



INDIGO  
FAMILY LAW

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JAN 22 2018

January 16, 2018

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

S.C. SUPREME COURT  
RECEIVED  
JAN 18 2018  
SC Court of Appeals

Re: Notice of Appeal  
Mokeia Hammond # 333772 vs. State of South Carolina  
Docket No.: 2012-CP-26-01065

Dear Ms. Kitchings:

At the request of the Applicant, enclosed please find the Original Notice of Appeal, attached to the Order of Dismissal of the Honorable William H. Seals, Jr., dated December 19, 2017, filed January 5, 2018 and received January 12, 2018. Please file the originals and return the clocked copies to me in the stamped, self-addressed envelope enclosed for your convenience.

As indicated in my proof of service, I have sent a copy to the Attorney General's Office, the Office of Appellate Defense, Horry County Clerk's Office and the Applicant.

I was appointed by the Court to represent the Applicant in the Fifteenth Circuit Court in his Application for Post-Conviction Relief. Since the Applicant is indigent, I am requesting the Office of Appellate Defense to appeal the case for the Applicant.

Thank you for your kind assistance in this matter. With warm regards, I am,

Very truly yours,  
INDIGO FAMILY LAW, LLC

  
Brana J. Williams

Enclosures (as stated)

BJW/jnb

cc: Johnny E. James, Jr., Assistant Attorney General  
Robert M. Dudek, Chief Appellate Defender  
Renee Elvis, Horry County Clerk of Court  
Mokeia Hammond

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JAN 22 2018

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY  
HONORABLE WILLIAM H. SEALS, JR.

CASE NO: 2012-CP-26-01065

MOKEIA HAMMOND SCDC # 333772.....APPLICANT

vs

STATE OF SOUTH CAROLINA.....RESPONDENT


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JAN 18 2018

SC Court of Appeals

NOTICE OF APPEAL

Mokeia Hammond appeals the Order of Dismissal of the Honorable William H. Seals, Jr.  
dated December 19, 2017, filed January 5, 2018 and received January 12, 2018.



Brana J. Williams, Esquire  
Attorney for Petitioner  
INDIGO FAMILY LAW, LLC  
1500 Highway 17N Suite 102  
Surfside Beach, SC 29575  
843-357-5100

This 16 day of January, 2018  
Surfside Beach, South Carolina

Other Counsel of record:

Johnny E. James, Jr. Esquire  
Attorney for Respondent  
Attorney General's Office  
P. O. Box 11549  
Columbia, SC 29211

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JAN 22 2018

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY  
HONORABLE WILLIAM H. SELAS, JR.

CASE NO: 2012-CP-26-01065

MOKEIA HAMMOND SCDC # 333772.....APPLICANT

Vs

STATE OF SOUTH CAROLINA.....RESPONDENT

RECEIVED

JAN 18 2018

SC Court of Appeals

PROOF OF SERVICE

The undersigned, Attorney for the Applicant, hereby certifies that a true copy of the Notice of Appeal in the above case, has been served upon the following by mailing a copy to each in a properly addressed envelope on January 16, 2018:

Jenny A. Kitchings, Clerk of Court  
South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

Mokeia Hammond #333772  
Graham Correctional Institution  
4450 Broad River Road  
Columbia, SC 29210-4096

Johnny E. James  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

Robert M. Dudek  
Office of Appellate Defense  
PO Box 11433  
Columbia, SC 29211

Renee Elvis  
Horry County Clerk of Court  
P. O. Box 677  
Conway, SC 29528



Brana J. Williams, Esquire  
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Surfside Beach, SC 29575  
843-238-5100

January 16, 2018

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STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Mokeia Hammond, #333772 )

Plaintiff )

v. )

State Of South Carolina )

Defendant. )

IN THE COURT OF COMMON PLEAS

JAN 22 2018

CASE NO. S.C. SUPREME COURT  
2012-CP-26-1065

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

FILED  
CLERK OF COURT  
HORRY COUNTY, SC  
JAN 5 5 18 PM 2:18

Plaintiff's Attorney: Brana, J. Williams, Bar No. 64193 Address: 1500 Hwy. 17 N. Ste 102 Surfside Beach, SC 29575 phone: fax: c-mail: other:	Defendant's Attorney: Johnny E. James Jr, Bar No. 10600 Address: Post Office Box 11549 Columbia, SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-3737 e-mail: other:
---	--

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion:

Estimated Time Needed: Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for  Plaintiff /  Defendant

December 15, 2017  
Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT:

- EXEMPT:  Rule to Show Cause in Child or Spousal Support
- (check reason)  Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRCP)
- Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other:

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE: \_\_\_\_\_

CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_

Date Filed: \_\_\_\_\_

MOTION FEE COLLECTED: \_\_\_\_\_

CONTESTED - AMOUNT DUE: \_\_\_\_\_

RECEIVED

JAN 18 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
)

Mokeia Hammond,  
S.C.D.C. No. 333772,

) Case No.: 2012-CP-26-01065  
)  
)

Applicant,

) **ORDER OF DISMISSAL**  
)

v.

State of South Carolina,

**RECEIVED**

Respondent.

