

# Law Office of Leah B. Moody, LLC

Leah B. Moody  
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Rock Hill, South Carolina 29730  
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**RECEIVED**

February 3, 2017

FEB 06 2017

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

**S.C. SUPREME COURT**

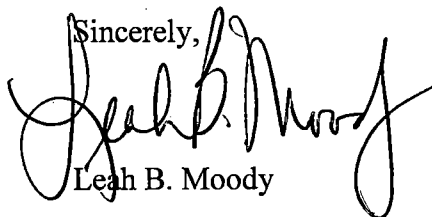
RE: Christopher Lynn Thomas v. State of South Carolina  
Case No.: 2013-CP- 46-3701

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Christopher Thomas 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

LBM/ LT

Enclosures

Cc Christopher Thomas  
Justin Hunter, Esq.  
David Hamilton, Clerk of Court, York County  
Sharon Graham, SCCID

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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FEB 06 2017

APPEAL FROM YORK COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable Roger Couch, Presiding in York County

Case No. 2013-CP-46-3701

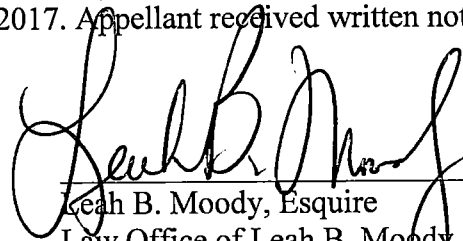
Christopher Lynn Thomas, ..... Appellant,

v.

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

NOTICE OF APPEAL

Christopher Lynn Thomas appeals the order of the Honorable Roger Couch, dated December 30, 2016 and mailed on January 11, 2017. Appellant received written notice of entry of the final order on January 20, 2017.



Leah B. Moody, Esquire  
Law Office of Leah B. Moody, LLC  
235 E. Main Street, Suite 119  
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**

FEB 06 2017

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

**S.C. SUPREME COURT**

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

**The Honorable Roger Couch, Presiding in York County**

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**Case No. 2013-CP-46-3701**

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**Christopher Lynn Thomas, ..... Appellant,**

**v.**

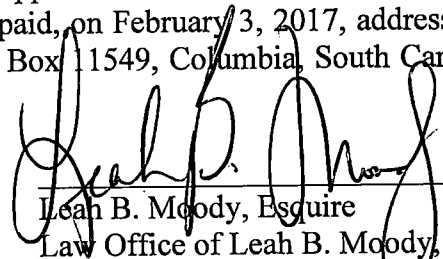
**State of South Carolina, ..... Respondent.**

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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 February 3, 2017, 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  
Post Office Box 1015  
Rock Hill, South Carolina 29731

February 3, 2017

Cc Christopher Thomas  
Justin Hunter, Esq.  
David Hamilton, Clerk of Court, York County  
Sharon Graham, SCCID

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Christopher Thomas, )  
 SCDC# 254868 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-3701

ORDER OF DISMISSAL

FILED - RECEIVED  
 2017 JAN 11 PM 4:12  
 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 December 5, 2013. Respondent made its Return on or about February 20, 2014. An evidentiary hearing into the matter was convened on Tuesday, November 8, 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. This Court had before it a copy of Applicant's records from the York County Clerk of Court, the signed plea agreement, the July 10, 2013 sentencing 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 August 2007 term of the York County Grand Jury for Trafficking in Crack Cocaine (2007-GS-46-3012), Possession of Marijuana with Intent to Distribute (2007-GS-46-3013) and Possession of a Firearm during the Commission of a Violent Crime (2007-CP-46-3011). B.J. Barrowclough,

*Handwritten signature/initials*

Esquire, represented him. On October 2, 2007, Applicant entered a plea agreement and pled guilty before the Honorable Michael Nettles.<sup>1</sup> Sentencing was deferred to November 28, 2007; however Applicant absconded and was sentenced in his absence. The sentence was sealed until Applicant was located. On July 10, 2013, Applicant was sentenced by the Honorable John C. Hayes, III, pursuant to a negotiated sentence, to imprisonment for eight years for Trafficking Crack Cocaine, 2nd offense; eight years, concurrent, for PWID Marijuana; and five years, concurrent, for the weapons charge. Applicant did not appeal his conviction or sentence.

