

# Law Office of Leah B. Moody, LLC

Leah B. Moody  
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SEP 27 2017

S.C. SUPREME COURT

September 18, 2017

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

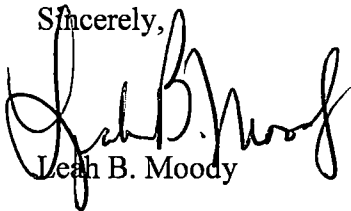
**RE: John Edward Hunsucker, #368035 vs. State of South Carolina**  
**C.A. No.: 2016-CP-46-03240**

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent John Hunsucker 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/emb

Enclosures

Cc John Hunsucker  
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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**APPEAL FROM YORK COUNTY  
Court of Common Pleas**

**The Honorable R. Lawton McIntosh, Presiding in York County**

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**Case No. 2016-CP-46-03240**

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**John Hunsucker, #368035, ..... Appellant,**

**v.**

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

RECEIVED

SEP 27 2017

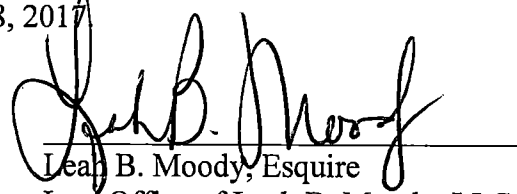
S.C. SUPREME COURT

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**NOTICE OF APPEAL**

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John Hunsucker appeals the order of the Honorable R. Lawton McIntosh, dated September 12, 2017 and mailed on September 12, 2017. Appellant received written notice of entry of the final order on September 18, 2017.



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

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Presiding in York County

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Case No. 2016-CP-46-03240

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John Hunsucker, #368035, ..... Appellant,

v.

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

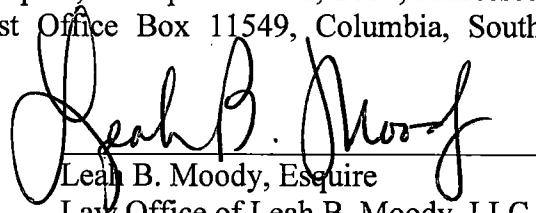
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SEP 27 2017  
S.C. SUPREME COURT

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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 18, 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

20 4:18 pm  
September 18, 2017

Cc John Hunsucker  
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 2016CP4603240

|                          |  |                         |  |
|--------------------------|--|-------------------------|--|
| John Edward Hunsucker Jr |  | South Carolina State Of |  |
|--------------------------|--|-------------------------|--|

|                         |   |
|-------------------------|---|
| PLAINTIFF(S)            | DEFENDANT(S)  |
| Submitted by: The Court | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><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: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- 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  
 ORDER OF DISMISSAL

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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ R LAWTON MCINTOSH  
 Circuit Court Judge

2155  
 Judge Code

9/12/2017  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on **9/12/2017**, and a copy mailed first class or placed in the appropriate attorney's box on **9/12/2017**, 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

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*David Hamilton*

---

**Court Reporter**

---

**David Hamilton - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCF.**

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**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.

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STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

2017 SEP 12 ) PM 12: 32

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTEENTH JUDICIAL CIRCUIT

John Edward Hunsucker, Jr. )  
S.C.D.C. #368035, )

2016-CP-46-3240

DAVID HAMILTON  
C.C.P. #368035  
YORK COUNTY, SC

Applicant, )

**ORDER OF DISMISSAL**

v. )

State of South Carolina, )

Respondent. )

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 2, 2016. Respondent made its Return on or about March 2, 2017. An evidentiary hearing into the matter was convened on August 1, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Michael Brown, Esquire, also testified.

**I. PROCEDURAL HISTORY**

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted for Armed Robbery (2015-GS-46-3862). Michael Brown, Esquire, represented Applicant. On April 28, 2016, Applicant waived presentment and pled guilty to the lesser included offense of attempted armed robbery before the Honorable Daniel Hall. Pursuant to a negotiated sentence, Applicant was sentenced to imprisonment for six years. Applicant did not appeal his guilty plea or sentence.

In his PCR application, Applicant alleges he is being held in custody unlawfully for

ineffective assistance of counsel in that Counsel failed to object to the plea judge's alteration of Applicant's negotiated sentence from a non-violent offense to a violent offense.

## 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. 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).

### 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 plea 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 the testimony of Applicant's counsel 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**

Applicant alleged that his Counsel was ineffective for failing to object to the plea judge changing his negotiated plea from attempted armed robbery (non-violent) to attempted armed robbery (violent). He testified that he thought the plea was a six-year non-violent sentence and only learned that it would be violent at the plea hearing. He testified that he signed the sentencing sheet first and then the plea waiver form but did not discuss these sheets with Counsel. He testified that he did not look at the plea waiver form but only initialed the boxes. Applicant testified that he expected Counsel to speak up at the plea hearing and because he was ignorant on the law.

