

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

September 12, 2016

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

RECEIVED

SEP 16 2016

S.C. SUPREME COURT

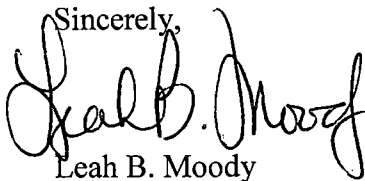
RE: Harry L. Anthony, #349291 v. State of South Carolina
Case No.: 2015-CP- 46-0790

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Harry L. Anthony 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 Harry L. Anthony
Justin Hunter, Esq.
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

RECEIVED

SEP 16 2016

S.C. SUPREME COURT

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

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

The Honorable Frank R. Addy, Jr., Presiding in York County

Case No. 2015-CP-46-0790

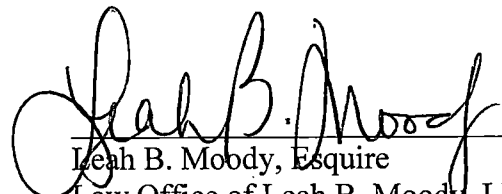
Harry L. Anthony, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Harry L. Anthony appeals the order of the Honorable Frank R. Addy Jr., dated August 11, 2016 and mailed on August 22, 2016. Appellant received written notice of entry of the final order on August 23, 2016.



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

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

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SEP 16 2016

S.C. SUPREME COURT

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

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

The Honorable Frank R. Addy, Jr., Presiding in York County

Case No. 2015-CP-46-0790

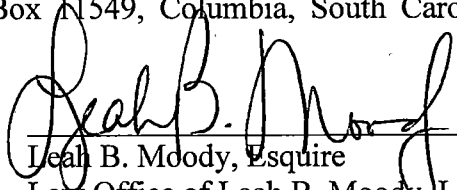
Harry L. Anthony, Appellant,

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 9/12 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

September 12, 2016

Cc Harry L. Anthony
Justin Hunter, Esq.
David Hamilton, Clerk of Court, York County
Sharon Graham, SCCID

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP4600790

Harry L Anthony _____ South Carolina State Of _____

PLAINTIFF(S) _____ DEFENDANT(S) _____
 Submitted by: Justin Hunter Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 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:

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

8/11/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on August 19, 2016, and a copy mailed first class or placed in the appropriate attorney's box on August 19, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

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

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Harry Anthony,)
 S.C.D.C. No. 349291,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-790

ORDER OF DISMISSAL

FILED-RECEIVED
 2016 AUG 19 PM 1:53
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 13, 2015. Respondent made its Return on or about December 30, 2015. An evidentiary hearing into the matter was convened on April 18, 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, B.J. Barrowclough, Esquire, also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the 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 York County Clerk of Court. Applicant was indicted at the April 2007 term of the York County Grand Jury for four counts of distribution of cocaine base (2007-GS-46-1072, -1073, -1074, and -1075). Applicant was represented by B.J. Barrowclough, Esquire, and Harry Dest, Esquire. On January 9-11, 2012, Applicant proceeded to a jury trial

before the Honorable John C. Hayes, III. Applicant was found guilty on all four counts. Judge Hayes sentenced Applicant to imprisonment for fifteen years on each charge, to run concurrently.

Applicant timely filed a notice of appeal and an appeal was perfected by Appellate Defender David Alexander, who filed briefs on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's convictions by an Unpublished Opinion filed November 5, 2014. State v. Anthony, Op. No. 2014-UP-388 (Ct. App. filed November 5, 2014). The Remittitur was issued November 21, 2014.

