

Law Office of Leah B. Moody, LLC

Leah B. Moody
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RECEIVED
JUL 08 9 11 AM 2019

S.C. SUPREME COURT

June 18, 2019

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

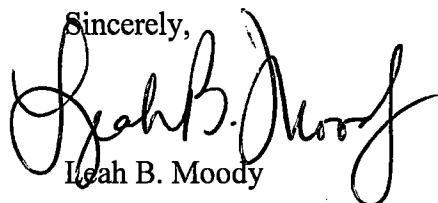
RE: Tony Lamont Young, #365002, vs. State of South Carolina
C.A. No.: 2016-CP-40-3641

Dear Mr. Shearouse:

The Richland County Court of Common Pleas appointed my office to represent **Tony Young** 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 the Post-Conviction Relief Application.

Thank you for your assistance with this matter.

Sincerely,



Leah B. Moody

LBM/bd

Enclosures

cc Tony Young
Lindsey McCallister, Esquire, SC Attorney General's Office
The Honorable Jeanette McBride, Clerk of Court, Richland County
Sharon Graham, SCCID

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUL 08⁹ 2019
S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Presiding in Richland County

Case No. 2016-CP-40-3641

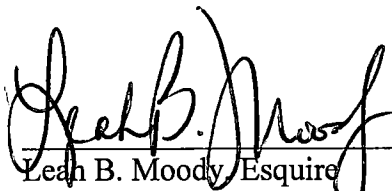
Tony Lamont Young, #365002, Appellant,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Tony Lamont Young appeals the order of the Honorable Jocelyn Newman, dated April 30, 2019, and mailed on June 5, 2019. Appellant received written notice of entry of the final order on June 10, 2019.


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:
Lindsey A. McCallister, SC Attorney General's Office
Attorney for Respondent
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
JUL 08⁹ 2019

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Presiding in Richland County

Case No. 2016-CP-40-3641

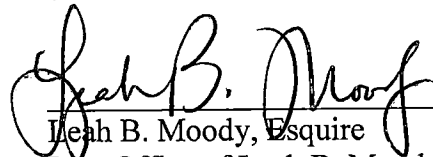
Tony Lamont Young, #365002,..... Appellant,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Lindsey A. McCallister, Esquire, SC Attorney General's Office, by depositing a copy of it in the United States Mail, postage prepaid, on July 4, 2019, addressed to its attorney of record, Lindsey A. McCallister, Esquire, SC Attorney General's Office, 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
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July 4th, 2019

Cc Tony Young
Lindsey McCallister, Esquire, SC Attorney General's Office
The Honorable Jeanette McBride, Clerk of Court, Richland County
Sharon A. Graham, SCCID

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Tony Lamont Young (SCDC #345002),

Applicant,

v.,

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Civil Action No. 2016-CP-40-3641

ORDER OF DISMISSAL

FILED
2018 APR 30 AM 11:2
JAMES R. BARBER, III
CLERK OF COURT
RICHLAND COUNTY


This matter comes before the Court upon Application for Post-Conviction Relief ("PCR") filed by Applicant Tony Lamont Young ("Applicant") on June 13, 2016. Respondent filed its Return on July 21, 2017. On January 25, 2018, a hearing was conducted at the Richland County Judicial Center. Applicant was present along with his counsel, Leah B. Moody, Esquire. The State was represented by Jessica Kinard, Esquire.

For the reasons set forth below, the Application for Post-Conviction Relief is DENIED, and this matter is DISMISSED WITH PREJUDICE.

FACTUAL AND PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the March 2014 term of the Richland County Grand Jury in indictment 2014-GS-40-1751 for Murder. Subsequently, Applicant was indicted at the December 2014 term in indictment 2014-GS-40-8317 for Armed Robbery. Applicant was represented on these charges by Anastasia Walker, Esquire ("plea counsel").

On August 10, 2015, Applicant pled guilty to Murder and Armed Robbery. The Honorable James R. Barber, III, imposed a negotiated sentence of confinement for a period of twenty years for


Page 1 of 8

Order of Dismissal

Tony Lamont Young v. State, 2016-CP-40-3641

Armed Robbery and thirty-five years for Murder to be served concurrently. Applicant received 680 days' of credit for time served and did not appeal his convictions or sentences.

Applicant filed an application for PCR on June 13, 2016, in which Applicant alleged he was being held in custody unlawfully due to ineffective assistance of counsel stating the following reasons: (1) plea counsel failed to properly go over Applicant's case with him; and (2) plea counsel failed to inform Applicant of amount of evidence present in the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

I. TESTIMONY OF APPLICANT: INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleged he received ineffective assistance of counsel due to multiple deficiencies by plea counsel which are laid out in Applicant's Application and discussed further in the upcoming paragraphs. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney

provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

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." Id. at 117-18, 386 S.E.2d at 625; see Strickland, 466 U.S. at 688, 692, 104 S. Ct. at 2065, 2067 ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); see also Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

"Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for

employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

This Court will now address each allegation of ineffective assistance of counsel as follows:

A. Ineffective assistance of counsel for failure to properly go over Applicant’s case with him

During the evidentiary hearing, Applicant testified he was first appointed Jacqueline Bambach, Esquire, of the Richland County Public Defender’s Office as counsel. Applicant stated Attorney Bambach provided Applicant with some discovery but did not provide Applicant with any forensics evidence. Applicant further testified Attorney Bambach received statements from potential witnesses but never interviewed the potential witnesses.

Applicant stated Attorney Bambach moved out of state and Applicant was subsequently appointed plea counsel. Applicant testified he and plea counsel met several times and discussed Applicant’s recorded confession to law enforcement. Applicant stated he told plea counsel that he believed his confession was coerced and showed plea counsel a case the Applicant referred to as “Chief v. Jackson”¹. Applicant testified he believed his confession was coerced because he initially declined to speak with law enforcement, but ultimately talked because he was under the influence of alcohol and marijuana. Applicant testified he wanted to investigate his confession further and review the recorded video. Applicant further testified plea counsel failed to challenge Applicant’s confession. Applicant stated had plea counsel challenged his confession and had he reviewed forensic evidence, he would not have pled guilty and instead would have proceeded to trial. Applicant also testified, plea counsel sent him forensic evidence after his guilty plea. Applicant contended his decision to plead

¹ Applicant may have been referring to Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964).

guilty was based on plea counsel's advice that a guilty plea would be a better option than a trial.

B. Ineffective assistant of counsel for failure to notify Applicant of amount of evidence present in case.

Applicant testified plea counsel failed to review all evidence included in the case, including DNA samples. Applicant stated that the lack of information concerning discovery forced him to make an informed decision to plead guilty. Applicant admitted that he was known for carrying knives, however, Applicant stated he confessed under duress. Applicant testified his defense at trial was to suppress or redact statements Applicant made to law enforcement. Applicant further testified he believed he was wrongfully arrested.

II. TESTIMONY OF PLEA COUNSEL

Plea counsel also testified at the evidentiary hearing and corroborated many of Applicants allegations. Specifically, plea counsel admitted that she begun preliminary trial preparation, but did not hire an investigator and did not personally interview any witnesses. Plea counsel also agrees that she did not review the Applicant's physical file. However, plea counsel testified she reviewed Attorney Bamback's personnel file concerning Applicant's case.

Plea counsel stated she discussed with Applicant his confession to law enforcement. Further, plea counsel stated she discussed with Applicant the opportunity to challenge his confession at trial, however, plea counsel testified she explained to Applicant the unlikelihood of success. Plea counsel testified Applicant was Mirandized at the time of his confession and voluntarily made a statement to law enforcement. Plea counsel also testified that she discussed with Applicant certain defense strategies such as stand your ground and self-defense, but expressed the unlikelihood of success of these strategies at trial. Plea counsel stated if Applicant proceeded to trial, she would have attempted to suppress Applicant's statement to law enforcement.

Finally, plea counsel testified she did not believe Applicant would have been successful at trial because of the abundance of evidence against Applicant, thus she advised Applicant to plead guilty. Applicant plead guilty a week before Applicant's scheduled trial. Plea counsel further testified, Applicant initially wanted to proceed with a trial, however, decided to consider a plea once the State's plea offer was under forty (40) years.

CONCLUSIONS OF LAW

I. INVOLUNTARY PLEA

Applicant alleges that his guilty plea was involuntary because it was coerced by plea counsel, who failed to properly go over Applicant's case with him, and failed to inform Applicant of amount of evidence present in the case. These allegations are without merit.

"Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). "A defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases." Richardson v. State, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993) (citing Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 209 (1985)).

"[A] guilty plea cannot be attacked as based on inadequate legal advice unless counsel was not 'a reasonably competent attorney' and the advice was not 'within the range of competence demanded of attorneys in criminal cases.'" Strickland v. Washington, 466 U.S. 668, 687 (1984) (quoting McMann v. Richardson, 397 U.S. 759, 770 (1970)). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-88.


"Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689 (citation omitted). Applicant has not done that here.

Having weighed the credibility of the testifying witnesses and having considered the admissions and explanations offered, the Court cannot find that plea counsel was not "a reasonably competent attorney" or that her advice was not "within the range of competence demanded of attorneys in criminal cases." The Court finds no professional errors on the part of plea counsel; therefore, no prejudice could have resulted from plea counsel's representation. Further, while Applicant contends that he would have gone to trial but for counsel's advice of the amount of evidence against him, this is not supported by the evidence. Rather, the credible testimony in this case is that Applicant wanted to plead guilty and hoped the plea offer made by the State would be under forty (40) years. Therefore, the PCR application is denied as to these allegations.

II. INVESTIGATION AND EVIDENCE CONSIDERED

Finally, Applicant contends that plea counsel failed to thoroughly go over Applicant's case with him and to notify Applicant of amount of evidence present in the case. These allegations are also without merit, and Applicant has failed to provide any evidence that would entitle him to relief.

A PCR applicant is not entitled to relief where there is no evidence presented at his PCR hearing to demonstrate how the outcome of his case might've been different if counsel were more prepared. *Skeen v. State of South Carolina*, 325 S.C. 210, 213-15, 481, S.E.2d 129, 131-32 (1997). This is particularly true here, where Applicant pled guilty and wanted to plead guilty.


Page 7 of 8

Order of Dismissal


Tony Lamont Young v. State, 2016-CP-40-3641

Similarly, Applicant has failed to offer evidence of his claims of coercion in his confession to law enforcement. Further, any such claims are obviated by Applicant's guilty plea. Challenges regarding the arrest and his voluntary confession, in essence, claims that Applicant's constitutional rights were violated. However, any related constitutional rights were waived when Applicant pled guilty to the charge. Without evidence that Applicant's waiver of those rights was not knowing, voluntary and intelligent (which Applicant doesn't even allege), Applicant cannot prevail on this claim, and the PCR application is denied as to these allegations as well. See, e.g., Pittman v. State of South Carolina, 337 S.C. 597, 524 S.E.2d 623 (1999) (discussing guilty pleas and waiver of constitutional rights).

IT IS THEREFORE ORDERED that the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

IT IS FURTHER ORDERED that Applicant Tony Lamont Young be REMANDED to the custody of the State of South Carolina.

AND IT IS SO ORDERED.


Jocelyn Newman
Presiding Judge

April 30, 2018
Columbia, South Carolina.

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP4003641

Tony Lamont #365002 Young	State Of South Carolina	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <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:

2018 APR 30 AM 11:20
 FILED
 RICHLAND COUNTY

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: _____

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.

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

Circuit Court Judge

Judge Code

4/30/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on April 30, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

Tony Lamont #365002 Young Broad River Correctional
Institution 4460 Broad River Road Columbia, SC 29210
Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock
Hill, SC 29730

Jessica Elizabeth Kinard PO Box 90860 Columbia, SC
29290-1860

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Court Reporter

Jeanette W. McBride - 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-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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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H CAROLINA 29211-1549

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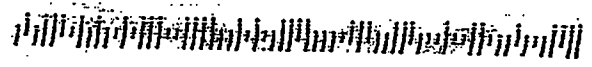


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Leah B. Moody, Esquire
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235 East Main Street, Suite 115
Rock Hill, South Carolina 29730

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Law Office of Leah B. Moody, LLC

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JUL 09 2019

S.C. SUPREME COURT

June 18, 2019

The Honorable Jeanette McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

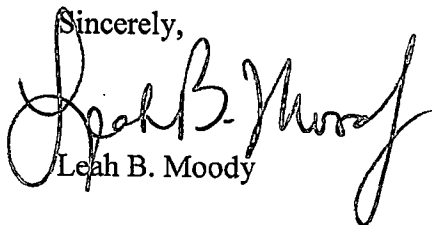
RE: Tony Lamont Young, #365002, vs. State of South Carolina
C.A. No.: 2016-CP-40-3641

Dear Mrs. McBride:

The Richland County Court of Common Pleas appointed my office to represent **Tony Young** 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 for your assistance in this matter.

Sincerely,



Leah B. Moody

LBM/bd

Enclosures

cc Tony Young
Lindsey McCallister, Esquire, SC Attorney General's Office
The Honorable Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
Sharon Graham, SCCID

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JUL 09 2019

S.C. SUPREME COURT

June 18, 2019

Lindsey McCallister, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

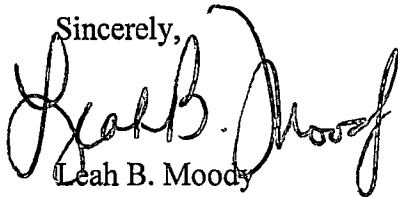
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C.A. No.: 2016-CP-40-3641

Dear Ms. McCallister:

The Richland County Court of Common Pleas appointed my office to represent **Tony Young** 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 for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/bd

Enclosures

cc Tony Young

The Honorable Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
The Honorable Jeanette McBride, Clerk of Court, Richland County
Sharon Graham, SCCID

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lbmatty@comporium.net

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JUL 09 2019

S.C. SUPREME COURT

June 18, 2019

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

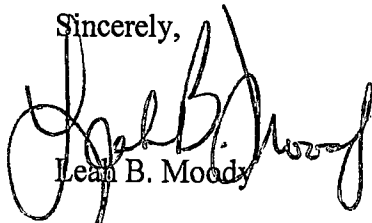
RE: Tony Lamont Young, #365002, vs. State of South Carolina
C.A. No.: 2016-CP-40-3641

Dear Ms. Graham:

The Richland County Court of Common Pleas appointed my office to represent **Maurice McCreary** 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 for your attention in this matter.

Sincerely,

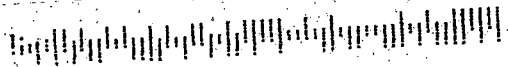


Leah B. Moody

LBM/bd

Enclosures

cc Tony Young
Lindsey McCallister, Esquire, SC Attorney General's Office
The Honorable Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court
The Honorable Jeanette McBride, Clerk of Court, Richland County



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Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, South Carolina 29730

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