Counsel testified that the plea negotiations in this case were drawn out because of the amount of charges. He testified that he tried to negotiate a strong arm robbery plea but the

solicitor's office would not agree. He testified that the plea offer was always a plea to attempted armed robbery for a cap of seven years. Counsel testified that he explained what most serious and no parole meant. He testified that he discussed with Applicant the differences between armed robbery and attempted armed robbery and the differences between attempted armed robbery and strong arm robbery. He testified that he was not exactly sure if he used the words "violent" or "non-violent" when discussing the case with Applicant. Counsel testified that the negotiated sentence was attempted armed robbery and it would be most serious and a no-parole offense.

This Court finds that Applicant has failed to prove that Counsel's actions were ineffective. This Court finds it is clear from the record that Applicant was facing a non-violent offense and that he understood this fact. During the plea hearing the plea judge advised:

THE COURT: You understand on the attempted armed robbery, that because it's a violent, most-serious offense, that if you got another most-serious offense conviction in the future -- and we hope that doesn't happen -- but if you did, the State can seek a life-without-parole sentence against you?

If you had three or more serious offenses, that's the three strikes, you could also get life without parole. Do you understand the consequences on your current criminal record of your plea today?

THE DEFENDANT: Absolutely.

THE COURT: You still want to go forward with your plea?

THE DEFENDANT: I do, sir.

Trial Transcript p. 7, ll. 4-18.

This Court also finds that the plea waiver form, initialed and signed by Applicant, designates the plea as a violent offense. It is also clear from the record and the plea judge's indication to Applicant during the hearing that the sentencing sheet contained a clerical error that listed the offense as non-violent, however, the plea judge changed the sheet to indicate that it was a violent offense and initialed where he scratched through the error. This was stated on the

record and Applicant acknowledged that he understood the clerical error.

THE COURT: "...the State is allowing you to plead to attempted armed robbery which carries up to 20 years in prison.

That is a violent, most-serious offense. In fact, I'm going to mark that on your sentencing. It's marked non-violent. I'm going to scratch through that and initial where I scratch and I'm going to check violent and most serious. You understand the potential penalty and the allegations in the indictment?

THE DEFENDANT: Yes, sir.

Trial Transcript p. 6, ll. 9-21.

This Court finds that the plea judge did not erroneously change Applicant's negotiated plea or sentence. This Court finds that all parties understood the plea to be to a violent offense as evidenced by the plea waiver form and the plea colloquy during the hearing. The plea judge did not err in making an administrative change in open court to the clerical error on the sentencing sheet. As the plea judge did not err, Counsel was not deficient for failing to object. Furthermore, Applicant has failed to prove that he was prejudiced by Counsel's actions, as he has failed to show that the outcome would have been different and that he would have proceeded to trial but for Counsel's actions. Accordingly, this application must be dismissed.

#### IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate 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.

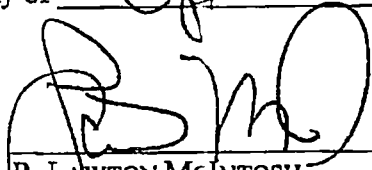
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

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), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

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

AND IT IS SO ORDERED this 7<sup>th</sup> day of Sept, 2017.

  
R. LAWTON MCINTOSH  
Presiding Judge  
Sixteenth Judicial Circuit

Anderson South Carolina



CLERK OF COURT'S OFFICE  
Post Office Box 649, York, South Carolina 29745-0649

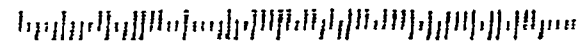


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September 18, 2017

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

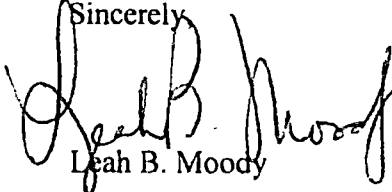
**RE: John Edward Hunsucker, #368035 vs. State of South Carolina  
C.A. No.: 2016-CP-46-03240**

Dear Mr. Hamilton:

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If you have any questions or concerns, please feel free to contact my office. Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/emb

Enclosures

cc John Hunsucker  
Justin Hunter, Esq.  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
Sharon Graham, SCCID

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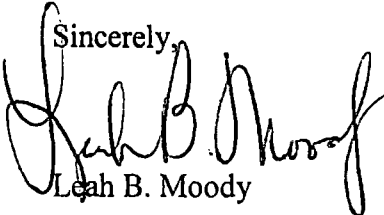
Sharon Graham  
SC Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11433  
Columbia, South Carolina 29211-1433

**RE: John Edward Hunsucker, #368035 vs. State of South Carolina  
C.A. No.: 2016-CP-46-03240**

Dear Ms. Graham:

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Sincerely,  
  
Leah B. Moody

LBM/emb

Enclosures

Cc John Hunsucker  
Justin Hunter, Esq.  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
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September 18, 2017

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

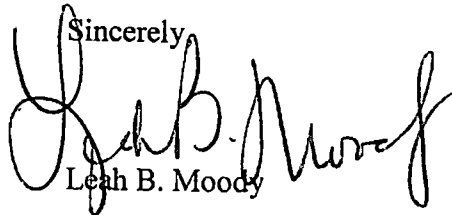
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**C.A. No.: 2016-CP-46-03240**

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Sincerely,



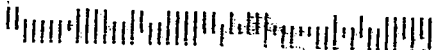
Leah B. Moody

LBM/emb

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Cc John Hunsucker

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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