

# Law Office of Leah B. Moody, LLC

Leah B. Moody  
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Facsimile (803) 329-1344

June 30, 2016

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

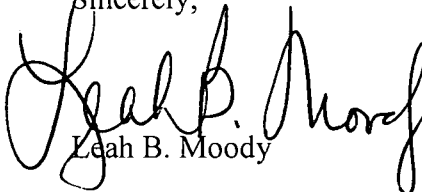
**RE: Dennis Davis, #288558 v. State of South Carolina**  
**Case No.: 2015-CP- 46-00777**

Dear Mr. Shearouse:

The York County Court of Common Pleas appointed my office to represent Dennis Davis in his Post-Conviction Relief action. Please find enclosed for filing the original and one copy 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 Dennis Davis, Jr.  
Justin Hunter, South Carolina Attorney General's Office  
David Hamilton, Clerk of Court, York County  
Sharon Graham, SCCID

**RECEIVED**

JUL 08 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 Paul M. Burch, Presiding in York County

RECEIVED

JUL 08 2016

S.C. SUPREME COURT

Case No. 2015-CP-46-00777

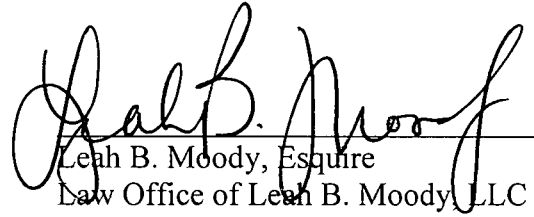
Dennis Rodger Davis, Jr., ..... Appellant,

v.

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

NOTICE OF APPEAL

Dennis Davis, Jr. appeals the order of the Honorable Paul M. Burch, dated June 6, 2016 and mailed on June 13, 2016. Appellant received written notice of entry of the final order on June 16, 2016.



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

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

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable Paul M. Burch, Presiding in York County

**RECEIVED**

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Case No. 2015-CP-46-00777

JUL 08 2016

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Dennis Rodger Davis, Jr. , ..... Appellant, **S.C. SUPREME COURT**

v.

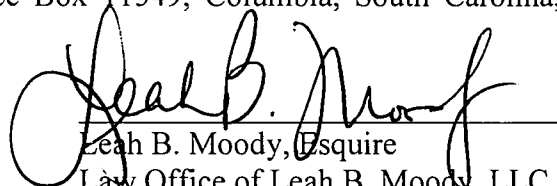
State of South Carolina, ..... Respondent.

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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 June 30, 2016, addressed to its attorney of record, Justin Hunter, Post Office Box 11549, Columbia, South Carolina, 29211-1549.

  
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June 30, 2016

Cc Dennis Davis, Jr.  
Justin Hunter, South Carolina Attorney General's Office  
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 2015CP4600777

Dennis Rodger Davis Jr

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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: PCR Heard & Denied
- 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: **ORDER OF DISMISSAL**

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/ Paul M. Burch  
 Paul M. Burch  
 Circuit Court Judge

2048  
 Judge Code

6/6/2016  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on June 13, 2016, and a copy mailed first class or placed in the appropriate attorney's box on June 13, 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

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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**

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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 )  
 )  
 Dennis Davis, Jr., )  
 S.C.D.C. No. 288558, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-0777

ORDER OF DISMISSAL

FILED-RECEIVED  
 2016 JUN 13 PM 12:32  
 DAVID H. HILTON  
 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 12, 2015. Respondent made its Return on or about August 7, 2015. An evidentiary hearing into the matter was convened on January 20, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Creighton Hayes, Esquire, 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 plea 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 2013 term of the York County Grand Jury for Possession of Marijuana (2013-GS-46-2964), two charges of Distribution of Marijuana In Proximity of a School (2013-GS-46-2966, -

2969), and two charges of Distribution of Marijuana-Third Offense (2013-GS-46-2970, -2971). Applicant was represented by Creighton Hayes, Esquire (hereinafter "Counsel"). On May 21, 2014, Applicant pled guilty as indicted before the Honorable G. Edward Welmaker. He was sentenced to a term of imprisonment for one year for Possession of Marijuana, a term of five years for each charge of Distribution of Marijuana In Proximity of a School, and a term of ten years and five months for each charge of Distribution of Marijuana-third offense. All sentences were to run concurrently.

