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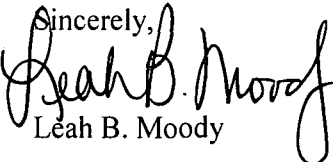
February 5, 2013

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

**RE: Phillip F. Watts, Jr. v. State of South Carolina**  
**Appellate Case No.: 2012-213513**  
**Lower Court C.A. No.: 2010-CP-46-3969**

Dear Mr. Shearouse:

Please find enclosed my letter and one (1) copy regarding the above-referenced matter for filing. Please return a clocked copy of this document in the enclosed self-addressed stamped envelope. Thank you for your attention in this matter.

Sincerely,  
  
Leah B. Moody

Enclosure(s)

cc: J. Rutledge Johnson, Esquire  
Office of Appellate Defense

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February 5, 2013

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

**RE: Phillip F. Watts, Jr. v. State of South Carolina (Motion to Reinstate the Appeal)**  
**C.A. No.: 2010-CP-46-3969**

Dear Mr. Shearouse:

This letter is in response to your letter regarding the above-referenced matter. I submit this letter as to why the PCR judge's determination was improper as to the statute of limitation but proper as to Mr. Watts' belated direct appeal.

**The PCR judge's determination was improper as to the PCR statute of limitation.**

The PCR judge's determination was improper as to the statute of limitation pursuant to *Ferguson v. State*, 677 S.E.2d 600 (S.C. 2009). In *Ferguson*, the court stated that the rule of *Odom v. State* and *Austin v. State* was extended in *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002). *Wilson* held:

*[E]very defendant has a right to file a direct appeal and one PCR application. There, since counsel had been ineffective in failing to file an appeal, and the statute of limitation in which to file for PCR had expired, we held "policy would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations." Id. at 602.*

Here, after Mr. Watts' plea of Guilty but Mentally Ill, he understood that his prior attorney would file an appeal. His prior attorney failed to timely serve opposing counsel with the Notice of Appeal. The prior attorney's failure to timely file an appeal was in direct contradiction with the statement made to the Defendant and his mother. Mr. Watts was not able to file a timely PCR application for ineffective counsel upon information from his family. The issue presented for PCR is whether the PCR judge erred in denying the Defendant's PCR application in violation of statute of limitation but granted a belated appeal.

The proper finding should be, for policy reasons, the one year statute of limitations does not apply to Mr. Watts' PCR application under *Ferguson*.

**Secondly, Mr. Watts should be entitled to appeal the dismissal of his PCR and receive a full hearing on the merits of his PCR.**

In *Odom v. State*, 523 S.E.2d 753(1999), the court held the one year statute of limitations of S.C. Code Ann. § 17-27-45(A), does not apply to *Austin v. State* appeals. Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." *Odom*, 523 S.E.2d at 755, citing *Aice v. State*, 409 S.E.2d 392, 395 (1991) (emphasis added).

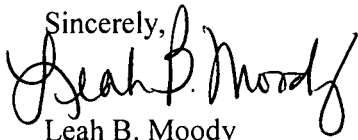
Further, in *Davenport v. State*, 389 S.E.2d 649 (S.C. 1990), the court held "[a]n accused who lacks the capacity to distinguish moral or legal right from moral or legal wrong at the time of the crime is relieved of responsibility for his acts.<sup>1</sup> In this matter, the Defendant was not evaluated as to his mental illness or insanity despite the court allowing the prior attorney time to have the Defendant evaluated. At the plea hearing, the prior attorney stated to the court that the Defendant was mentally ill and relied on an in court statement from the Defendant's mother regarding her son's mental illness. The court found that the Defendant was *not* mentally ill.

Lastly, *State v. Hartfield*, 388 S.E.2d 802 (S.C. 1990), the court outlines the requirements for receiving a verdict of guilty but mentally ill. I would submit to the court that the requirements were not followed in this matter. The Defendant possibly had a defense in his case pursuant to §17-24-10(A) of the S.C. Code Laws. The prior attorney did not provide the proper showing of evidence for the sentencing court to determine the mental status of the Defendant. Further, the prior attorney did not evaluate the case as to whether a defense was present for the Defendant to proceed to trial.

Based on the foregoing reason, Mr. Watts is entitled to a full adjudication on the merits of the original petition, or "one bite of the apple". Specifically, Mr. Watts is entitled to a [1] direct belated appeal as to his Guilty but Mentally ill and [2] a full hearing on the merits of his entire PCR application.<sup>2</sup>

I respectfully submit this letter on behalf of my client. Thank you for your attention this matter.

Sincerely,



Leah B. Moody

Enclosure(s)

cc: J. Rutledge Johnson, Esquire  
Office of Appellate Defense

<sup>1</sup> *State v. Law*, 270 S.C. 664, 244 S.E. 2d 302 (1978); *State v. Cannon*, 260 S.C. 537, 197 S.C. 2d 678 (1973).

<sup>2</sup> In the alternative, Mr. Watts should be entitled to a dismissal without prejudice.



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