In his PCR application, Applicant alleges he is being held unlawfully for the following reasons:

1. "These charges are bogus/nothing was found in my possession"
  - a. "I was arrested for a child support warrant not for drugs. They brought these charges after I was already locked up. They found nothing in possession. Not in my residence."
2. "Ineffective Counsel"
  - a. "Lawyer never met me only 5 min. before going in front of judge."
3. "The statement in which the narcotics officers said was mine is totally false"

## II. SUMMARY OF THE TESTIMONY

Applicant testified that in November 2007, before his trial, he left the city. He testified that Toni Johnson, Esquire, was his attorney and he was forced to sign a plea agreement even though he was innocent. Applicant testified that the solicitor told him that if he did not sign a plea agreement then he would have to proceed to trial. He testified that he read the agreement and signed the agreement because it was what he needed to do. Applicant testified that he absconded because he felt like he would not get a fair trial. He further testified that his counsel did not give her best effort and forced him to plead guilty without seeing all of the evidence.

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<sup>1</sup> Respondent has previously provided documentation to this Court that Applicant's plea hearing transcript is not available as it was destroyed after five years, pursuant to SCACR 607.

*Bill*  
*02*

### 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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

*psl*  
*p3*

#### 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 plea transcript, 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.

##### **Ineffective Assistance of Counsel**

This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective in any way. This Court finds that Applicant had the right to a jury trial but purposefully fled because he did not want to participate. This Court finds that the lack of the plea transcript is attributable to Applicant's absconding, as it would have been destroyed in 2012. This Court further finds that Judge Nettles would have gone through a normal plea colloquy with Applicant during his plea hearing and nothing has been produced to show otherwise. In summary, this Court finds that Applicant has failed to show that Counsel was ineffective or that her performance was deficient. Likewise he has failed to show that he was prejudiced by Counsel's actions as he has failed to show that he would not have pled guilty but would have gone to trial on these charges.

##### **All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

*Alse*  
*p4*

## V. 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), SCRPC, 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 IT IS SO ORDERED this 30<sup>th</sup> day of December, 2016.

Appalauzy, South Carolina

  
\_\_\_\_\_  
ROGER COUCH  
Presiding Judge  
Sixteenth Judicial Circuit

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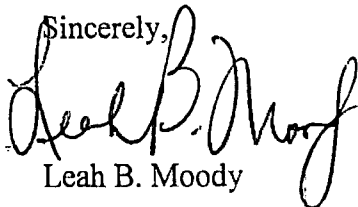
February 3, 2017

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

**RE: Christopher Lynn Thomas v. State of South Carolina**  
**Case No.: 2013-CP-46-3701**

Dear Mr. Hamilton:

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

Sincerely,  
  
Leah B. Moody

Enclosures

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

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February 3, 2017

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

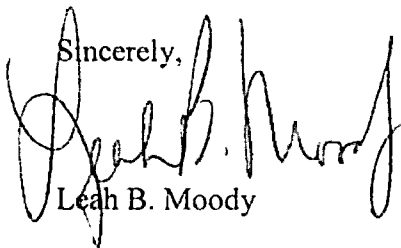
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Dear Ms. Graham:

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

Sincerely,



Leah B. Moody

LBM/lpt

Enclosures

Cc Christopher Thomas  
Justin Hunter, Esq.  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
David Hamilton, Clerk of Court, York County

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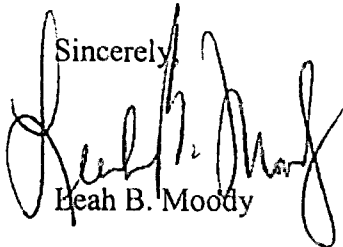
Justin Hunter, Esquire  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211

RE: Christopher Lynn Thomas v. State of South Carolina  
Case No.: 2013-CP- 46-3701

Dear Mr. Hunter:

The York County Court of Common Pleas appointed my office to represent Christopher Thomas in his Post-Conviction Relief action. Please find enclosed a copy of the Notice of Appeal and Proof of Service in this matter.

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Sincerely,  
  
Leah B. Moody

LBM/lpt


Enclosures

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David Hamilton, Clerk of Court, York County  
Sharon Graham, SCCID

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TO: 

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