) **JAN 18 2018**  
)

FILED  
HORRY COUNTY  
2018 JAN -5 PM 2:18  
CLERK OF COURT  
HORRY COUNTY, SC

**SC Court of Appeals**

This matter comes before the Court by way of an application for post-conviction relief filed by Mokeia Hammond ("Applicant") on February 9, 2012. Respondent made its return on or about May 24, 2012. The Court convened an evidentiary hearing into the matter on Tuesday, September 19, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Brana J. Williams, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Ronald W. Hazzard, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the August 2007 term of the Horry County Grand Jury for murder (2007-GS-26-3362). Applicant was further indicted at the October 2008 term for possession of a weapon during the commission of a violent

crime (2008-GS-26-04118), and armed robbery (2008-GS-26-04119). Ronald W. Hazzard, Esq., represented Applicant. Donna Elder and Bradley C. Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury on March 9, 2009. The jury found Applicant not guilty of murder and possession of a weapon during the commission of a violent crime, and guilty of armed robbery on March 13, 2009. Judge Culbertson sentenced Applicant to imprisonment for a term of 15 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Joseph L. Savitz, III, Esq., who raised the following issues:

The trial judge committed reversible error by refusing to direct a verdict acquitting Hammond of armed robbery, since the State failed to introduce any substantial circumstantial evidence that she was anything other than merely present when the incident happened, regardless of which version of events – Moore's or Niles' – the jury chose to believe.

By unpublished opinion decided October 26, 2011, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Hammond, Op. No. 2011-UP-476 (S.C. Ct. App. filed Oct. 26, 2011). The Remittitur was issued on November 14, 2011.

### **Present Application**

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. "Refer to Final Brief"
  - a. "Refer to Final Brief"

By order filed August 28, 2013, the Honorable J. Cordell Maddox, Jr. granted Applicant's request for a stay of proceedings pending the resolution of co-defendant Richard Bill Niles, Jr.'s appeal, then pending upon the State's petition for writ of certiorari in the Supreme Court of South Carolina. That appeal was resolved June 10, 2015, with the Supreme Court

reversing the holding of the South Carolina Court of Appeals and affirming co-defendant Niles' conviction. See State v. Niles, 412 S.C. 515, 772 S.E.2d 877 (2015). At the evidentiary hearing, Respondent motioned that the stay be lifted. This Court lifted the stay without objection.

Additionally, at the evidentiary hearing, Respondent motioned to dismiss the application for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act. Applicant responded with a motion to amend her application to allege ineffective assistance of counsel. This Court denied Respondent's motion to dismiss and granted Applicant's motion to amend the application.

## II. 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 records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

### A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's 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." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness

claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

*IAC Allegation #1 – Failure to Adequately Argue for Directed Verdict*

Applicant primarily alleges that Counsel failed to adequately show her lack of involvement or adequately argue that there was no evidence to support her conviction during his motion for a directed verdict. At trial, the parties agreed to follow a consistent procedure in which witnesses would first be cross-examined by counsel for co-defendant Niles, Verdell Barr, Esq., and then by Counsel. Tr. 100, ll. 4-13. Throughout trial, much of Counsel's cross-examination fixed on totally disassociating Applicant from the affair, including recurring questions as to whether a witness personally, or by way of their investigation, had anything to show that Applicant ever shot or robbed the victim, or ever possessed a weapon. See, e.g. Tr. 179-80, 331-32. The State's key witness, Ervin Moore, however, testified that Applicant was driving the car when Niles declared his intent to rob the victim:

Q: Now, during the course of riding to the Best Buy parking lot after he made arrangements for somebody to meet you all there ---

A: Yes, ma'am

Q: --- what did he say if anything?

A: He said that we was going – he was going to do a lick.

Q: What does do a lick mean?

A: Rob somebody.

...

Q: All right, and who was driving the vehicle at this time?

A: Mokeia.

Q: Okay, and where were you sitting?

A: Behind Richard, behind the passenger side.

Q: In the backseat?

A: Yes, ma'am.

Q: And he was in the ---

A: Front seat.

Q: Okay, and when he was telling you he's hitting this lick, going to rob this victim was he in the front seat?

A: Yes ma'am.

Q: And was Mokeia Hammond beside him driving?

A: Yes, ma'am.

Q: And you were in the backseat?

A: Yes, ma'am.

Q: And even with the radio were you able to hear that?

A: I heard a little bit of it.

Q: Okay, you heard enough that you knew what you were going there for?

A: Yeah.

Tr. 380-82. Applicant continued driving. Id. Counsel thoroughly and aggressively impeached Moore, drilling him on his prior drug record, plea deal with the State, differences between his testimony and his prior statement, and other weaknesses in his story. Tr. 421-49.

At the close of the State's case-in-chief, both Counsel and Barr motioned for a directed verdict. Counsel argued that no evidence was introduced to show Applicant directly committed the crimes alleged, nor was there any evidence to justify the application of "hand of one, hand of all":

As the Court has heard, Your Honor, there is no witness that the State has presented that has indicated in any way, shape or form that Mokeia Hammond directly committed any of the crimes for which she is charged, no witness indicated that she directly robbed anyone while armed, no witness testified that she directly possessed a handgun, no witness indicates or testifies that she directly fired a shot that led to the death of James Salter and that being an unlawful killing.

That would bring us to the issue, therefore, of accomplice liability, okay, where the felony murder rule or the hand of one is the hand of all. I would submit that then is the only way that the State could have these charges, you know, go forward. Well, in looking at the testimony the only witness that I recall from the State who gives any testimony whatsoever regarding what occurred that day among the three Codefendants is Ervin Moore and what I recall Ervin Moore saying is that at some point in time he heard Rich Niles say "I'm going to hit a lick," or something to that effect. I do not recall hearing any testimony indicating that Mokeia Hammond heard that statement. I do not remember hearing any testimony that would indicate that Mokeia Hammond even knew whatever that terminology or that slang is supposed to mean. I do not recall hearing any testimony indicating that as a result of hearing this slang phraseology that Mokeia Hammond in any way, shape, or form indicated that she was and knew of a plan to commit a robbery or indicated that she was part of a plan to commit a robbery.

In fact, from what I recall hearing, the light most favorable, taken in the light most favorable to the State the only evidence is Ervin Moore says at some point Rich Niles said, "I'm going to hit a lick," no indication whatsoever, A, as to whether Mokeia Hammond heard those words, B, whether she would have any idea what those words meant because I do not believe that we will be involved with conceit that every member of a certain ethnic group happens to know and recognize any gutter street slang that is thrown out there, but I don't personally recall hearing anything from Ervin Moore or any other witness indicating that Mokeia Hammond specifically knew of any plan to rob anyone.

Tr. 525-26 (paragraph breaks added). The motion was denied. Tr. 529, ll. 4-6. On appeal, the South Carolina Court of appeals held that "substantial circumstantial evidence existed showing [Applicant's] guilt." State v. Hammond, Op. No. 2011-UP-476 (S.C. Ct. App. filed Oct. 26, 2011).

At the evidentiary hearing, Counsel reported meeting or speaking with Applicant on seven different occasions prior to trial. Counsel summarized the facts of the case. Counsel condemned Moore's "doing a lick" testimony as a ludicrous statement. Nonetheless, Counsel identified it as the crux of Applicant's conviction and as the key to establish her guilt under hand-of-one, hand-of-all. When asked why he did not question Moore as to whether Applicant heard the "doing a lick" statement, Counsel replied that doing so would have been asking Moore to speculate. Counsel testified that he did not feel Applicant needed to testify at trial, as he felt his client was in a good place prior to co-defendant Niles' testimony. Nonetheless, Counsel explained that he never tells any client not to testify, but rather discusses the options available to them and the possibility of testifying. Counsel could not recall why Applicant did not testify, but noted that she could have hurt herself by testifying and potentially provided facts necessary to earn convictions on her other charges. Counsel's theory of what occurred was that co-defendant Niles had no reason to rob the victim, but that the only person who wished to rob was Moore.

Applicant testified that she did not recall defense counsel ever trying to contact her prior to trial. Applicant claimed there was evidence not presented at trial and that Counsel never challenged Moore on his inconsistent statements. Applicant suggested that the State should have tested under Moore's fingernails for DNA evidence. Applicant recalled that Counsel told her it would be best if she did not testify.

This Court finds no deficiency on the part of counsel nor prejudice therefrom. The sufficiency of the evidence to support the trial court's denial of Applicant's motion for a direct verdict has already been settled by the Court of Appeals. The trial transcript reflects Counsel's consistent strategy of disassociating Applicant from the shootout that occurred, in favor of "mere presence," despite her role as the driver. Counsel effectively cross-examined witnesses and argued his motion for a directed verdict. Applicant introduced no evidence or testimony that

Counsel could have otherwise utilized to her benefit. Applicant's assertion that Counsel did not impeach Moore is not at all credible, as evidenced by the exhaustive impeachment reflected in the trial transcript. Nor does this Court find credible Applicant's claim that Counsel did not meet with her prior to trial, given Counsel's credible recitation of meetings and conversations with Applicant. Accordingly, Applicant has failed to meet her burden of proof, and her request for relief is **DENIED**.

### **III. CONCLUSION**

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### **IT IS THEREFORE ORDERED:**

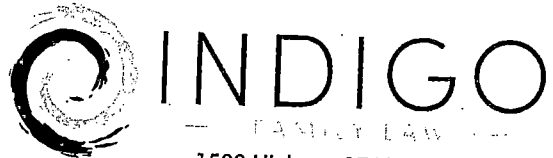
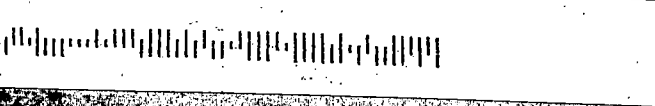
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of December, 2017.



WILLIAM H. SEALS, JR.  
Presiding Judge  
Fifteenth Judicial Circuit

Mari, South Carolina



1500 Highway 17 N., Suite 102  
Surfside Beach, SC 29575

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JAN 18 2018  
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The Honorable Jenny Abbott Kitchings  
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