

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Debra R. McCaslin, Circuit Court Judge

Indictment Nos. 2022-GS-32-0141A, 01426, 01427A, 01429, 01430A, 01434,
03179, 03180, 03181, 03182, 03183, 03184, 03185, 03186, 03187, 03188, 03189,
03190, 03191, 03192, 03197, 03198, 03199, 03200, 03201, 03203, 03204, 03205,
03207 & 2023-GS-32-06012

The State,

Respondent,

v.

Breanna Audette,

Appellant.

RECEIVED

SEP 22 2023

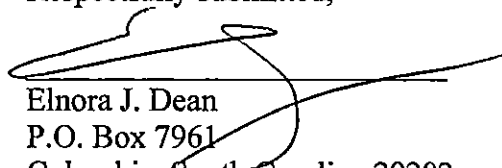
SC Court of Appeals

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

Pursuant to Rule 203(d)(1)(B)(iv), the undersigned asserts that Appellant's appeal of his guilty plea is pursuant to Appellant's Motion to Reconsider Sentence whereby Appellant alleged that the Court failed to consider the mitigating factors in this case when issuing the Court's sentence. Further Appellant alleged that consecutive sentences imposed did not follow the guidance of the South Carolina Legislature. The Court ruled on the Motion to Reconsider Sentence without a hearing and the Order Denying Motion to Reconsider is a part of this record.

September 20, 2023

Respectfully submitted,


Elnora J. Dean
P.O. Box 7961
Columbia, South Carolina 29202
(803) 733-1800
Attorney for Appellant

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) FOR THE 11TH JUDICIAL CIRCUIT

THE STATE,

V.

BREANNA AUDETTE,

Defendant.

2023 APR 11 AIC Case No(s): 2022GS3201421A; 2022GS3201426;
2022GS3201427; 2022GS3201429;
LISA M. COMPTON
CLERK OF COURT
LEXINGTON, SC
2022GS3201430A; 2022GS3201434; 2022GS3203179;
2022GS3203180; 2022GS3203181; 2022GS3203182;
2022GS3203183; 2022GS3203184; 2022GS3203185;
2023GS3206012; 2022GS3203186; 2022GS3203187;
2022GS3203188; 2022GS3203189; 2022GS3203191;
2022GS3203192

MOTION TO RECONSIDER SENTENCE

TO: THE HONORABLE DEBRA MCCASLIN, SUZANNE MAYES & ASHLEY WELLMAN, ASSISTANT SOLICITORS OF THE 11TH JUDICIAL CIRCUIT AND HEATHER WEISS, ASSISTANT ATTORNEY GENERAL

NOW COMES the Defendant, Breanna Audette, by and through her attorney, Elnora J. Dean, respectfully requesting this Honorable Court to reconsider the sentence imposed at a guilty plea hearing on April 13, 2023.

IT APPEARS that the Defendant pled guilty to Unlawful Conduct Towards a Child (30 counts). The offense of Unlawful Conduct Towards a Child carries a maximum penalty of 10 years. The Court imposed a total sentence of 16 years, 10 years concurrent for 29 charges and 6 years consecutive for one charge.

IT FURTHER APPEARS that the Defendant is requesting that the Court reconsider the 16-year sentence imposed on April 13, 2023 and consider a lesser sentence, taking into consideration the mitigating factors that exist and were presented in this case. Mitigating factors to consider in this case include but are not limited to:

1. Defendant was 23 years old when the offenses occurred;
2. Defendant does not have a prior criminal record;
3. Defendant plead guilty to all non-violent offenses;
4. Defendant is a Type I diabetic, requiring daily insulin shots;
5. Victims did not require medical treatment or suffered any physical injury;
6. Defendant was suffering from postpartum depression at the time of the offenses;
7. Defendant is the mother of 2 toddlers;

RECEIVED

SFP 2.2 2023

SC Court of Appeals

8. Defendant is pregnant now and due to high-risk pregnancy, she is scheduled for C-section on May 25, 2023; and

FILED

9. Defendant was on house arrest with electronic monitoring for almost 600 days and did not have any violations.

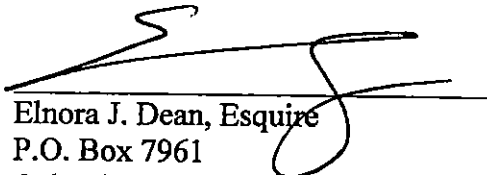
LISA M. COMER
CLERK OF COURT
LEXINGTON, SC

IT FURTHER APPEARS that the State in its argument to the Court did not request consecutive sentences nor did the victims who testified before the Court.

IT FURTHER APPEARS that the South Carolina Sentencing Guidelines Commission in its January 2001 report, in an advisory role, established a sentencing grid as guidance and recommended lower sentences for non-violent offenders. The sentencing guidelines for Class E felonies even with aggravating factors is 8-10 years. Additionally, the Report states that "The Judge is encouraged to consolidate the offenses for a single judgment but retains discretion to sentence each conviction separately and choose whether they will be served consecutively or concurrently." ¹

THEREFORE, based upon the above and other information to be presented, the Defendant respectfully requests a hearing in this matter.

