

Law Office of Leah B. Moody, LLC

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RECEIVED

August 26, 2016

AUG 30 2016

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

S.C. SUPREME COURT

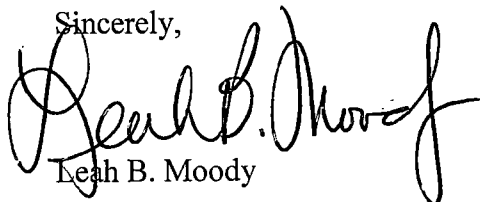
RE: Clarence Puckett, #353209 v. State of South Carolina
Case No.: 2015-CP- 44-125

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Clarence Puckett, #353209 in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal and Proof of Service in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope. Also enclosed is a copy of the Order Dismissing Post-Conviction Relief Application.

Thank you for your assistance with this matter.

Sincerely,



Leah B. Moody

Enclosures

Cc Clarence Puckett, #353209
Justin Hunter, Esq.
June Miller, Clerk of Court, Union County
Sharon Graham, SCCID

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 30 2016

APPEAL FROM UNION COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Daniel D. Hall, Presiding in York County

Case No. 2015-CP-44-125

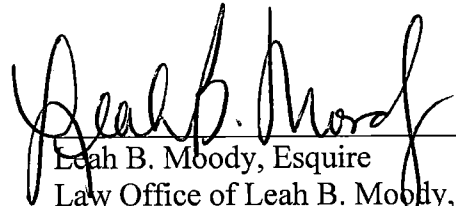
Clarence Puckett, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Clarence Puckett appeals the order of the Honorable Daniel D. Hall, dated July 25, 2016 and mailed on August 4, 2016. Appellant received written notice of entry of the final order on August 3, 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
Attorney for Respondents
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

RECEIVED

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

AUG 30 2016

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

S.C. SUPREME COURT

The Honorable Daniel D. Hall, Presiding in York County

Case No. 2015-CP-44-125

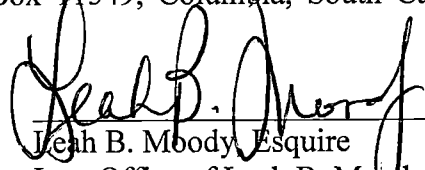
Clarence Puckett, Appellant,

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 August 26, 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
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August 26, 2016

Cc Clarence Puckett, #353209
Justin Hunter, Esq.
June Miller, Clerk of Court, Union County
Sharon Graham, SCCID

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP4400125

Clarence Julius Puckett FILED FOR RECORD South Carolina State of

PLAINTIFF(S) 2015 AUG 3 PM 2:49 DEFENDANT(S)

Submitted by: CLERK OF COURT 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;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

SEE ATTACHED ORDER OF DISMISSAL

ORDER INFORMATION

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.

s/Daniel D. Hall 2753 7/25/16
 Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on 3rd day of August, 2015, and a copy mailed first class or placed in the appropriate attorney's box on 3rd day of August, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

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

Justin J. Hunter, Office of the Attorney General, PCR Division, PO Box 11549, Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

June H. Miller / idw

Court Reporter

June H. Miller - 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 UNION)
)
Clarence Julius Puckett,)
S.C.D.C. No. 353209,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-44-125

FILED FOR RECORD
2016 AUG 3 PM 2 48

CLERK OF COURT
UNION, SC

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 23, 2015. Respondent made its Return on or about December 30, 2015. An evidentiary hearing into the matter was convened on January 20, 2016, 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, Erik Delaney, Esquire, (hereinafter "Counsel") also testified. This Court had before it a copy of Applicant's records from the Union County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial 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 Union County Clerk of Court. Applicant was True Bill indicted at the October 2009 term of the Union County Grand Jury for Trafficking in Cocaine (2009-GS-44-1210). Applicant was represented by Eric Delaney, Esquire. Applicant underwent a jury trial

on November 13-15, 2012, before the Honorable John C. Hayes, III. Applicant was found guilty of trafficking in cocaine. Applicant was sentenced to imprisonment for ten years.

Applicant timely filed a notice of appeal on November 12, 2012, and the appeal was perfected by his appellate counsel, Appellate Defender Carmen V. Ganjehsani. By Order filed October 1, 2014, the South Carolina Court of Appeals affirmed Applicant's convictions. The Remittitur was sent October 17, 2014.

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

1. Ineffective Assistance of Counsel
 - a. Counsel failed to object to introduction of illegally seized drugs
 - b. Counsel failed to ask for mistrial at appropriate time
 - c. Counsel failed to ask for a change of venue
2. Ineffective Assistance of Appellate Counsel
 - a. Appellate Counsel failed to file an appeal to the Supreme Court after the Court of Appeals affirmed conviction

II. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified that Counsel should have made a timely motion for mistrial and that his direct appeal was denied because the motion for a mistrial was not called in a timely fashion.

Applicant testified that Counsel should have asked for a change of venue from Union County. He testified that his codefendant, Travis Anderson, worked for the Department of Social Services and his codefendant's dad, Leslie Anderson, was a magistrate judge. He testified that Counsel should have asked for a change of venue because a trial in Union County would be biased against him. Applicant did testify that Judge Anderson had no role during any part of Applicant's trial.

Applicant testified that Counsel asked the State to provide information about the confidential informant but the State would not comply. He testified that Counsel never

challenged the possession of drugs in Travis Anderson's car or the possession of scales. Applicant testified that law enforcement committed perjury in their police report when they stated that Applicant told officers about selling drugs and his ability to get nine ounces of cocaine from a dealer.

Applicant testified that his appellate counsel should have challenged the Allen Charge that was given at trial. He also testified that appellate counsel should have filed for rehearing to the Supreme Court.

Counsel's Testimony

Counsel testified that his law practice history has been entirely in the criminal defense field and he has been a public defender since 2005. He testified that Applicant was represented by Melinda Butler at the first trial which ended in a hung jury. He testified that once he began his representation of Applicant, he received all of the discovery from the Solicitor's Office. Counsel testified that he met with Applicant about ten to twelve times preparing for trial.

Counsel testified that there were no issues with the search warrant and that the search warrant was obtained through information from the confidential informant. He testified that he explained to Applicant that the confidential informant was not necessary or required in his case and that he believed Applicant understood this information. Counsel testified that there were not any issues with the confidential informant. He testified that the confidential informant was not disclosed because the charges did not arise from buying from or selling to the confidential informant but from the police officers entering the home. Counsel testified that a Jackson v. Denno hearing was held and Counsel challenged all admitted statements on cross-examination. Counsel also testified that Applicant was not charged with possession any of the drugs found in Travis Anderson's car.

Counsel testified that Travis Anderson did not testify at trial about Counsel brought this to the jury's attention in closing. He testified that their best defense strategy was to put all the blame on Mr. Anderson. Counsel testified that Applicant had concerns about Mr Anderson's father being a magistrate judge but Counsel did not see any issue because Applicant did not appear in front of Judge Anderson and Judge Anderson did not have any involvement with Applicant's case.

Counsel testified that he moved for a mistrial but it was not contemporaneous. He testified that the trial judge still gave a ruling on the mistrial and denied it because the judge found there was no manifest necessity to grant the mistrial. Counsel further testified that he does not particularly like the Allen charge but had no reason to contest it.

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.

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 trial 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

This Court finds that Applicant failed to meet his burden of proving that his trial counsel was ineffective. First, this Court finds that Applicant has failed to prove that Counsel was deficient for failing to object to the introduction of the drugs. This Court finds Counsel's

testimony persuasive that he had no lawful reason to challenge the search warrant which was lawfully obtained from a confidential informant's information. Additionally, the record reflects that the evidence against Applicant was seized pursuant to this lawfully obtained search warrant. This Court finds that Counsel rendered effective assistance in regards to this allegation.

Next, this Court finds that Applicant has failed to meet his burden of proving that trial counsel was ineffective for failing to move for a change of venue for Applicant's trial. This Court finds this allegation to be without legal justification as Applicant was tried in the county where the crime was committed before an impartial judge and jury. Applicant's allegations that he suffered bias because his codefendant's father was a magistrate is unsubstantiated and conclusory and this Court finds the allegation to be without merit. Accordingly, Counsel was not ineffective for failing to request a change of venue for Applicant's trial. Applicant has also failed to prove that the result of his trial would have been different had Counsel moved to change venue. Applicant's codefendant did not testify and Judge Anderson had no involvement in Applicant's pre-trial or trial proceedings. Thus, Applicant has failed to meet his burden to show that he was prejudiced by having his trial in Union County.

This Court also finds that Applicant has failed to meet his burden of proving that Counsel was ineffective for failing to timely move for a mistrial. During Counsel's cross examination of Sergeant Jimmy Johnson, Counsel began to ask how the search warrant was obtained and the following exchange took place:

A. Yes. Lieutenant Sherfield gave me a call advised me that one of our confidential informants --

Q. Right.

A. -- that we had used had been to Mr. Puckett's location --

Q. Right.

A. -- and witnessed him sell --

MR. DELANEY: Your Honor.

THE COURT: Just - Go on to your next question.

BY MR. DELANEY:

Q. Again, my question to you is, and if you - just wait.

A. Okay.

Q. Listen to what my question is. You received information; is that right?

A. Right.

Q. From Officer Sherfield?

A. Correct.

Q. Okay. And your job at that point was to take that information to somebody and to get a warrant; is that right, search warrant?

A. Correct.

(Tr. Transcript p. 158 l. 10 - p. 159 l. 5).

After several more witnesses, Counsel asked the court to consider a mistrial for Sergeant Johnson's testimony because it began to mention that a confidential informant had witnessed Applicant sell something. (See. Tr. Transcript p. 208). This issue was raised on appeal and dismissed as unpreserved because no contemporaneous motion for a mistrial was made. Applicant now alleges Counsel's untimely motion for a mistrial constitutes ineffective performance because it prevented the matter from being heard on the appellate level. This Court finds that even if this action is ineffective, Applicant cannot show that he was prejudiced because the trial court ruled on the motion, despite the fact that it was untimely made. The trial court denied the motion, finding that there was no manifest necessity to grant the mistrial because it was gratuitous information. (See. Tr. Transcript p. 210). The record also reflects that Counsel renewed this motion at the close of the State's case and again the trial judge denied the motion as there was no manifest necessity. (See Tr. Transcript p. 226-227). This Court finds that Applicant cannot show that the result of his trial would have been different had Counsel made a timely motion for a mistrial because the trial judge twice stated his ruling on the matter. Given that the

trial judge revealed how he would have ruled on the motion had it been timely made and applied the correct standard, this Court finds that Applicant was not prejudiced by Counsel's failure to raise the issue contemporaneously. Accordingly, this allegation must be dismissed.

Ineffective Assistance of Appellate Counsel

This Court finds that Applicant's allegation that his appellate counsel failed to file an appeal to the Supreme Court after the Court of Appeals affirmed his conviction must be dismissed. An individual has no constitutional right to the effective assistance of counsel when seeking discretionary appellate review. Wainwright v. Torna, 455 U.S. 586, (1982) (no Sixth Amendment right to counsel in pursuing discretionary appeal); see also Ross v. Moffitt, 417 U.S. 600 (1974) (no Fourteenth Amendment right to counsel when pursuing discretionary appeal after an appeal of right); State v. Clinkscales, 318 S.C. 513, 458 S.E.2d 548 (1995) (Sixth Amendment right to counsel "extends only to the first right of appeal").

The South Carolina Supreme Court has explicitly held that appellate counsel has no duty "to pursue regrading and or to pursue rehearing and/or certiorari following the decision of the Court of Appeals in a criminal direct appeal." Douglas v. State, 369 S.C. 213, 215-16, 631 S.E.2d 542, 543-44 (2006). The Court further stated:

The imposition of such a duty would conflict with this Court's explanation in In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases, 321 S.C. 563, 471 S.E.2d 454 (1990), that the Court of Appeals was created to reduce the State's appellate backlog." Id. A holding that certiorari must be sought whenever requested would increase this Court's workload by increasing the number of criminal writs of certiorari to the Court of Appeals. This Court "reviews [Court of Appeals] decisions by writ of certiorari only where special reasons justify exercise of that power." Id. We find that the decision whether to pursue certiorari is a matter left solely to the appellant's attorney's professional discretion.