Applicant timely filed a notice of appeal. By Order filed February 11, 2014, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to file sufficient explanation as required by SCACR 203(d)(1)(B)(iv). The Remittitur was sent September 5, 2014.

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

1. Ineffective Assistance of Guilty Plea Counsel
  - a. "Failure to challenge the use of an invalid conviction"
  - b. "Failure to challenge the sufficiency of the chain of custody"
  - c. "Failure to protect my rights to seek a direct appeal. Also failure to sign me up with the indigent defense to represent me on appeal."

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

### **Applicant's Testimony**

Applicant testified that he bonded out and met with Counsel a couple times before his plea. He testified that he gave Counsel his side of the story and told him that he did not want to plead guilty. He testified that a six year offer came right before trial but he rejected this offer. He further testified that Counsel and the State were trying to scare him to plead guilty, and that he believed the State was punishing him for exercising his right to trial. Applicant also testified that

he thought he would be parole eligible but found out that he would have to serve eighty-five percent before being parole eligible.

Applicant said that he had an issue with the chain of custody, testifying that there were key documents missing and that the drugs had been altered. He testified that he got a copy of the discovery but that Counsel did not review it with him.

Applicant testified that Counsel failed to seek his appellate rights by failing to sign him up with the Office of Indigent Defense.

#### **Counsel's Testimony**

Counsel testified that he met with Applicant fifteen to twenty times prior to the plea. He testified that he received everything in discovery and shared this with Applicant, including video evidence and a statement. Counsel testified that he believed the State's evidence against Applicant to be strong. He testified that the State first presented a plea offer of seven years, then an offer of six years. Counsel testified that after Applicant rejected the six year offer, Counsel asked the State to put the offer back on the table. He testified that the plea offer eventually turned to a straight up plea offer because the information concerning the State's confidential informant was revealed. He testified that York County has a policy whereby the revelation of the confidential informant's identity negates a plea offer. Counsel testified that he believed pleading guilty was in Applicant's best interest and he believed Applicant understood everything involved with the plea. Counsel testified that he had two of his colleagues give Applicant a second and third opinion regarding whether to plead guilty or go to trial and that they both thought Applicant should plead guilty.

Counsel testified that he discussed with Applicant the fact that his prior convictions of trafficking crack cocaine and simple possession of marijuana (second or subsequent offense)

could be used to enhance his offenses to possession of marijuana second offense and distribution of marijuana third offense. He testified that the prior conviction of possession of marijuana second or subsequent offense may have had issues, but admitted that both prior convictions were properly used to enhance the current offenses.

Counsel testified that he had no issues with the chain of custody and no reason to think that it might be defective. He also testified that any issues regarding the weight were immaterial because any small and were probably the result of field testing.

Counsel testified that he informed the Court in mitigation to consider a low sentence because if he did not get a paroleable sentence then he would have to serve eighty-five percent of whatever sentence he received. He testified that he discussed this with Applicant.

Counsel testified that he filed Applicant's notice of appeal and a Rule 203(B) explanation stating that he did not have a good faith basis to appeal the sentence. He testified that public defenders do not have a duty to sign applicants up for Appellate Defense. He testified that he received the notice that Applicant's appeal was dismissed and that Robert Dudek of the Office of Appellate Defense was copied on it.

### III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that 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 (1985).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked

through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

#### 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, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

##### Ineffective Assistance of Counsel

This Court finds that Applicant failed to meet his burden of proving that his plea counsel was ineffective. This Court finds Applicant's attorney 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.

First, this Court finds that Applicant has failed to prove that Counsel was ineffective for failing to challenge the use of Applicant's prior convictions. Counsel testified that Applicant's prior convictions for trafficking crack cocaine and simple possession of marijuana (second or

subsequent offense) were properly used to enhance his current offenses. Applicant has presented no evidence to show that his prior convictions were improperly used against him or that Counsel's performance was deficient. Furthermore, Applicant has failed to show that he was prejudiced, as he has failed to show that he would not have pled but would have gone to trial but for Counsel's alleged errors. Accordingly, this allegation must be dismissed.

Next, this Court finds that Applicant has failed to show that Counsel was ineffective for failing to challenge the sufficiency of the chain of custody. First, Applicant was properly informed during his guilty plea that by pleading guilty he would give up his right to challenge the State's evidence and Applicant informed the court that he understood that waiver of rights. Counsel testified that he had no justifiable reason to challenge the chain of custody and Applicant has presented no veritable evidence of defects in the chain of custody. This Court finds that Counsel provided effective assistance in this regard and Applicant has failed to meet his burden of proving otherwise. Additionally, this Court finds that Applicant was not prejudiced by any alleged deficiency as he has failed to show that he would have gone to trial but for Counsel's alleged errors. Accordingly, this allegation must be dismissed.

This Court also finds that Applicant has failed to show that Counsel was ineffective for not signing him up with Appellate Defense. This Court finds, and the record reflects, that Counsel followed the proper procedure for appealing a guilty plea by filing a notice of appeal and a Rule 203(B) explanation. Applicant has failed to show that Counsel was ineffective in this regard and, accordingly, this allegation must be dismissed.

#### **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, this Court finds the Applicant failed to

present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

## V. 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.

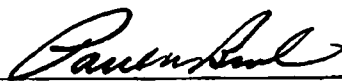
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a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

*[Signature Block on Following Page]*

**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 6<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
PAUL M. BURCH  
Presiding Judge  
Sixteenth Judicial Circuit

Charleston, South Carolina



CLERK OF COURT'S OFFICE

Post Office Box 649, York, South Carolina 29745-0649



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June 30, 2016

The Honorable David Hamilton  
York County Clerk of Court  
Post Office Drawer 649  
York, South Carolina 29745-0649

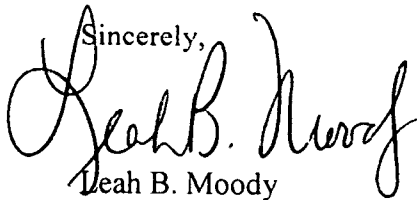
**RE: Dennis Rodger Davis, Jr., 288558 v. State of South Carolina**  
**C.A. No.: 2015-CP-46-00777**

Dear Mr. Hamilton:

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

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

Sincerely,



Leah B. Moody

Enclosures

cc Dennis Davis, Jr.  
Justin Hunter, Esquire, South Carolina Attorney General's Office  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
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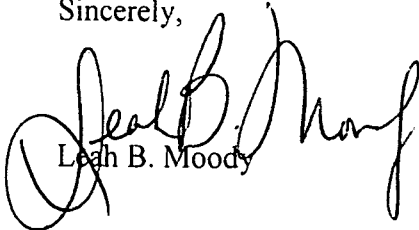
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Case No.: 2015-CP- 46-00777

Dear Mr. Hunter:

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Sincerely,



Leah B. Moody

Enclosures

Cc Dennis Davis, Jr.  
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June 30, 2016

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

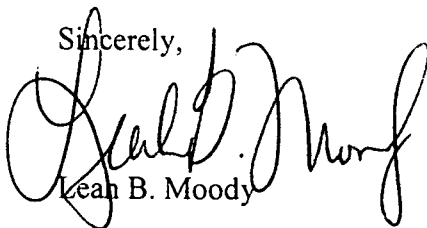
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Case No.: 2015-CP-46-00777

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Sincerely,



Leah B. Moody

Enclosures

Cc Dennis Davis, Jr.  
Justin Hunter, Esquire, South Carolina Attorney General's Office  
Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court  
David Hamilton, Clerk of Court, York County

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Rock Hill, South Carolina 29730

TO:

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