon (2013-GS-42-5288); assault and battery of a high and aggravated nature ("ABHAN") (2013-GS-42-5287);

two counts of failure to stop motor vehicle when signaled by officer (2013-GS-42-5284, -5590); burglary, first degree (2013-GS-42-5286); and two counts of grand larceny (2013-GS-42-5286(B), -5283). Applicant was represented by M. Claire Hall, Esquire ("Counsel"). On July 7, 2014, he pleaded guilty to all charges as indicted. The Honorable Roger L. Couch sentenced the Applicant to concurrent terms of twenty-five years for burglary, twenty-five years for attempted murder, twenty years for assault and battery of a high and aggravated nature, twenty years for carjacking, ten years for resisting arrest with a deadly weapon, five years on each charge of failure to stop charge, and five years on each grand larceny charge.

Counsel filed a timely notice of appeal on Applicant's behalf. In an Order filed December 4, 2014, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned on December 19, 2014.

### **Allegations**

Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel; specifically:
  - a. Counsel was ineffective in refusing to give a dispositive motion in support of a direct appeal pursuant to White v. State, when Applicant did not knowingly and intelligently waive the right to withdraw his guilty plea;
  - b. Counsel allowed due process violations to occur by not challenging the Respondent abuse of power by placing two (2) charges, i.e., burglary 1st and grand larceny, upon one indictment making it impossible to plea or seek acquittal thereof;
  - c. Counsel failed to challenge the evidence pertaining to ABHAN when such conviction if pled would result in a miscarriage of justice.

### **II. SUMMARY OF TESTIMONY PRESENTED**

At the PCR hearing, Applicant testified that the State had previously made a plea offer whereby the State agreed to dismiss the burglary, first degree, and one count of grand larceny

charges if Applicant pleaded guilty to all other charges straight up. Applicant testified he reviewed all videos. Applicant testified that Counsel did not want him to take the deal. Applicant testified that Counsel told him that he was going to trial if he did not plead. Applicant testified that Counsel told him to plead guilty and then he could come back to court and get a new attorney. Applicant testified he wished to withdraw his allegation that his due process rights were violated as a result of two of his charges being placed on a single indictment.

Counsel testified she represented Applicant for approximately a year prior to the plea. Counsel testified that she met or spoke with applicant at least six times. Regarding the strength of the State's case against Applicant, Counsel testified that there were several videos from officers' dash cameras, cellphone videos, and a video from the gas station where the car was stolen. Counsel testified there were also cab reports and 911 calls. Counsel testified there were many police officers involved in the incident and that the officers would have testified at trial. Regarding her investigation, Counsel testified she spoke with the officers involved, spoke with the Chief of Police in Chesnee, and went with her investigator to look at all locations involved. Counsel testified that she reviewed all discovery. Counsel testified that there may have been more than one plea offer, but that she recalled the State had made an offer of a recommended twenty year sentence the week before the plea, but that the State revoked the offer when Applicant indicated that he wished to relieve her as counsel. Counsel testified she never went before a judge on Applicant's request to relieve her.

Counsel testified that it was Applicant's decision to accept the plea offer, considering his exposure was a life sentence. Counsel testified that if Applicant had elected to proceed with a trial that she would have been substantially prepared, but if she was not she would have requested a continuance.

Regarding the Notice of Appeal, Counsel testified that she did not recall whether Applicant or a family member may have asked her to file the appeal, but that in either case, she did not think there were any appealable issues. On cross-examination Counsel was asked why she filed a notice of appeal if she felt there was no basis for appeal, and Counsel stated that Applicant was sentenced to twenty-five years, and that she would rather file and have it be withdrawn than to file late.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, and closely pass upon their credibility. This Court has weighed their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

#### A. Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant “must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice.” Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014). “The two-part test adopted in Strickland also applies to challenges to guilty pleas based on ineffective assistance of counsel.” Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011).

The applicant must first show that counsel’s performance “fell below an objective standard of reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386



S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

This Court finds that Applicant has failed to show Counsel's performance was deficient. The facts as presented at the plea hearing were substantially as follows. A woman arrived at her residence one morning to find Applicant inside. Applicant then ran out, taking some of the woman's possessions with him, and went inside the house next door. The authorities were called. When they arrived, Applicant came out of the house, but then fled and the authorities tried to subdue him. Applicant took out a knife, and one of the officers fired a shot. Applicant fled, and police began chasing him on foot. In the process, Applicant began trying to break out a window of a truck that was stopped in the street. The person in the vehicle knew Applicant and could identify him. Applicant continuously ignored commands by police to drop his knife. The officers tased him and he kept going. Applicant ran to a nearby gas station, took a vehicle and a high-speed chase ensued. The authorities were eventually able to block him off with a sheriff's vehicle. Applicant got out of the vehicle he was in and kept running. They later found him later in an abandoned house nearby.

At the plea, the State had five exhibits introduced: (1) a SLED investigative report; (2) CDs containing notes and statements, (3) reports, photographs, and a video, (4) Applicant's rap sheet, and (5) certified copies of Applicant's convictions.

Applicant spoke at his guilty plea and told the plea judge that his words to the court were his own. The record reflects that Applicant told the plea judge that he was satisfied with the advice of counsel and that he waived his rights to remain silent, to a jury trial, and to confront witnesses against him. Applicant affirmed that he had thoroughly discussed his case with Counsel, that he was satisfied with her services, and that he did not need to consult with her about anything further and did not feel there was anything else she should do before he proceeded with his plea. Furthermore, the plea judge inquired on the record as to the truth of the facts presented and applicant's waiver of his rights. The plea judge accepted the plea as freely, voluntarily, and intelligently entered.

In mitigation, Counsel told the trial judge that at the time he committed the offenses, Applicant was acting under the influence of narcotics and was incapable of making rational decisions. She asked the court to sentence Applicant to a sentence that would allow him time with his family. Multiple individuals also spoke on Applicant's behalf at the plea.

This Court finds that Counsel adequately conferred with Applicant and provided thoroughly competent representation. In her conferences with Applicant, Counsel reviewed all discovery materials and explained the charges against him including the potential sentence that each carried. Counsel also explained his constitutional rights to him and informed him regarding the rights he was waiving by pleading guilty. This Court finds that Counsel, in advising Applicant, considered the overwhelming evidence against him including the videos and the potential testimony from multiple police officers and other eyewitnesses. Counsel retraced the

crime scene with the investigator, spoke with officers, spoke with 911 communications personnel, and spoke with witnesses.

This Court further finds that Applicant failed to provide any evidence that he attempted to relieve Counsel, nor did he advise the plea judge that he was dissatisfied with her or wished to relieve her. This Court finds Counsel relayed the correct statement of law to Applicant regarding advice on entering a plea or proceeding with a jury trial. Therefore, this Court finds Applicant has failed to show any deficiency in Counsel's performance.

Furthermore, this Court finds Applicant has failed to show that he was prejudiced by any alleged deficiency of Counsel. The record reflects that the evidence against Applicant was overwhelming. Applicant was facing serious charges and several of his victims were members of law enforcement who were prepared to testify at trial. Applicant was facing a potential life sentence on the burglary charge as well as substantial sentences on the remaining charges if convicted by a jury. This Court finds that Applicant chose to plead guilty considering he would have been exposed to a life sentence if he went to trial. Therefore, this Court finds Applicant has failed to show that he was prejudiced by any alleged deficiency of Counsel.

Regarding Applicant's allegation that Counsel was ineffective for failing to perfect his direct appeal, this Court finds Applicant has failed to show either deficiency or prejudice. Counsel testified that even though she did not believe there were any appealable issues, she filed a Notice of Appeal. She could not recall whether she did so as a routine practice, or whether she was advised by Applicant or one of Applicant's family members that he wished to appeal. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant

reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). On appeal from a guilty plea, the notice must be accompanied by "a written explanation showing that there is an issue which can be reviewed on appeal," and the explanation must also identify the issues and provide a factual basis for the issues. Rule 203(d)(1)(B)(iv), SCACR.

Here, Counsel filed a Notice of Appeal, however, Counsel testified she knew of no appealable issues, and therefore, the appeal was not perfected. Regardless, Applicant failed to identify any specific meritorious claims that could have been raised or argued on appeal. Therefore, this Court finds Applicant has failed to show either deficiency or prejudice with regard to this claim.

Accordingly, this Court finds Applicant has failed to satisfy either prong of Strickland with respect to his claims of ineffective assistance, and it must be denied and dismissed with prejudice.

#### **B. 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.

#### **IV. 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, his application must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days

JKK

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 post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 9th day of May, 2016.

R. Keith Kelly  
R. KEITH KELLY  
Presiding Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

CLERK OF COURT  
SPARTANBURG COUNTY  
2016 MAY -9 AM 9:10  
M. HOPE BLACKLEY

A CERTIFIED COPY  
M Hope Blackley  
CLERK OF COURT  
SPARTANBURG COUNTY  
BY: Martha Long D.C.  
DATED 5.11.16

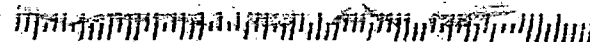
**M. HOPE BLACKLEY**  
Clerk of Court, Spartanburg County  
Post Office Box 3483  
Spartanburg, South Carolina 29304-3483

RECEIVED MAY 13 2016

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

CFS 2014-5026

29730 37015 8004



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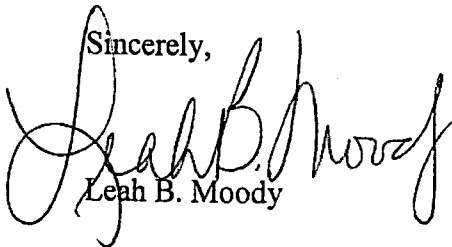
The Honorable Hope Blackley  
Spartanburg County Clerk of Court  
Post Office 3483  
Spartanburg, South Carolina 29304

**RE: Chad Edward Hollingsworth v. State of South Carolina**  
**Case No.: 2014-CP-42-5026**

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/jh

Enclosures

cc Chad Edward Hollingsworth  
Alicia Olive, Assistant Attorney General  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
Sharon Graham, SCCID

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May 13, 2016

Alicia Olive, Esquire  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211

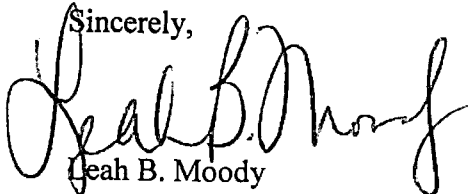
**RE: Chad Edward Hollingsworth v. State of South Carolina**  
**C.A. No.: 2014-CP-42-5026**

Dear Ms. Olive:

The Spartanburg County Court of Common Pleas appointed my office to represent Chad Edward Hollingsworth 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/jh

Enclosures

Cc Chad Edward Hollingsworth  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
Hope Blackley, Clerk of Court, Spartanburg County  
Sharon Graham, SCCID

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May 13, 2016

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

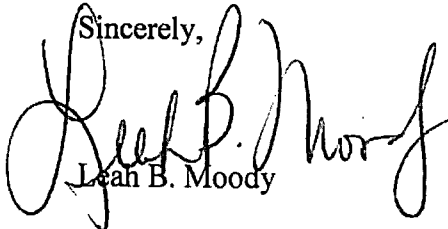
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**Case No.: 2014-CP-42-5026**

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Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/jh

Enclosures

cc Chad Hollingsworth  
Alicia Olive, Esquire  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
Hope Blackley, Clerk of Court, Spartanburg County



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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

