

# Law Office of Leah B. Moody, LLC

Leah B. Moody  
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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

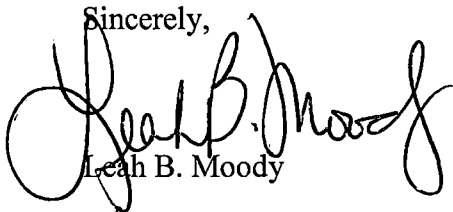
**RE: Patrick Rice v. State of South Carolina**  
**Case No.: 2013-CP-44-0013**

Dear Mr. Shearouse:

The Union County Court of Common Pleas appointed my office to represent Patrick Rice in his Post-Conviction Relief action. Please find enclosed for filing the original and two (2) copies of the Notice of Appeal, Proof of Service, and one (1) copy of the Order of Dismissal in the above-referenced case. Please return the clocked copies to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance with this matter.

Sincerely,



Leah B. Moody

Enclosure

cc Patrick Rice  
Justin Hunter, Esquire  
Sharon Graham, SCCID  
June Miller, Clerk of Court, Union County

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

SEP 16 2016

S.C. SUPREME COURT

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APPEAL FROM UNION COUNTY  
Court of Common Pleas

The Honorable J. Derham Cole, Presiding in Union County

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C.A. No.: 2013-CP-44-00013

---

Patrick Rice, ..... Appellant,

v.

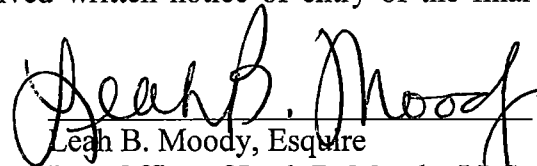
State of South Carolina, ..... Respondent.

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NOTICE OF APPEAL

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Patrick Rice appeals the order of the Honorable J. Derham Cole, August 23, 2016 and mailed on August 4, 2016. Appellant received written notice of entry of the final order on August 5, 2016.



Leah B. Moody, Esquire  
Law Office of Leah B. Moody, LLC  
235 E. Main Street, Suite 115  
Post Office Box 1015  
Rock Hill, South Carolina 29731

Other Counsel of record:  
Justin Hunter, SC Attorney General's Office  
Rembert C. Dennis Building  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-3970

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

SEP 16 2016

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APPEAL FROM UNION COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable J. Derham Cole, Presiding in Union County

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C.A. No.: 2013-CP-44-00013

Patrick Rice, ..... Appellant,

v.

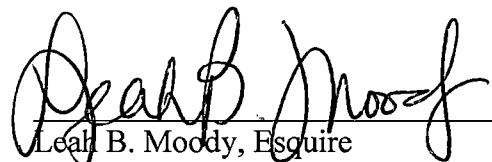
State of South Carolina, ..... Respondent.

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on Justin Hunter by depositing a copy of it in the United States Mail, postage prepaid, on September 12, 2016 addressed to its attorney of record, Justin Hunter, Post Office Box 11549, Columbia, South Carolina, 29211-1549.



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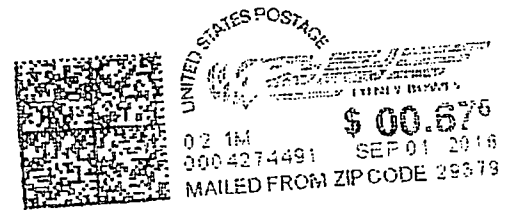
September 12, 2016  
cc Patrick Rice  
Sharon A. Graham, SCCID  
June Miller, Clerk of Court, Union County  
Justin Hunter, Esquire

**Clerk of Court**

POST OFFICE BOX 703  
UNION, SOUTH CAROLINA 29379

RECEIVED SEP 06 2016

Leah B. Moody  
Attorney at Law  
235 East Main Street, Suite 115  
Rock Hill, SC 29730



2973034891 0014

CASE NO. 2013 CP-44-00013

Patrick Rice # 273296 RECORD State of South Carolina

PLAINTIFF(S) 2016 AUG 31 PM 3 05 DEFENDANT(S)

Submitted by:	CLERK OF COURT UNION, SC	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> 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.

J. Durham Cole  
 Circuit/Court Judge  
 SCRPC Form 4C (03/2013)

2053  
 Judge Code

8-23-16  
 Date



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF UNION )  
 )  
Patrick Rice, )  
S.C.D.C. No. 273296, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
OF THE SIXTEENTH JUDICIAL CIRCUIT

2013-CP-44-0013

**ORDER OF DISMISSAL**

FILED FOR RECORD  
2016 AUG 31 PM 3 05  
CLERK OF COURT  
UNION, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 8, 2013. Respondent made its Return on or about July 11, 2013. An evidentiary hearing into the matter was convened on January 22, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, John Reckenbiel, Esquire, 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 indicted at the February 2009 term of the Union County Court of General Sessions for Murder (2009-GS-44-0232), Burglary, 1st degree (2009-GS-44-0233), Armed Robbery (2009-GS-44-0234), and two

counts of Kidnapping (2009-GS-44-0235, -236). He was represented by John Reckenbiel, Esquire. On September 17, 2009, Applicant was tried by a jury and convicted all charges as indicted. The Honorable James C. Williams, Jr. sentenced Applicant to confinement for fifty (50) years for Murder and Burglary, 1st degree, and thirty (30) years for Armed Robbery and both counts of Kidnapping. All sentences run concurrently.