Respectfully Submitted,


Elnora J. Dean, Esquire
P.O. Box 7961
Columbia, South Carolina 29202

April 21, 2023

¹ See South Carolina Sentencing Guidelines Commission, January 2001 Report, Truth in Sentencing/Advisory Sentencing Guidelines and Criminal Justice Plan.
<https://www.scstatehouse.gov/Archives/Legislative/Sentence.doc>

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

FILED IN THE COURT OF GENERAL SESSIONS

2023 APR 11 11:05 AM

Indictment Nos. 2022GS3201421A; 1426-1430A;
1434; 3179-3188; 3191-3192; and 6012;

The State of South Carolina,

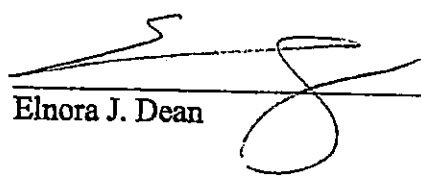
LISA M. COHER
CLERK OF COURT
LEXINGTON SC

vs.

CERTIFICATE OF SERVICE

BREANNA AUDETTE,
Defendant.

I certify that on this date I served the Motion to Reconsider Sentence in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record by delivering said copy to his office located at The Office of the Solicitor, Eleventh Judicial Circuit, 205 East Main Street, Lexington, South Carolina 29072.


Elnora J. Dean

Columbia, South Carolina

This 21st day of April, 2023

RECEIVED

SEP 22 2023

SC COURT of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The State,

vs.

Breanna Audette

Defendant.

IN THE COURT OF GENERAL SESSIONS

Case No(s): 2022GS3201421A; 2022GS3201426;
2022GS3201427; 2022GS3201429; 2022GS3201430A;
2022GS3201434; 2022GS3203179; 2022GS3203180;
2022GS3203181; 2022GS3203182; 2022GS3203183;
2022GS3203184; 2022GS3203185; 2022GS3206012;
2022GS3203186; 2022GS3203187; 2022GS3203188;
2022GS3203189; 2022GS3203191; 2022GS3203192

ORDER DENYING RECONSIDERATION

FILED
SEP 12 AM 11:13
CLERK OF COURT

THIS MATTER CAME BEFORE THE COURT on Defendant's Motion for Reconsideration. On April 13, 2023, Defendant pled guilty to 39 counts of Unlawful Conduct Towards a Child. This Court imposed a total sentence of 16 years, 10 years concurrent for 29 charges and 6 years consecutive for one charge. Elnora J. Dean, Esquire, represented the Defendant at the hearing and filed the Motion for Reconsideration on behalf of the Defendant on April 21, 2023.

"The authority to change a sentence rests solely and exclusively" within the discretion of the sentencing judge. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008).

In reviewing the materials and arguments of both parties, the Court has sought to reevaluate and determine if reconsideration is appropriate and would ensure justice is done. The Defendant's Motion appears to be based on mitigating circumstances concerning the Defendant's family and the Defendant's medical issues. These grounds were considered by the Court at sentencing.

Therefore, the Defendant has failed to offer any materially new information that could form the basis for a reconsideration.

IT IS THEREFORE ORDERED that Defendant's Motion to Reconsider is **DENIED**.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Debra R. McCaslin". The signature is written in a cursive style with a horizontal line underneath the name.

Debra R. McCaslin
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina
August 28, 2023

0-10

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington

STATE VS.

INDICTMENT/CASE#: 2022 - GS - 32 - 03179

Breanna Marie Audette

A/W#: 2021A3220500584

AKA: _____

Date of Offense: 7/12/2021

Race: White Sex: F Age: 25

S.C. Code §: 63-05-0070

DOB: _____ SS#: _____

CDR Code #: 2481

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

RECEIVED
SFP 22 2023
SC Court of Appeals

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: Children / Legal custodian, unlawful neglect of child or helpless person

In violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

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] 1024673 Breanna Marie Audette 12211
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 10 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 _____ days/months/years/Time Served and or payment of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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: 2023-GS-32-6012

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. 619 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.

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: _____

- RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly prnts. of	\$ _____	Beginning	\$ _____
§14-1-206 (Assessments 107.5%)			\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ <u>100</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</u>
§14-1-213 (Drug Court Surcharge)		\$150	\$ _____
§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	\$ _____
<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	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$ _____
TOTAL			\$ <u>125</u>

Clerk of Court/Deputy Clerk: _____
Court Reporter: _____

Lisa Conner
Lisa

Presiding Judge: Debra McCaslin
Judge Code: 2769
Sentence Date: 4/13/23

0-10

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington

STATE VS.

INDICTMENT/CASE# 2022 - GS - 32 - 03180

Breanna Marie Audette

AW#: 2021A3220500636

AKA: _____

Date of Offense: 6/2/2021

Race: White Sex: F Age: 25

S. C. Code §: 63-05-0070

DOB: _____ SS#: _____

CDR Code #: 2481

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

RECEIVED

SENTENCE SHEET

SFP 22 2023

SC Court of Appeals

*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: Children / Legal custodian, unlawful neglect of child or helpless person

In violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

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] 1021123 Breanna M Audette [Signature] 12211
Solicitor SC Bar # 64191 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 6 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 _____ days/months/years/Time Served and or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

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:

2022-GS-32-03179-03912;
03197-03201; 03203-03205; 03207,
01426, 01427A, 01429, 1430A,
01434,

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. 6190 days/months

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

The Defendant Shall be Released from County Detention Center.

2023-GS-32-6012

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.

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: _____

- RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly prmts. of	\$ _____	Beginning	_____	\$ _____
§14-1-206 (Assessments 107.5%)				\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)		\$100		\$ <u>100</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</u>
§14-1-213 (Drug Court Surcharge)		\$150		\$ _____
§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		\$ _____
<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		\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD		\$ _____
		TOTAL		\$ <u>125</u>

Clerk of Court/Deputy Clerk:
 Court Reporter:

Lin [Signature]
Steve [Signature]

Presiding Judge:
 Judge Code:
 Sentence Date:

Debra [Signature]
2109
9/13/23