

STATE OF SOUTH CAROLINA

vs.

JOHN EDWARD ATWELL

Defendant.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Indictment #: 2022GS3500067

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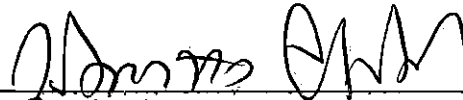
AUG 28 2023

SC Court of Appeals

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), the undersigned asserts that he 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,



Jason Chehoski
Tri County Public Defender
P. O. Box 1852
McCormick, South Carolina

McCormick, South Carolina
August 23, 2023

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF McCORMICK)
 STATE OF SOUTH CAROLINA,)
)
 -vs-)
)
 JOHN EDWARD ATWELL,)
)
) Indictment Number 2022GS3500067
) Warrant Number 2022A3510100077
)
 Defendant.)

A TRUE COPY

Heard: April 16, 2023 at McCormick, South Carolina
 State's Attorney: Douglas W. Fender, II
 Defense Attorney: Jason S. Chehoski
 Court Reporter: Digital – Stacy Johnson

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AUG 28 2023

SC Court of Appeals

Clerk of Court, McCormick County

By: _____

A timely motion was filed by the defendant to reconsider and to amend the sentence imposed on August 7, 2023. The motion is granted as set out below. The amended sentence is that the defendant be committed to the South Carolina Department of Corrections for a period of 7 years, provided that upon the service of 90 days in the County Jail, the balance is suspended, and he is placed on probation for a period of 3 years. He is to receive credit towards his 90-day jail term for time served at the South Carolina Department of Corrections since August 7, 2023. (His attorney indicated that he served 3 days in jail pre-plea, and if he did, he is entitled to credit for that time served towards his 90-day sentence.) He is subject to all the standard conditions of probation, including passing random drug and alcohol screens, as well as the following special conditions:

WPK #1

- (1) The defendant is placed on home detention with electronic monitoring for a period of 6 months after his release from incarceration, and may be away from his

home during that period only to travel directly (a) to and from meetings with his probation agent, (b) to and from work or legitimate volunteer activities at the animal shelter, which he has done in the past, (c) to and from medical and dental appointments, including any substance abuse or addiction programs in which he may be enrolled; (d) to and from organized religious services; (e) to and from his public service requirements; (f) to and from activities or meetings approved in advance by his probation agent; and, (g) to and from a grocery store located in McCormick County, provided that he may be away from home to shop for groceries no more than one hour and must be accompanied by a responsible adult since he has indicated that drugs are being distributed at the grocery store parking lot.

*WPK
#2*

- (2) He is not to be outside the State of South Carolina until he has completed the 6 months of house arrest and the public service work required below. However, in the event of a medical emergency, he may be transported by EMS to a hospital in the Augusta, Georgia area, but must return immediately to South Carolina upon his release from hospitalization.
- (3) The electronic monitoring may be removed upon successful completion of house arrest, and he may apply to move to the State of Florida, as proposed at the guilty plea, at the conclusion of his house arrest and public service work.
- (4) The defendant is to have no contact, directly or indirectly, with the confidential informant. He is not to be within a 500-yard radius of the informant's home or her husband's place of work. If the defendant encounters the confidential informant at

any of the places he is approved to be, aside from his probation meetings, he must leave immediately.

- (5) The defendant must perform 320 hours of public service.
- (6) The defendant must complete such addiction treatment as is deemed appropriate by the probation authorities.
- (7) The defendant may not consume drugs, except for those prescribed by licensed medical personnel. He may take over-the-counter drugs for legitimate medical issues, but is not to purchase or possess any drug that includes pseudoephedrine or which induces euphoria. He may not consume any alcohol.
- (8) The defendant may not possess any firearm or ammunition, actually or constructively.

Well #3

In all other respects, the sentence remains as originally imposed, and he must provide his DNA sample, at his expense, and pay his court costs as directed. A copy of the original sentence sheet is attached.

Mr. John Edward Atwell pleaded guilty to Distribution of Methamphetamine and was sentenced to 7 years of imprisonment, suspended upon the service of 18 months, with probation for 5 years. No recommendations or negotiations concerning sentencing were reached between the prosecutor and defense counsel. Charges of Distribution of Methamphetamine (2022A3510100076 and 2022A3510100078) were dismissed in exchange for his plea, along with charges for Possession of Less Than One Gram of Methamphetamine (2022A3510100086) and Simple Possession of Marijuana (2022A3510100086). The distribution charges arose from separate controlled buys arranged with the same confidential informant. The State recited that the defendant had

methamphetamine in individual baggies as for distribution at the time of his arrest. The State also contends that federal Drug Enforcement Agency officers were involved in this matter.

The public index shows that Mr. Atwell was arrested on April 8, 2022 and released on personal recognizance bonds the same date. One charge lists his arrest date as November 22, 2021, but that appears to be a scrivener's error. As indicated above, his attorney claims that Mr. Atwell served 3 days in jail pre-plea.