PCR Application

On March 13, 2015, Applicant filed an application for post-conviction relief alleging ineffective assistance of counsel. On April 8, 2016, Applicant filed a Motion to Amend, alleging the following grounds:

1. Failed to file a timely motion to suppress illegally obtained evidence by a defective search warrant, denying Applicant's constitutional right.
2. Failed to impeach State's key witness which was a denial of effective assistance of counsel and a violation of Applicant constitutional right.
3. Failing to litigate Applicant right to privacy.
4. Failing to object to addict's testimony without the required cautionary instructions, a violation of applicant's constitutional rights according to the 4th amendment.
5. Failing to object to the State failing to deny applicants constitutional right to a speedy trial.
6. Failing to object to the distribution of cocaine based (crack) indictments being constitutionally overbroad and vague, a violation of Applicant's constitutional rights.
7. Failing to object to solicitor's improper vouching, because witness's credibility was clearly questionable thus denying Applicant's constitutional right.
8. Failing to disclose material fact to Applicant, and to introduce available evidence to the jury, thus violating Applicant's constitutional right.
9. Failing to object to the indictment. The crime for which he was accused did not meet the elements of the indictment and he denied 6th amendment right.

10. Failing to object to the prosecutor arguing inadmissible evidence to the jury, thus violating my constitutional right according to the 6th amendment.
11. Failing to competently litigate my illegal search and seizure claim thus violating my constitutional right according to the 6th amendment.
12. Failing to object to the court's erroneous jury instructions which was a denial of effective assistance of counsel, a violation of Applicant's constitutional right.
13. Failing to advise defendant of improbability of acquittal and benefit of plea bargain when defendant faced potential sentence twice as long as that offered under plea agreement, thus violating Applicant's right.
14. Trial court erred in denying Applicant's motion for a directed verdict as to the drug charges.
15. The prosecutor failed to disclose material evidence affecting the credibility of the State's witness.

II. 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.

III. 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 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.

Counsel failed to file a timely motion to suppress illegally obtained evidence by a defective search warrant, denying Applicant's constitutional right.

Applicant testified that Counsel was ineffective for failing to timely object to inadmissible evidence or to move to suppress the evidence from the search. He testified that there was no probable cause for the search warrant on his house and believed the videotape evidence should be suppressed. He testified that the videotapes recovered had nothing to do with the missing persons case that the police were investigating.

Counsel testified that the police did have probable cause to search his house and recover the videotapes. He testified that the State had supporting facts and witnesses for the search

warrant. Counsel testified that making a motion to suppress this evidence would have been frivolous. He testified that he relayed this opinion to Applicant but Applicant disagreed with him.

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. Applicant has failed to meet his burden of proving that Counsel's performance was deficient in this regard. This Court finds Counsel's testimony to be credible that the search warrant was not defective and a motion to suppress would have been frivolous. Additionally, Applicant has failed to show that the outcome of his trial would have been different had Counsel made a motion to suppress the evidence, as he has failed to show that this motion would have been meritorious. Accordingly, this allegation must be dismissed.

Counsel failed to impeach state's key witness which was a denial
of effective assistance of counsel and a violation of Applicant
constitutional right.

Applicant argued that Counsel should have impeached Ms. Littlejohn more effectively. Counsel testified, and the record reflects, that his entire cross examination of Ms. Littlejohn consisted of impeaching her with her drug use, her trading sex for crack on video, and her criminal history involving crimes of dishonesty. See Trial Transcript p. 141-145.

This Court finds that Applicant has failed to meet his burden of proving that Counsel's actions were deficient. This Court finds that Counsel spent his entire cross examination of Ms. Littlejohn impeaching her for her prior bad acts and crimes of dishonesty. This Court finds that Counsel's impeachment was reasonable and effective in highlighting issues with Ms. Littlejohn's credibility to the jury that would benefit Applicant's case. Cross-examination must be objectively reasonable, but not flawless. Dows v. Wood, 211 F.3d 480, 487 (9th Cir. 2000). An attorney's

decision about the extent of cross-examination and whether to refrain from certain lines of inquiry is entitled to great deference. Id.; see also Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (the manner and extent of cross-examination should not be second-guessed). Furthermore, Applicant has failed to show that he was prejudiced by Counsel's action as he has not shown that further cross-examination would have changed the result of his trial. Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) ("[O]ne can only speculate whether a 'better' cross examination would have helped Skeen."). Accordingly, this allegation must be dismissed.

Counsel failed to litigate Applicant's right to privacy.

Applicant testified that the videos recovered at his house were his own videos made with Ms. Littlejohn and had nothing to do with the State's warrant for a missing person. He testified that the tapes were his own property, showed consensual sex, and did not show crack.

As stated above, Counsel testified that the police did have probable cause to search Applicant's house and recover the videotapes. He testified that the State had supporting facts and witnesses for the search warrant. The record reflects that Counsel agreed during pretrial motions that there were no issues with the search of the house. See Trial Transcript p. 47.

This Court finds that Applicant has failed to meet his burden of showing that Counsel's actions were deficient for failing to litigate Applicant's right to privacy. This Court agrees with the State, Counsel, and the trial court that the search warrant was valid and the videotapes were recovered lawfully pursuant to the search warrant and Applicant has failed to prove otherwise. This Court further finds that Applicant has failed to show that his privacy rights were violated or that this was a meritorious argument for Counsel to argue. Furthermore, this Court finds that

Applicant has failed to show that the outcome of his trial likely would have been different had Counsel argued for Applicant's right to privacy. Accordingly, this allegation must be dismissed.

Counsel failed to object to addict's testimony without the required cautionary instructions, a violation of applicant's constitutional rights according to the 4th amendment.

Applicant testified that he later found out that Ms. Littlejohn was an addict. He testified that she should have been prosecuted and that Counsel should have objected to all of her testimony as not credible. He further testified that he did not bring any of this to Counsel's attention.

Counsel testified, and the record reflects, that he was able to impeach Ms. Littlejohn with her drug usage, her trading sex for crack on video, and her criminal history involving crimes of dishonesty. See Trial Transcript p. 141-145. Counsel also argued about Ms. Littlejohn's lack of credibility to the jury during closing. See Trial Transcript p. 198, ll. 2-3 ("All we know about what those tapes depict is the word of Ms. Littlejohn, which is obviously no good.") See also Trial Transcript p. 200, ll. 18-23.

This Court finds that Applicant has failed to show that Counsel was deficient in failing to object to Ms. Littlejohn's testimony. This Court finds that Applicant has failed to show specific testimony from Ms. Littlejohn that was objectionable, aside from his belief that her entire testimony should be objectionable because she was an addict. This Court finds that Counsel was effective in impeaching Ms. Littlejohn on her prior bad acts, drug usage, and prior crimes of dishonesty and in arguing her lack of credibility in closing argument. This Court finds that Ms. Littlejohn's drug addiction was made clear to the jury. Applicant has failed to show that an objection to her testimony was warranted or would have been successful and likewise has failed to show that a curative instruction was necessary or appropriate. Similarly, Applicant has failed

to show that the outcome of his trial would likely have been different had Counsel objected to Ms. Littlejohn's testimony. Accordingly, this allegation must be dismissed.

Counsel failed to object to the State's failure to honor Applicant's constitutional right to a speedy trial.

Applicant testified that he was withdrawing this allegation and this Court finds it must be dismissed.

Counsel failed to object to the distribution of cocaine based (crack) indictments being constitutionally overbroad and vague, a violation of Applicant's constitutional rights.

Applicant testified that Counsel should have objected to the indictments because there was no testimony provided by chemical analysts as to the substance of the crack. He testified that he did not discuss with this Counsel and never saw the indictments. He further testified that the indictments were overbroad because there was no timestamp on the videos.

The indictment is a notice document. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). An indictment is generally sufficient if (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) it apprises the defendant of the elements of the offense that is intended to be charged. Id. at 102-03, 610 S.E.2d at 500. In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. Id. Further, whether the indictment could be more definite or certain is irrelevant. Id.

This Court first finds Applicant has failed to meet his burden to show Counsel was ineffective for failing object to the sufficiency of the indictment. Applicant has failed to show any actual deficiency or otherwise meritorious reason for objecting to the indictment. Applicant's

indictments for distribution of cocaine base state the offense with certainty and apprise Applicant of the elements of distribution of cocaine base. Applicant's disagreement concerning with the evidence supporting his charges has no bearing on the sufficiency of the indictment. This Court finds that Counsel was not ineffective in this regard and that an objection to the indictment would not have been meritorious. Applicant has failed to show that Counsel was deficient and that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Counsel failed to object to solicitor's improper vouching, because
witness's credibility was clearly questionable thus denying
Applicant's constitutional right.

Applicant testified that Counsel should have objected to vouching by the State because Ms. Littlejohn's testimony was not credible.

As stated above regarding Ms. Littlejohn's credibility, Counsel testified and the record reflects that he was able to impeach Ms. Littlejohn with her drug usage, her trading sex for crack on video, and her criminal history involving crimes of dishonesty.

It is well established that a solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences, but may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record. Matthews v. State, 350 S.C. 272, 275, 565 S.E.2d 766, 768 (2002). This Court finds that Applicant has not shown any specific instances where the solicitor improperly vouched for Ms. Littlejohn's credibility and thus has failed to point out any instances where Counsel's objection would be necessary or appropriate. This Court finds that any issue with Ms. Littlejohn's credibility has been addressed above. Applicant has failed to show that Counsel was deficient in regard to the State's alleged vouching. Additionally, this Court finds that Applicant has failed to show that the outcome of his trial would likely have been different had Counsel made these objections. Accordingly, this allegation must be dismissed.

Counsel failed to disclose material fact to defendant, and to
introduce available evidence to the jury, thus violating Applicant's
constitutional right.

Applicant testified that Counsel failed to disclose evidence available that showed that Applicant was innocent. He testified that parts of the videos not shown to the jury would show his innocence. He testified that the full tapes should have been shown to the jury.

Counsel testified that out of all videos seized, there was nothing exculpatory on the videos or anything extra that would shed a different light on Applicant. He testified that the videos were redacted for brevity and to keep out prejudicial aspects such as the presence of other women including the subject of a missing persons investigation.

At the hearing, Applicant requested that the Court review approximately sixteen hours of videos. Based upon representation of Counsel, these videos depict Applicant and another individual engaged in sexual relations. Applicant failed to articulate a sufficient relevant reason for this Court to view all these videos and the Court ordered these videos marked as Applicant's #1 for purposes of the record. This Court did find that Applicant's PCR contained sufficient grounds to require the Court to view the video excerpts which were presented at trial. These tapes were received by the Court and the Court has had an opportunity to view these prior to this ruling. This Court agrees with Counsel that nothing in the videos provided anything exculpatory that would benefit Applicant. This Court finds that Applicant has failed to show that any material facts were not disclosed or that Counsel was ineffective for failing to introduce this at trial. This Court finds that Applicant has failed to show that Counsel was deficient and has failed to show that the result of his trial would likely have been different had Counsel shown more of the videos at trial. Accordingly, this allegation must be dismissed.

Counsel failed to object to the indictment. The crime for which he was accused did not meet the elements of the indictment and he was denied 6th amendment right.

Applicant testified that Counsel should have objected to the indictment because there was no evidence in the indictment to support the crime charged.

As stated above, the indictment is a notice document. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). An indictment is generally sufficient if (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) it apprises the defendant of the elements of the offense that is intended to be charged. Id. at 102-03, 610 S.E.2d at 500. In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. Id. Further, whether the indictment could be more definite or certain is irrelevant. Id.

This Court first finds Applicant has failed to meet his burden to show Counsel was ineffective for failing object to the sufficiency of the indictment. Applicant has failed to show any actual deficiency or otherwise meritorious reason for objecting to the indictment. Applicant's indictments for distribution of cocaine base state the offense with certainty and apprise Applicant of the elements of distribution of cocaine base. Applicant's disagreement concerning the evidence supporting his charges has no bearing on the sufficiency of the indictment. This Court finds that Counsel was not ineffective in this regard and that an objection to the indictment would not have been meritorious. Applicant has failed to show that Counsel was deficient and that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Counsel failed to object to the prosecutor arguing inadmissible evidence to the jury, thus violating my constitutional right according to the 6th amendment.

Applicant testified that Counsel was ineffective for failing to object to the State arguing inadmissible evidence to the jury. Applicant testified that Littlejohn admitted during her testimony to smoking crack in the video played to the jury, but she testified at trial that she was not charged with a crack-related crime.

This Court finds that Applicant has failed to meet his burden of showing that Counsel was deficient for failing to object in this regard. Applicant has failed to show with specificity that there was inadmissible evidence presented to the jury without objection by Counsel. As Applicant has not made such a showing, he cannot show that Counsel was deficient nor can he show that any prejudice resulted from Counsel's actions. As Applicant as failed to meet his burden, this allegation must be dismissed.

Counsel failed to competently litigate my illegal search and seizure claim thus violating my constitutional right according to the 6th amendment.

Applicant testified that Counsel was ineffective for failing to argue the illegality of the search of his house and seizure of his videotapes. He testified that there was no probable cause for the search and Counsel should have moved to suppress the resulting fruits of the search.

As stated above, Counsel testified that he believed the police did have probable cause to search Applicant's house and recover the videotapes. He testified that the State had supporting facts and witnesses for the search warrant. Counsel testified that making a motion to suppress this evidence would have been frivolous. He testified that he relayed this opinion to Applicant but Applicant disagreed with him.

This Court finds Counsel's testimony to be credible that the search warrant was not defective and a motion to suppress would have been frivolous. Additionally, Applicant has failed

to show that the outcome of his trial would have been different had Counsel made a motion to suppress the evidence, as he has failed to show that this motion would have been meritorious. Accordingly, this allegation must be dismissed.

Counsel failed to object to the court's erroneous jury instructions which was a denial of effective assistance of counsel, a violation of Applicant's constitutional right.

Applicant testified that Counsel should have objected to the jury instruction for distribution of crack. He testified that he believed distribution to mean to distribute among many people but this case only involved two people. Counsel testified that although this case was not what one would call traditional distribution, distribution of crack would still involve the sharing of crack.

First, the instructions given to the jury were proper and not objectionable. When read as a whole, the jury instructions adequately covered the law and the burden of proof required to find Applicant guilty. The trial court is required to charge only the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "A charge is sufficient if, when considered as a whole, it covers the law applicable to the case." State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct.App. 1996). This Court finds that Applicant has failed to show that Counsel was deficient because he has failed to show that the trial court's instruction on distribution of crack inadequately covered the law or shifted the burden of proof. Applicant has also failed to show that the outcome of his trial likely would have been different had Counsel objected to the trial court's jury instruction. As such he has failed to prove both prongs of Strickland and this allegation must be dismissed.

Counsel failed to advise defendant of improbability of acquittal
and benefit of plea bargain when defendant faced potential
sentence twice as long as that offered under plea agreement, thus
violating Applicant's right.

Applicant testified that Counsel never discussed any plea agreement with him and he never saw a plea agreement. Applicant testified that he only met with Counsel twice for about fifteen minutes.

Counsel testified that he viewed all evidence from the State, including reports from Applicant's prior attorney. Counsel testified that he met with Applicant more than five times and discussed the facts, evidence, and allegations against Applicant. Counsel testified that a plea offer was not presented because of the larger missing persons issue, but he still tried to negotiate a plea with the State. Counsel testified that he thought Applicant should plead guilty and that he even brought in one of Applicant's friends to meet with them who agreed that Applicant should plead guilty in this case. He further testified that Applicant was not interested in pleading guilty because he maintained his innocence. Counsel testified that he went over Applicant's case with him and told him that he would probably lose because of the videotape evidence showing him sharing crack. Counsel also testified that he never told Applicant that he "had his case won."