Thereafter, Applicant appealed his conviction and sentence. After full briefing, the South Carolina Court of Appeals vacated one of his kidnapping charges pursuant to S.C. Code Ann. § 16-3-910 (2003), but affirmed his other convictions. State v. Rice, 2011-UP-584 (filed December 21, 2011). The Remittitur was issued on January 11, 2012.

#### PCR Application

In his application for post-conviction relief, Applicant alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

## **II. SUMMARY OF THE TESTIMONY**

### Counsel's Testimony

Counsel testified that he met with Applicant and had many conversations with him prior to the trial. He testified that it was clear that Applicant was present and an active participant in the crime. He testified that he discussed possible defense strategies with Applicant and tried to get him to help the Solicitor's Office prosecute the real shooter. Counsel testified that the State was more focused on Applicant's codefendant but Applicant was unwilling to cooperate. He testified that he discussed with Applicant the State's evidence against him and how the evidence was substantiated by several witnesses including statements made by Applicant to witness Michael Rice. Counsel testified that their defense strategy was that of a mistaken identity and he

cross examined the State's witnesses about trying to help themselves on their accessory charges; but the defense was ultimately unsuccessful.

Counsel further testified that the State did not make an offer to plead. Counsel testified that he made a motion for a directed verdict. He testified that Applicant did not have a sufficient alibi and initially did not want to testify. Counsel also testified that he believed that Applicant did not have the intent to do half of what happened and that he was convicted on the hand of one theory. He testified that he would have interviewed and investigated all of the witnesses that Applicant gave to him. He testified that he presented Applicant's alibi to the jury but the jury did not believe it.

#### Applicant's Testimony

Applicant testified that he met with Counsel over the course of four to five months at the county jail. He testified that he told Counsel his version of events and that all of the witnesses' statements were false. He testified that Counsel did not investigate and did not interview Michael Rice or Sierra Braswell. Applicant also testified that Counsel should have done a better job during cross examination of Michael Rice. Applicant further testified that Counsel did a good job on his case other than failing to interview the codefendants.

Applicant testified that he did not have an opportunity to take a plea deal. He testified that law enforcement met with him after the trial but he did not cooperate. He testified that he was offered a change in his sentence but did not take it because he was innocent. He further testified that multiple witnesses said that Applicant told them that he committed the robbery.

### 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 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.

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. This Court finds that Counsel discussed defense strategies with Applicant, reviewed discovery, and conducted proper investigation to aid in Applicant's defense. This Court also finds that Applicant has failed to show that Counsel's investigation was deficient and has also failed to show what any further investigation would have revealed. To establish counsel was inadequately prepared for trial, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (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 the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). This Court finds that Applicant has failed to meet his burden of showing

Counsel was ineffective regarding his investigation and has also failed to show how the result of the trial would have been different had he pursued further investigation. This Court also finds that Counsel effectively cross examined the State's witnesses testifying against Applicant and specifically brought out discrepancies in statements made and the fact that several testifying witnesses were charged with related crimes as well. This Court finds that Counsel presented witnesses to testify for the defense and argued Applicant's alibi despite it ultimately being unsuccessful. Applicant has failed to meet his burden of proving that Counsel's performance was deficient in this regard and that any prejudice resulted from his performance. Accordingly 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.

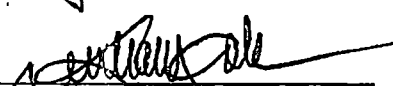
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a 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.

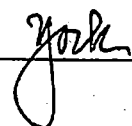
Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**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 31<sup>st</sup> day of August, 2016.

  
\_\_\_\_\_  
J. DERHAM COLE  
Presiding Judge  
Sixteenth Judicial Circuit

, South Carolina

**JUDGEMENT SIGNED AND  
ENTERED UP 8-31-16**

CLERK OF COURT

# Law Office of Leah B. Moody, LLC

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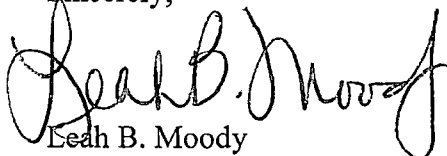
The Honorable June Miller  
Union County Clerk of Court  
210 W. Main Street  
Union, South Carolina 29379

**RE: Patrick Rice v. South Carolina**  
**C.A. No.: 2013-CP-44-00013**

Dear Ms. Miller:

Please find enclosed the Notice of Appeal and the Proof of Service in the above-referenced matter.

Sincerely,



Leah B. Moody

Enclosures

cc Patrick Rice  
Justin Hunter, Assistant Attorney General  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
Sharon Graham, SCCID

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Post Office Box 11549  
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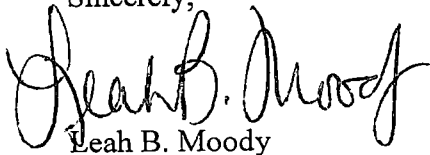
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**C.A. No.: 2013-CP-44-0013**

Dear Mr. Hunter:

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If you have any questions or concerns, please feel free to contact my office. Thank you.

Sincerely,



Leah B. Moody

Enclosures

Cc Patrick Rice  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
June Miller, Clerk of Court, Union County  
Sharon Graham, SCCID

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September 12, 2016

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

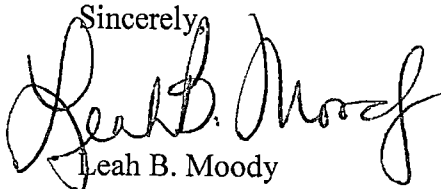
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Sincerely,



Leah B. Moody

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June Miller, Clerk of Court, Union County