

Law Office of Leah B. Moody, LLC

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June 9, 2016

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

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JUN 13 2016

SC SUPREME COURT

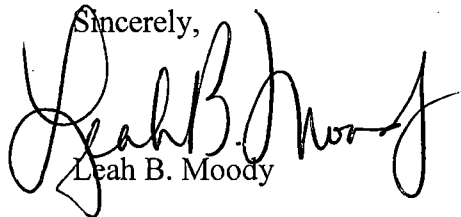
RE: Marion Earl Stewart, #221024 v. State of South Carolina
Case No.: 2014-CP-42-2767

Dear Mr. Shearouse:

The Spartanburg County Court of Common Pleas appointed my office to represent Marion Earl Stewart 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 Marion Earl Stewart
Alicia Olive, Esquire
Hope Blackley, Clerk of Court, Spartanburg County
Sharon Graham, SCCID

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JUN 13 2016

SC SUPREME COURT

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

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

Honorable Keith, Kelly, Presiding in Spartanburg County

Case No.: 2014-CP-42-2767

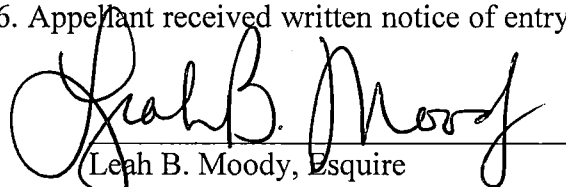
Marion Earl Stewart, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Marion Earl Stewart appeals the order of the Honorable Keith Kelly, dated May 27, 2016 and mailed on or about June 2, 2016. Appellant received written notice of entry of the final order on June 6, 2016.



Leah B. Moody, Esquire
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Other Counsel of record:
Alicia Olive, SC Attorney General's Office
Rembert C. Dennis Building
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Columbia, South Carolina 29211-1549
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JUN 13 2016
SC SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Honorable Keith Kelly, Presiding in Spartanburg County

Case No.: 2014-CP-42-2767

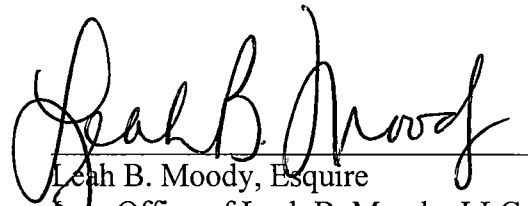
Marion Earl Stewart, Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

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 May 27, 2016 addressed to its attorney of record, Alicia Olive, Post Office Box 11549, Columbia, South Carolina, 29211-1549.



Leah B. Moody, Esquire
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235 E. Main Street, Suite 115
Post Office Box 1015
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June 9, 2016

cc Marion Earl Stewart
Alicia Olive, Esquire
Hope Blackley, Clerk of Court, Spartanburg County
Sharon A. Graham, SCCID

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Marion Earl Stewart, #221024,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2014-CP-42-2767

ORDER OF DISMISSAL

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This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 10, 2014. Respondent made a Return on or about April 9, 2015. The Court convened an evidentiary hearing into the matter on March 23, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Leah B. Moody, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Kathleen J. Hodges, Esquire, ("Counsel") also testified. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings, the return, and the exhibits introduced at the hearing. The Court finds as follows:

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. In January 2010, the Spartanburg County Grand Jury indicted Applicant for Armed Robbery (2010-GS-42-494). Kathleen J. Hodges, Esquire, represented Applicant. On April 13, 2011, Applicant proceeded to

trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45, based upon Applicant's prior conviction of a most serious offense.

Applicant filed a timely notice of appeal. Katherine Hudgins, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 12, 2012. State v. Stewart, Op. No. 2012-UP-654 (S.C. Ct. App. filed June 30, 2014). Applicant filed a petition for writ of certiorari in the Supreme Court of South Carolina. Applicant's petition was denied on June 11, 2014. The Remittitur was returned to the Circuit Court on June 26, 2014.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. "Conflict of Interest"
3. "Miranda Rights Violated"

At the evidentiary hearing, Applicant alleged that Counsel was ineffective for (1) failing to properly advise Applicant regarding a plea offer; (2) failing to challenge the indictment; (3) failing to challenge the voluntariness of Applicant's statement; (4) failing to place Applicant in a neutral line-up, and (5) failing to request the recusal of the trial judge.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The

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Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