Mr. Atwell is 67 years of age. His attorney indicated the following: Mr. Atwell moved to South Carolina from Florida in 2008 to obtain work; he has worked at various businesses and volunteered for non-profit organizations; he was a founding member of a local church; and, he worked with the census bureau in 2009-2010. He is divorced with one child and one grandchild. He claims that he only sold drugs to one person, the confidential informant in this case. He has no prior criminal record, aside from vehicular traffic violations. He has not been arrested since his release on bond, but had contact with law enforcement for an incident wherein it is alleged that he harassed the confidential informant.

WPC
#4

Mr. Atwell's son, Christopher Atwell, and his brother, Don Atwell, spoke eloquently on the defendant's behalf at the sentencing hearing on August 7. His son was particularly impressive. Christopher Atwell is 31 years of age and indicated that he will take his father with him to live in Florida.

The Solicitor was asked if any money was recovered. None was. The weight of drugs involved was between 0.98 and 1.3 grams. Major Brock stated that several buys were made from this defendant. This case was set for trial, the defendant having rejected

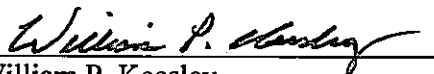
a plea offer, but the defendant elected to plead guilty on the Monday preceding the beginning of the court term. This court has no idea what plea offer was extended.

One of the significant concerns of the court was the recitation that the defendant knows the confidential informant's identity and had recently had a confrontation where he confronted the informant and law enforcement officials were called to the scene on a claim of harassment. That issue was discussed further at the reconsideration hearing today, and it appears that there were contacts previously with the husband of the informant wherein he threatened to expose the informant's relationship with law enforcement. The court has considered the event in fashioning the amended sentence. The court has also been further informed about involvement of the DEA, and this does not appear to be indicative of the defendant being a major drug dealer, though any distribution is reprehensible.

Having reconsidered the matter,

IT IS ORDERED that the motion to amend the sentence is granted as specified above.

AND IT IS SO ORDERED.



William P. Keesley
Judge

August 16, 2023

ARREST WARRANT

2022A3510100077

STATE OF SOUTH CAROLINA

County/ Municipality of
Mccormick

THE STATE
against
John Edward Atwell

Address: _____

Phone: _____ SSN: _____
Sex: M Race: W Height: 5 9 Weight: 180

DL State: SC DL #: _____

DOB: _____ Agency ORI #: SC0330000

Prosecuting Agency: Mccormick County Sheriff

Prosecuting Officer: Christopher E Motes - S00009

Offense: Drugs / Distribution, etc. of methamphetamine, 1st
(Excludes manufacturing meth; see CDR Code

Offense Code: 3198

Code/Ordinance Sec: 44-53-0375 (B) (1)

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.

(L.S.)

Signature of Judge

Date: _____

RETURN
A copy of this arrest warrant was delivered to
defendant John Edward Atwell
on 04/06/2022

[Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
Mccormick Magistrate
211 West Augusta Street, Extension
Post Office Box 1116
Mccormick, SC 29835

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Mccormick)

AFFIDAVIT

ORIGINAL S.C. Attorney General
April 21, 2003
SCCA 51B

Personally appeared before me the affiant Christopher E Motes who
being duly sworn deposes and says that defendant John Edward Atwell
did within this county and state on or about 3/18/2022 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Mccormick)
in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Distribution, etc. of methamphetamine, 1st (Excludes manufacturing meth; see CDR Code 3776)

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:

That on March 18, 2022 in the city/county of Mccormick, one John Edward Atwell did knowingly and without authorization distribute methamphetamine, a Schedule II Controlled Substance. See attached affidavit. Incident investigated by Dep. Motes and Major Brock of the MCSOI.

Signature of Affiant

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Mccormick)

Affiant's Address P O Box 1236
Mccormick, SC 29835-
Affiant's Telephone (864)465-3200

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 or about 3/18/2022 defendant John Edward Atwell
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Mccormick) as set forth below

DESCRIPTION OF OFFENSE: Drugs / Distribution, etc. of methamphetamine, 1st (Excludes manufacturing meth; see CDR Code 3776)

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 his execution, or as soon thereafter as is practicable

Sworn to and subscribed before me
on 4/1/2022

[Signature] (L.S.)
Signature of Issuing Judge
John Cliff Long
Judge Code: 7261

Judge's Address P. O. Box 1116
McCormick, SC 29835-
Judge's Telephone (864)-85-2-23 x 16

Issuing Court: Magistrate Municipal Circuit

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 CLERK OF COURT
 MCCORMICK COUNTY, SC
 AUG 28 2023
 SD Court of Appeals
 BY: [Signature]
 Clerk of Court, McCormick County

STATE OF SOUTH CAROLINA) ATTACHMENT A
COUNTY OF MCCORMICK) AFFIDAVIT FOR ARREST WARRANT

**Section 44-53-0375 (B) (1) – Drugs / Distribution, etc. of methamphetamine, 1st
(Excludes manufacturing meth; see CDR Code 3776)**

CDR Code: 3198

Case #: 2022-3440

That on March 18, 2022, the Defendant, John Edward Atwell, did knowingly, intentionally and unlawfully commit the offense of Distribution, etc. of methamphetamine, 1st offense, such possession not having been authorized by law. The defendant did distribute a quantity of methamphetamine. The distribution was made to a undercover reliable operative working for the McCormick County Sheriff's Office.