This Court finds Counsel's testimony to be more credible than Applicant's testimony regarding their pre-trial meetings and Counsel's advice. This Court finds Counsel's testimony to be credible that he tried to negotiate a plea even though the State would not offer one and that he told Applicant that he would probably lose at trial because of the strength of the State's evidence. This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court finds that Counsel's actions were reasonable

and that Applicant has failed to show that Counsel gave deficient or erroneous advice regarding Applicant's probability of success at trial or the benefit of a plea bargain. Additionally, this Court finds that Applicant has failed to show that the outcome of his trial likely would have been different had Counsel given different advice. Accordingly, this allegation must be dismissed.

Trial Court erred in denying Applicant's motion for a directed verdict as to the drug charges.

Applicant testified that the Court erred in denying Counsel's motion for a directed verdict because there was no evidence to support the case. Counsel testified that he did not think a directed verdict would work given the substantial circumstantial evidence against Applicant. Counsel testified, and the record reflects, that he moved for a directed verdict at the close of the State's case. See Trial Transcript p. 167.

This Court finds that the trial court's failure to grant a directed verdict is a direct appeal issue. PCR is not a substitute for an appeal and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error, therefore, is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Accordingly, this allegation must be dismissed.

The prosecutor failed to disclose material evidence affecting the credibility of the State's witness.

Applicant testified that the State failed to present evidence that he could have used to impeach Ms. Littlejohn. He also testified that there were statements that the State failed to present that showed he was threatened.

This Court finds Applicant's allegation that the Solicitor failed to turn over material evidence is without merit. An individual asserting a Brady violation must demonstrate that

evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

This Court finds that Applicant has not met his burden as he has failed to show the existence of actual favorable evidence that the State failed to disclose. This Court finds Applicant's assertions to not be credible and finds that any impeachment evidence and evidence showing he was threatened are not material and would not change the result of Applicant's trial. As Applicant has failed to show that he was prejudiced by such action, this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

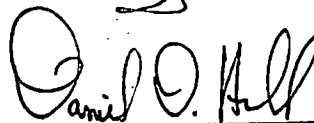
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11th day of August, 2016.



DANIEL D. HALL
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina



CLERK OF COURT'S OFFICE

P.O. Box 649, York, South Carolina 29743-0649

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Neal Moody
P.O. Box 1010
Rock Hill, SC 29730

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

September 12, 2016

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

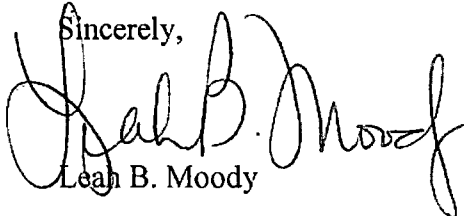
RE: Harry L. Anthony, #349291 v. State of South Carolina
C.A. No.: 2015-CP-46-0790

Dear Mr. Hamilton:

The York County Court of Common Pleas appointed my office to represent Harry L. Anthony 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 Harry L. Anthony
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

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

September 12, 2016

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

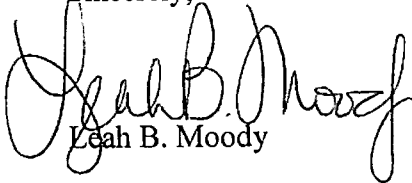
RE: Harry L. Anthony, #349291 v. State of South Carolina
Case No.: 2015-CP- 46-0790

Dear Mr. Hunter:

The York County Court of Common Pleas appointed my office to represent Harry L. Anthony 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 Harry L. Anthony
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

September 12, 2016

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

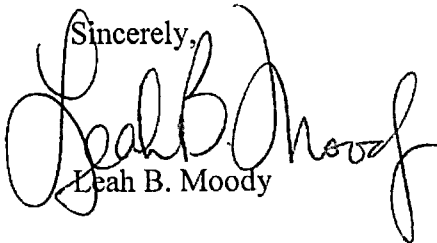
RE: Harry L. Anthony, 349291 v. State of South Carolina
Case No.: 2015-CP-46-0790

Dear Ms. Graham:

The York County Court of Common Pleas appointed my office to represent Harry L. Anthony 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 Harry L. Anthony
Justin Hunter, Esq.
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
David Hamilton, Clerk of Court, York County

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

TO:

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