Applicant testified that Counsel was appointed at his preliminary hearing but that he did not see her until much later. Applicant testified that his grounds for his PCR application were that Counsel allowed him to be indicted where the language in the indictment was incorrect. Applicant testified the indictments for the four kidnapping charges should have said "with malice aforethought." Applicant testified that he was taken to the sheriff's office and was asked questions. Applicant testified that he felt his statements should not have been admitted. Applicant admitted that Counsel argued the voluntariness of his statements at trial and that it was also raised and ruled upon in his direct appeal. Applicant testified that Counsel went over all documents with him. Applicant testified that Counsel failed to inform him of a plea offer. Applicant testified that the plea offer was to plead to armed robbery and kidnapping straight up and the State would not seek life without parole. Applicant testified that he had to accept the plea by 5:00 PM. Applicant testified he did not think there was enough evidence. Applicant testified that he was not tried for kidnapping. Applicant introduced an exhibit showing a handwritten note that he alleged was Counsel's handwriting. Applicant testified the note showed that Counsel told Applicant he had an "80%-80%" chance of succeeding at trial. Applicant testified he did not understand what the life without parole notice was. He testified he did not know that he would receive a mandatory sentence of life imprisonment without the possibility of parole if he was convicted. Applicant testified that he did not remember whether Counsel explained what life without parole meant, but that there was no way he could have understood. Applicant testified that Counsel failed to put him in a neutral line-up. However, Applicant also testified that Counsel

cross-examined the witnesses regarding the identity of the assailant. Applicant testified the officer's report stated that the assailant was 5'7" or 5'8" but that he was 6'1" and weighed 187 pounds. Applicant also testified that Counsel cross-examined the witnesses on the height and weight discrepancies. Applicant testified he felt that the trial judge should have recused himself because he had some relation to the victim. Applicant testified he did not want to go forward with that judge. Applicant testified he told Counsel that he felt it would be biased.

Counsel testified that she represented him for about a year and a half. Counsel testified she met with Applicant several times. Counsel testified that the first plea offer was made July 29, 2010, and a final offer was made March 25, 2011, in which the solicitor offered that Applicant could plead straight up with no recommendation to one count of armed robbery and one count of kidnapping, and that life without parole would be off the table. Counsel also testified that as part of that plea deal, the solicitor would drop charges against Applicant's sister. Counsel testified that there was a deadline of 5:00PM to accept the plea. Counsel testified that before Applicant could have had his judge of choice, but after it would have to be in front of Judge Couch. Counsel testified that she discussed the plea with Applicant, but that he chose not to accept. Counsel testified that the solicitor said he would call the kidnapping charges after the armed robbery charge. Counsel testified Applicant indicated he was not guilty. Counsel testified that Applicant's codefendant testified against him at trial. Counsel testified that she discussed Applicant's potential defenses with him, including an alibi defense. Counsel testified that Applicant gave her the names of several people but that they had made inconsistent statements and had credibility issues. Counsel testified that as part of her investigation of the case she went to the pharmacy where the robbery occurred and walked around the store and took photographs, watched the video, and interviewed potential witnesses. Counsel testified that her theory was that

there was no physical evidence that linked Applicant to the crime. She testified that witnesses testified that the assailant was wearing a hooded sweatshirt, jeans, white tennis shoes, and a mask. Counsel testified that her cross-examination was designed to point out the discrepancies in the identification of the assailant. Counsel testified that Applicant never told her he did not want to continue with the proceedings with the trial judge. Counsel testified if she felt there was a conflict of interest she would have asked the judge to recuse himself.

Counsel testified she did not see anything in the indictment that would render it invalid. Counsel testified that the plea offer made in July 2010 was straight up to all charges and the State would not seek life without parole. Counsel testified that regarding advising Applicant about life without parole, she would have explained that the trial judge would have no discretion in sentencing and would have to sentence him to life without parole. Counsel testified they discussed this several times. Counsel testified she tried to discuss a range of sentencing with the sheriff's office and solicitor's office but that neither was interested. Counsel testified that Applicant maintained his innocence. Counsel testified that the defense witnesses had credibility issues. Counsel testified that on the eve of trial one of the witnesses turned into a State's witness. Counsel reviewed Applicant's exhibit showing her handwriting that stated 80-80% and she testified that it looked like her handwriting but that she thinks it may have been altered. She testified that she always tells her clients that the jury decides and that the chances of succeeding at trial are 50-50%.

B. Ineffective Assistance of Trial 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). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so

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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 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "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. Courts must strongly presume that trial counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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 Applicant has failed to satisfy his burden of proving Counsel was ineffective. The specific allegations of ineffective assistance that were raised at the hearing are addressed below.

Failure to properly advise Applicant regarding a plea offer

During plea negotiations defendants are "entitled to the effective assistance of competent counsel." Lafler v. Cooper, 132 S. Ct. 1376, 1384 (2012) (citing McMann v. Richardson, 397

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U.S. 759, 771 (1970)). If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. Id. In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice. Id. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence. Lafler, 132 S. Ct. at 1387.

This Court finds Counsel relayed the correct statement of law to Applicant regarding his options to accept the plea or proceed with a jury trial. Counsel testified that Applicant maintained his innocence and that he did not wish to accept a plea offer. Counsel testified she discussed all plea offers with Applicant and her notes reflect that she pursued counter offers on Applicant's behalf and attempted to negotiate a more favorable offer. Counsel testified that at that point neither the solicitor's office nor the sheriff's office was interested in offering a plea. Counsel testified she met with Applicant on several occasions over the course of a year and a half and discussed the life without parole notice after Applicant rejected the plea offer. Counsel testified that it is her usual and customary practice to explain the nature of a notice of life without parole to her clients. This Court finds Applicant has failed to show that Counsel failed to relay any plea offers to him or failed to adequately advise Applicant on the nature of a notice of life without parole. Accordingly, the Court finds Applicant has failed to show any deficiency in Counsel's performance in advising him of any plea offers. Furthermore, this Court finds Applicant has failed to demonstrate that any alleged deficiency prejudiced him because Applicant maintained his innocence and did not wish to plead guilty. Therefore, this allegation is denied and dismissed.

Failure to challenge indictment

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Applicant testified Counsel should have prevented him from being indicted and alleged that Counsel should have challenged the indictment. An "indictment is a notice document." State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). In considering a timely challenge to the sufficiency of an indictment, the trial judge should determine whether:

(1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.

Id. at 102-103, 610 S.E.2d at 500 (citing State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717 (2003); see also S.C. Code Ann. § 17-19-20 (2003) (sufficiency of indictment)).¹ A court reviewing an indictment for sufficiency should consider the indictment "on its face," and consider the events at trial." State v. Reddick, 348 S.C. 631, 636, 560 S.E.2d 441, 443 (Ct. App. 2002). The court must also observe the indictment with a practical eye in view of all the surrounding circumstances. Gentry, 363 S.C. at 103, 610 S.E.2d at 500 (citing State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981)). In other words, a court should examine "the totality of the circumstances" to determine if Petitioner was cognizant of the crimes for which he was charged. Reddick, 348 S.C. at 636, 560 S.E.2d at 443. Moreover, a challenge to the indictment on the ground of insufficiency must be made before the jury is sworn. Gentry, 363 S.C. at 103, 610 S.E.2d at 500; S.C. Code Ann. § 17-19-90.

This Court finds that Counsel made no errors in advising Applicant on the sufficiency of the indictment and Applicant produced no evidence to support his allegations that the indictment

¹ Section 17-19-20 provides:

Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

S.C. Code Ann. § 17-19-20.

is defective. Counsel testified that she reviewed the indictment and advised Applicant that she did not see any errors to support a motion to quash and that the language contained in the indictments was sufficient to place Applicant on notice of the charges against him. Counsel also testified that it is her belief that the omitted words do not rise to the level of the indictment being defective. Accordingly, this Court finds Applicant has failed to satisfy his burden of proving that Counsel's performance in not challenging the sufficiency of the indictment was deficient.

Furthermore, Applicant has failed to show that a challenge to the indictment would have been successful. This Court finds there is no reasonable probability that had Counsel challenged the sufficiency of the indictment, the result of the trial would have been different. Accordingly, this Court finds Applicant has failed to satisfy his burden of proving he was prejudiced by any alleged error of Counsel. Therefore, this allegation is denied and dismissed.

Failure to place Applicant in a neutral line-up

Applicant testified Counsel should have placed him in a neutral line-up. This Court finds this allegation is without merit. Counsel testified no one could identify the assailant because there was clothing almost completely covering his body. The testimony of the witnesses at trial was largely consistent with their prior statements. To the extent there were inconsistencies, Counsel brought those out on cross-examination. Applicant acknowledged that Counsel cross-examined witnesses regarding identification and performed her duties to illicit testimony to refute witnesses who testified that Applicant was the assailant. Applicant has failed to show any deficiency in Counsel's performance in not conducting a neutral line-up. Further, the Court finds that Applicant failed to substantiate this allegation with any evidence of probative value demonstrating how the failure of Counsel to conduct a neutral line-up prejudiced the defense or how the lineup would have yielded a different result at trial. See Palacio v. State, 333 S.C. 506,

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512, 511 S.E.2d 62, 66 (1999) (citing Jackson v. State, 329 S.C. 345, 349, 495 S.E.2d 768, 770 (1998) ("Mere speculation and conjecture on the part of respondent is insufficient.")). Accordingly, this Court finds that Applicant has failed to demonstrate deficiency in Counsel's performance or any resulting prejudice with regard to this allegation. Therefore, this allegation is denied and dismissed.

Failure to investigate

Applicant alleged Counsel failed to properly investigate. This Court finds this allegation is without merit. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had she been more fully prepared for the trial. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Furthermore, "[A]pplicant's mere speculation" as to what an additional investigation would have shown "cannot by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995). Here, Counsel reviewed all the evidence in the case, including eye-witness statements. She also reviewed the State's evidence with Applicant prior to trial. This Court finds Counsel properly investigated and prepared for trial, exploring and explaining possible defenses, and adequately conferred with Applicant. Counsel testified that she went over and presented an alibi defense at trial. Counsel also testified that she interviewed witnesses and went to the pharmacy, took pictures, viewed the scene, and walked the perimeter. Such an investigation was reasonable under the circumstances. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing Daniels v. State, 676 S.E.2d 13 (Ga.

2009)). Accordingly, this Court finds Applicant has failed to satisfy his burden of proving Counsel's performance in conducting an investigation was deficient. Furthermore, Applicant has failed to produce any evidence to indicate what an additional investigation would have shown or how any additional investigation would have affected the outcome of trial. See Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (finding applicant cannot prove ineffective assistance where allegation supported only by mere speculation as to result); Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Therefore, this allegation is denied and dismissed.

Failure to challenge voluntariness of Applicant's statement

This Court finds this allegation is without merit. This Court finds the record is dispositive as to this allegation. Both Counsel and Applicant acknowledged that Counsel moved to suppress Applicant's statements through a pretrial Jackson v. Denno² hearing. Ultimately, the trial judge admitted all three statements and the ruling was affirmed on appeal. Accordingly, not only did Counsel challenge the admissibility of the statements, but the issue was fully litigated at trial and in Applicant's direct appeal. See Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 218 (Cl. App. 1993) ("A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action."); Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Cl. App. 1992) ("*Res judicata* prohibits subsequent actions by the same parties on the same issues."). Therefore, this Court finds Applicant has produced no evidence with regard to this allegation and it is denied and dismissed.

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Failure to request recusal of the trial judge

Applicant alleged that the trial judge's failure to recuse himself violated Applicant's due process rights. Based on the testimony at the hearing, this Court interprets this as an allegation that Counsel was ineffective for not asking the trial judge to recuse himself. This Court finds Applicant has failed to show that Counsel's performance in not requesting a recusal was deficient.

"Pursuant to Canon 3(E)(1)(a) of Rule 501, SCACR, a judge should disqualify himself . . . in a proceeding in which the judge's impartiality might reasonably be questioned. It is not enough for a party seeking disqualification to simply allege bias or prejudice. The party must show some evidence of that bias or prejudice. The alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge."

State v. Jackson, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003).

Counsel testified, and the transcript reflects, that the trial judge's brother was the president of the drug division of JM Smith Corporation, of which QS1 Data Systems (the owner of the pharmacy in question) was a division. The trial judge also advised that he had no financial interest in and no direct contact with QS1 or the pharmacy. The trial judge stated on the record that he did not see a conflict in the matter. Counsel advised the trial judge that she had discussed the matter with Applicant and stated that he advised her he did not feel there was any conflict of interest and did not wish to seek recusal. (Tr. p. 212). The trial judge then asked Applicant if what Counsel had said was true and Applicant said "Yes, sir." (Tr. p. 212). At the PCR hearing, Applicant testified he felt that the trial judge should have recused himself because he had some relation to the victim. Applicant testified he did not want to go forward. Applicant testified he told Counsel that he felt it would be biased. Counsel testified that she discussed the matter with Applicant and that Applicant never told her he did not want to continue with the proceedings

² 378 U.S. 368 (1964).