This violation took place at 1519 Jefferson St, McCormick SC, the same being located within McCormick County, SC.

The affiant knows this to be true because the affiant during the course of this investigation has received information and viewed evidence from the investigating officer(s) and/or witnesses implicating the defendant, John Edward Atwell, as being involved in this crime. This affiant and/or other parties are prepared to testify to the same

This being in violation of the South Carolina Code of Laws, 1976, as amended.

This incident was investigated by Deputy Motes and Major Brock with the McCormick County Sheriff's Office.

Sworn to and subscribed before me this 15th day of April,
2022.

[Signature]
Signature of Judge

[Signature]
Affiant

Defendant: John Edward Atwell
Address:
SSN:
DOB:
Race: White
Sex: Male
Height: 5'09
Weight: 180
SCDL#:

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GRENOLLYN D. CHILES
1 2022 APR 12 A 11: 12
CLERK OF COURT
MCCORMICK COUNTY, SC

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AUG 28 2023

SC Court of Appeals

0-15 and/or \$25,000

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF McCormick

STATE VS.

INDICTMENT/CASE# 2022-GS-35-00067

John Edward Atwell

AW#: 2022A3510100077

AKA: _____

Date of Offense: 3/18/2022

Race: White Sex: M Age: 67

S.C. Code §: 44-53-0375 (B) (1)

DOB: _____ SS#: _____

CDR Code #: 3198

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS.

TO: Drugs/ manufacture, distribution, etc. of methamphetamine, 1st

In violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3198

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature] 101195 [Signature] [Signature] [Signature]
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 7 days/months/years/Time Served Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of 18 days/months/years/Time Served and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

2 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

A TRUE COPY

[Signature]
Clerk of Court, McCormick County

By: [Signature]

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SC Court of Appeals

SPECIAL CONDITIONS:

- PTUP after _____ months/years
And Other Terms Listed Below:
- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
 - Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
 - Mental Health Counseling May serve W/E beginning: _____
 - Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours
 - Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
 - Other: DNA

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine: costs

Fine may be pd. in equal consecutive weekly <u>monthly</u> prmts. of	\$ <u>50</u>	Beginning	<u>9/1/24</u>	\$ _____
§14-1-206 (Assessments 107.5%)				\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)			\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)			\$100	\$ _____
§56-5-2995 (DUI Assessment)			\$12	\$ _____
§56-1-286 (DUI Breath Test)			\$25	\$ _____
§14-1-212 (Law Enforce. Funding)			\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)			\$150	\$ <u>150.00</u>
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)			\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)			\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)			\$40/ea	\$ _____
3% to County (if paid in installments)			TBD	\$ <u>20.00</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees			\$500	\$ <u>500</u>
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund			TBD	\$ _____
			TOTAL	\$ <u>770.00</u>

Clerk of Court/Deputy Clerk: _____
 Court Reporter: _____
 Presiding Judge: William P. Hensley
 Judge Code: 105B
 Sentence Date: August 7, 2023

Page 2 of 2
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WITNESSES

McCormick County Sheriff's Department

Christopher E Motes

Law Enforcement Case #: 2022-3440

DWF

ARREST WARRANT NUMBER

2022A3510100077

ACTION OF GRAND JURY

True Bill

Kimberly Tate

Foreperson of Grand Jury

Date: MAY 25 2022

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2022GS3500067

The State of South Carolina

County of McCormick

COURT OF GENERAL SESSIONS

MAY TERM 2022

THE STATE

vs.

John Edward Atwell

CDR #: 3198

Indictment for

Distribution of Methamphetamine

§ 44-53-0375 (B) (1)

S.R. Hubbard III, SOLICITOR

A TRUE COPY

Clerk of Court, McCormick County

By:

[Handwritten signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF MCCORMICK)
)

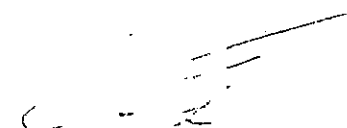
INDICTMENT FOR
Distribution of Methamphetamine

§ 44-53-0375 (B) (1)

At a Court of General Sessions, convened on May 2022, the Grand Jurors of McCormick County present upon their oath:

That in McCormick County, South Carolina, on or about March 18, 2022, the Defendant, **John Edward Atwell**, did unlawfully sale or distribute methamphetamine; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR