

NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
FROM AIKEN COUNTY
THE HONORABLE DOYET A. EARLY, III
May 23, 2013

Indictment # 2012-GS-02-01563

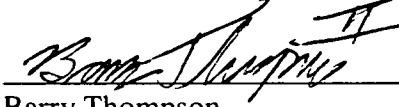
THE STATE OF SOUTH CAROLINA -- Respondent

 VS.

TIMOTHY DRAIN -- Appellant

NOTICE OF INTENT TO APPEAL

Timothy Drain pled guilty and was convicted of Burglary 2nd Degree, on May 21, 2013, before the Honorable Doyet A. Early, III in Aiken, South Carolina. He appeals his conviction and sentence.


Barry Thompson
Attorney for Defendant

Other Counsel of record is:

Jeffrey Slocum
Assistant Solicitor
Second Judicial Circuit
P.O. Drawer 3368
Aiken, SC 29802

RECEIVED

MAY 30 2013

SC Court of Appeals

NOTICE OF INTENT TO APPEAL

State of South Carolina

Vs:

Timothy Drain- Appellant

2012-GS-02-01563

CERTIFICATE OF SERVICE

I, Loretta Walker, do hereby certify that I have this day served the original of Appellate's Notice to Appeal upon the South Carolina Court of Appeals, and copies of Appellate's Notice of Intent to Appeal to the Clerk of Court of Aiken County, and to J. Strom Thurmond, Solicitor, Second Judicial Circuit, by placing same in the United States Mail properly addressed and with correct postage affixed thereto:

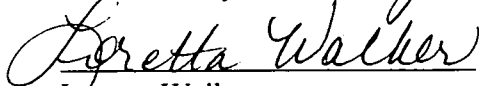
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

South Carolina Commission
Of Appellate Defense
P. O. Box 11589
Columbia, SC 29211

Clerk of Court
Aiken County Judicial Circuit
Post Office Box 583
Aiken, SC 29802

J. Strom Thurmond
Solicitor
Second Judicial Circuit
Post Office Box 3368
Aiken, SC 29802

Dated this 24 day of May, 2013



Loretta Walker
Secretary to Appellant's Attorney
Post Office Drawer 2247
Aiken, SC 29802
803-642-1732

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MAY 30 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

vs.

Timothy Drain,

Defendant.

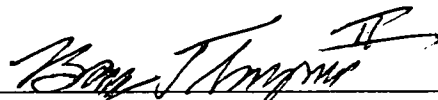
STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Indictment #: 2012-GS-02-01563

RULE 203(d)(1)(B)(iv) EXPLANATION

Pursuant to Rule 203(d)(1)(B)(iv), the undersigned asserts that she does not have a good faith basis to believe that any issues are properly before the Court of Appeals, and the undersigned did not object to the sentence or file a motion to reconsider the sentence. Nevertheless, the undersigned consulted with the Appellant about his right to appeal, and after consultation, the undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. *See Frazer v. South Carolina*, 430 F.3d 696, 706 (4th Cir. 2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'") (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

Respectfully submitted,



Barry Thompson II
Aiken County Public Defender
Post Office Drawer 2247
Aiken, SC 29802
(803) 642-1732

Aiken, South Carolina
March 21, 2013

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MAY 30 2013
SC Court of Appeals

ARREST WARRANT

1-093291

STATE OF SOUTH CAROLINA
County/ [X] Municipality of
City of Aiken

11-35382 THE STATE
against

Timothy Drain

Address: 656 Satcher Pond Road
Ridge Spring, SC 29129-

Phone: SSN: 87-62-1500
Sex: M Race: B Height: 5 10 Weight: 189
DL State: DL #:

DOB: 8/2/1978 Agency ORI #: SC0020100

Prosecuting Agency: Aiken Public Safety
Prosecuting Officer: Anthony K Glover

Offense: BURGLARY 2ND
Offense Code: 0080

Code/Ordinance Sec: 16-11-0312

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

The accused is to be arrested and brought before me to be
dealt with according to the law.

Date: Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Timothy Drain on 04-15-11

Sgt. Caden 522
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Aiken Municipal Court
251 Laurens St., N.W.
Aiken, SC 29801

ORIGINAL

STATE OF SOUTH CAROLINA

County/ [X] Municipality of

City of Aiken

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on 04/14/2011
State of South Carolina (or ordinance of
in the following particulars:

DESCRIPTION OF OFFENSE:

BURGLARY 2ND

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

Upon information and belief, the defendant, Timothy Drain, did commit the offense of 'Burglary' in the 2nd Degree. The
defendant did enter the residence on one Phyllicia Dubose by prying the back door open with a crowbar and gaining
entry. The defendant did enter the residence during the day and removed a flat screen Phillips TV. This incident
occurred at 715 Barnwell Avenue NE within the city limits of Aiken, SC. This offense is in violation of the S.C. Code
of laws as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ [X] Municipality of

City of Aiken

Affiant's Address 251 LAURENS ST NW
AIKEN, SC 29801-

Affiant's Telephone (803)642-7620 x 0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 04/14/2011 defendant Timothy Drain

did violate the criminal laws of the State of South Carolina (or ordinance of
City of Aiken) as set forth below:

DESCRIPTION OF OFFENSE:

BURGLARY 2ND

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me
on 04/15/2011

Signature of Issuing Judge (L.S.)

Judge Code: 0080 35

Judge's Address 251 Laurens St NW

Judge's Telephone (803)642-7620 x 0000

Issuing Court: [X] Municipal

ORIGINAL

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0201563
 A/W#: 1093291
 Date of Offense: 4/14/2011
 S.C. Code §: 16-11-0312(A)
 CDR Code #: 0080

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
 STATE VS. Timothy Shaw Drain

AKA: _____
 Race: _____ Sex: M Age: 34
 DOB: 08-02-1978 SS#: 087-62-1500
 Address: 656 Satcher Pond Road
 City, State, Zip: Ridge Spring, SC 29129
 DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree

in violation of § 16-11-0312(A) of the S.C. Code of Laws, bearing CDR Code # 0080
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. Cap of 4 years (defendant's initials)

ATTEST: John W. Weeks SC Bar# 100236 Defendant
Jeffrey A. Swann, Jr SC Bar# 72900 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 4 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ probation for _____
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: _____ § 24-13-40 to be calculated and applied
 The Defendant is to be given credit for time served pursuant to S.C. Code _____ by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient:	\$	\$
*Fine:		
§ 14-1-206 (Assessments 107.5%)	\$100	\$ 100.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$12	\$
§ 56-5-2995 (DUI Assessment)	\$25	\$
§ 56-1-286 (DUI Breath Test)	\$500	\$
Proviso 47.9 (Public Def/Prob)	\$25	\$ 25.00
§ 14-1-212 (Law Enforce. Funding)	\$150	\$
§ 14-1-213 (Drug Court Surcharge)	\$50	\$
§ 50-21-114(BUI Breath Test Fee)	\$40/ea	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$5	\$ 5.00
Proviso 90.5 (SCCJA Surcharge)		\$ 3.90
3% to County (if paid in installments)		\$ 133.90
TOTAL		

PTUP _____ days/hours Public Service or _____
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol testing _____
 Fine may be pd. in equal, consecutive _____
 pmts. of \$ _____ paid to Public _____
 Other: _____

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Elizabeth Goddard, Clerk of Court of General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this MAY 23, 2013
 Elizabeth Goddard
 Clerk of Court, Aiken County, S.C.
 Dawn Starnes
 Deputy Clerk

Appointed PD or appointed other counsel. §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: W. E. Early, III
 Judge Code: 0136
 Sentence Date: May 21, 2013

Clerk of Court/Deputy Clerk: Shannon D. Rosenkrantz
 Court Reporter: Lisa H. Davenport
 SCCA/217 (03/2011)

WITNESSES

Aiken Department Of Public Safety

Anthony K Glover

Law Enforcement Case #: 11-35382

DOCKET NO. 2012GS0201563

The State of South Carolina
County of Aiken

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2012

ARREST WARRANT NUMBER

FILED

1093291

Liz Godard
S.C.C.P. & G.S.
Deputy Clerk

TIMOTHY SHAW DRAIN

THE STATE
VS.

ACTION OF GRAND JURY

True Bill

Walter Caldwell
Foreperson of Grand Jury
Date: November 8, 2012

VERDICT

CDR #: 0080

Indictment for

BURGLARY IN THE SECOND DEGREE

§ 16-11-0312

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAY 23, 2013

Liz Godard
C.C.C.P. & G.A., Aiken County, S.C.

Deputy Clerk

**OFFICE OF THE SECOND JUDICIAL CIRCUIT PUBLIC
DEFENDER**

**410 Barnwell Avenue N.W.
Post Office Box 2247
Aiken, South Carolina 29802**

May 23, 2013

South Carolina Commission
On Indigent Defense
Attention: Lorie French
P. O. Box 11589
Columbia, SC 29211

RE: NOTICE OF INTENT TO APPEAL
TIMOTHY DRAIN
I-093291 / 2012-GS-02-01563

Dear Mrs. French:

Please find enclosed copies of Notice of Intent to Appeal, Indictment 2012-GS-02-01563, Arrest Warrant I-093291, the defendant's affidavit of indigency and the Rule 203(B) explanation.

Timothy Drain pled in General Sessions Court to the charge of Burglary 2nd Degree, and was sentenced on May 21, 2013 before the Honorable Doyet A. Early, III. Ms. Lisa Davenport served as the Court Reporter. Her address is P. O. Box 5485, Aiken, SC 29804.

I am available to discuss this case if you so desire.

Sincerely,


Barry Thompson
Assistant Public Defender

BT:lw
Enclosure

RECEIVED

MAY 30 2013

SC Court of Appeals

NOTICE TO APPELLATE DEFENSE

To: Division of Appellate Defense/ Office of Attorney General

From: L. Bellamy

Date: June 5, 2013

Re: Notice of Filing of Notice of Appeal

Case Name: The State v. Timothy Drain

Case Number: 2013-001181

County: Aiken

Date of Filing: May 30, 2013

Filed by: Barry Thompson, Esquire

Judge: The Honorable Doyet A. Early, III

Hearing Date: May 21, 2013