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with the trial judge. Counsel testified if she felt there was a conflict of interest she would have asked the judge to recuse himself. Applicant produced no evidence that any bias or prejudice stemmed from the trial judge's loose connection with the pharmacy, nor has he shown that such alleged bias or prejudice resulted in a decision based on other than what he learned from his participation in the case as a judge. See State v. Jackson, 353 S.C. at 627, 578 S.E.2d at 745. Furthermore, Applicant confirmed at the trial, on the record, that he told Counsel he did not feel there was a conflict of interest. State v. Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) (A party "cannot complain of an error which his own conduct has induced."). Accordingly, this Court finds applicant has failed to satisfy his burden of proving that Counsel's performance in not requesting a recusal was unreasonable. Based upon Counsel's testimony, the trial judge's statements, and Applicant's own statement to the trial judge, this Court finds there is no reasonable probability that but for the alleged deficiency, the outcome of the proceeding would have been different. Therefore, this Court finds Applicant has failed to satisfy his burden of proving either prong of Strickland, and this allegation is denied and dismissed.

C. Due Process Violation

Applicant alleged that the trial judge's failure to recuse himself violated Applicant's due process rights. This Court finds Applicant raised this allegation as an ineffective assistance claim, which is addressed above. To the extent Applicant attempted to raise the issue as a violation of due process, this Court finds this is a direct appeal issue and cannot be raised in an application for post-conviction relief. See Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal."). Regardless, this Court finds Applicant has failed to produce any evidence in support of this allegation. Accordingly, this allegation is without merit and is therefore denied

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and dismissed.

D. Violation of Miranda Rights

This Court finds this allegation is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786. A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918. *Res judicata* also bars any issues that could have been raised in the former action. Id. As discussed above, this matter was addressed to the trial court in a Jackson v. Denno hearing, the trial court ruled on the issue, and the ruling was affirmed in Applicant's direct appeal. Therefore, Applicant had a full opportunity to litigate these allegations in his direct appeal. Accordingly, pursuant to Rule 12(b)(6), SCRPC, this Court finds that this claim is barred by *res judicata*, and this allegation is therefore denied and dismissed.

E. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. 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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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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), SCRCR, 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of May

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

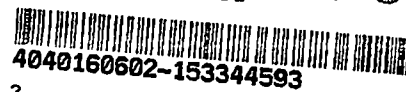
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M. HOPE BLACKBURN

Spartanburg, South Carolina

A CERTIFIED COPY
M. Hope Blackburn
CLERK OF COURT
SPARTANBURG COUNTY
BY *M. Hope Blackburn*
DATED 10-2-16

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

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June 9, 2016

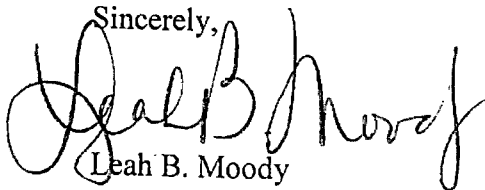
The Honorable Hope Blackley
Spartanburg County Clerk of Court
Post Office 3483
Spartanburg, South Carolina 29304

**RE: Marion Earl Stewart, #221024 v. South Carolina
Case No.: 2014-CP-42-02767**

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 Marion Earl Stewart
Alicia Olive, Assistant Attorney General
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
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

June 9, 2016

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

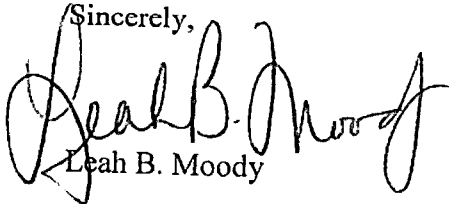
RE: Marion Earl Stewart, #221024 v. State of South Carolina
C.A. No.: 2014-CP-42-2767

Dear Ms. Olive:

The Spartanburg County Court of Common Pleas appointed my office to represent Marion Earl Stewart 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 Marion Stewart
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Hope Blackley, Clerk of Court, Spartanburg County
Sharon Graham, SCCID

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June 9, 2016

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

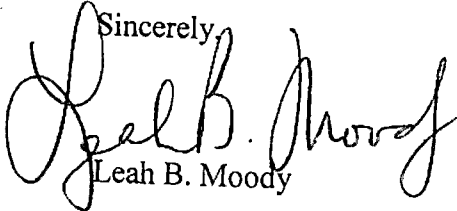
RE: Marion Earl Stewart, #221024 v. State of South Carolina
Case No.: 2014-CP-42-2767

Dear Ms. Graham:

The Spartanburg County Court of Common Pleas appointed my office to represent Marion Earl Stewart 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,

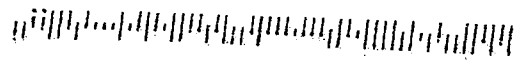


Leah B. Moody

LBM/jh

Enclosures

cc Marion Earl Stewart
Alicia Olive, Esquire
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Hope Blackley, Clerk of Court, Spartanburg County



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

TO:

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