Id.

Applying Douglas and its progeny of cases to this case, this Court finds that this allegation must be denied and dismissed with prejudice. Appellate counsel had no duty to petition for rehearing or to the Supreme Court for discretionary review. Furthermore, Applicant had no right to appellate review from the Supreme Court following his full and complete review by the Court of Appeals. Applicant cannot establish deficiency or prejudice as to this allegation, which must be denied and dismissed with prejudice.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.

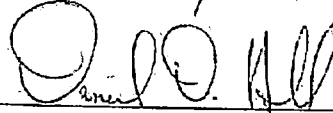
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, 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.

[Signature page to follow]

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. That Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 25th day of July, 2016.



DANIEL D. HALL
Chief Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina

JUDGEMENT SIGNED AND
ENTERED UP 8-3-16

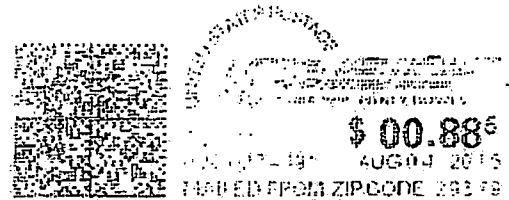
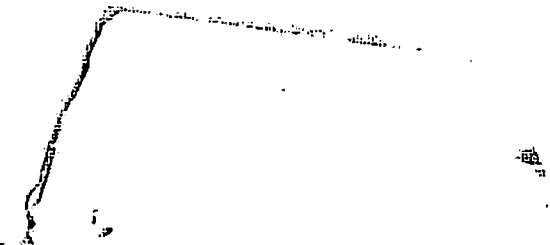
CLERK OF COURT

A TRUE COPY

AUG - 3 2016

Clerk of Court

Post Office Box 703
Union, South Carolina 29379



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Attorney at Law
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August 26, 2016

The Honorable June H. Miller
Union County Clerk of Court
Post Office Box 703
Union, South Carolina 29379

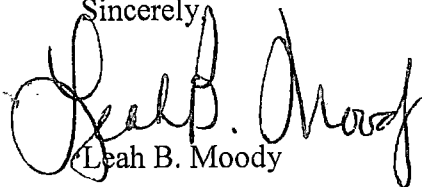
RE: Clarence Puckett v. State of South Carolina
C.A. No.: 2015-CP-44-125

Dear Ms. Miller:

The Cherokee County Court of Common Pleas appointed my office to represent Alex O. Davidson 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 Alex O. Davidson
Justin Hunter, Esq.
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

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August 26, 2016

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

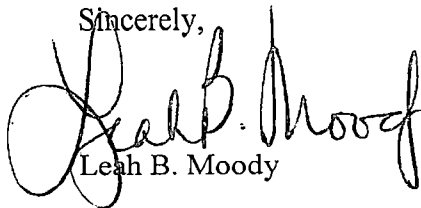
RE: Clarence Puckett, #353209 v. State of South Carolina
Case No.: 2015-CP-44-125

Dear Mr. Hunter:

The York County Court of Common Pleas appointed my office to represent Clarence Puckett, #353209 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 Clarence Puckett, #353209
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
June Miller, Clerk of Court, Union County
Sharon Graham, SCCID

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August 26, 2016

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

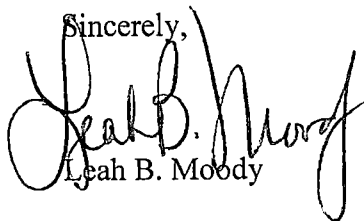
RE: RE: Clarence Puckett, #353209 v. State of South Carolina
Case No.: 2015-CP-44-125

Dear Ms. Graham:

The Cherokee County Court of Common Pleas appointed my office to represent Clarence Puckett, #353209 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.

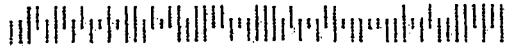
Sincerely,



Leah B. Moody

Enclosures

Cc Clarence Puckett, #353209
Justin Hunter, Esq.
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
June Miller, Clerk of Court, Union County



\$
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FIRST
29730 AUG



Charlotte PND NC 282
SAT 27 AUG 2016 PM



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