STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY

Circuit Court

The Honorable Kristi Lea Harrington

Case No: 2011-CP-10-4018

Appellate Case No. 2012-212353

Donald James Hurlbert..... Appellant

v.

State of South Carolina..... Respondent

PETITION FOR A WRIT OF CERTIORARI

George E. Counts

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ATTORNEY FOR THE APPELLANT

Other Counsel of Record:

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Assistant Attorney General
(803) 734-3970Attorney for Respondent

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QUESTION PRESENTED

1. Did the Magistrate court err in accepting Petitioner's nolo contendere plea when Petitioner did not knowingly and intelligently waive his right to a Jury trial?

STATEMENT OF THE CASE

On March 4, 2009, Petitioner pled no contest to a charge of public drunkenness. On direct appeal, his conviction was affirmed by the Circuit Court, CITY OF CHARLESTON vs. DONALD HURLBERT, Case No.: 09-CP-10-7840 (Charleston County Court of Common Pleas, filed June 18, 2010).

On July 3, 2008, the Petitioner was ticketed for public drunkenness. Petitioner was arrested and spent one night in the Charleston City Jail. On March 4, 2009, Petitioner had a final hearing in the Charleston Municipal Court. Petitioner filed several motions which were disposed of by the presiding Judge. The hearing was initially set for a jury trial. It was subsequently changed to a bench trial. The hearing ended with the Petitioner pleading no contest to the charge of public drunkenness. Petitioner was sentenced to time served. Thereafter, on June 6, 2011, Petitioner brought this action seeking post-conviction relief.

The Circuit Court denied the application on May 24, 2012 and a notice of appeal was served on June 23, 2012. Petitioner now seeks a writ of certiorari to review this denial.

ARGUMENT

1. PETITIONER's PLEA OF NOLO CONTENDRE WAS INVALID BECAUSE IT WAS NOT ENTERED INTO FREELY, VOLUNTARILY, AND INTELLIGENTLY.

Petitioner alleged that he did not knowingly and intelligently enter his no contest plea. Petitioner in his amended appeal to the Circuit Court paragraph (a) on page 8 states, "The plea in the lower court of "no contest" ought never have been accepted, because the municipal judge ought to have perceived that the plea was not a conscious decision in addition to any reasonable inference or inferences thereof..." (App. P. 29, paragraph (a) lines 1-3).

The Judge in the Municipal Court did not question Petitioner regarding his wavier of his right to a jury trial. The judge noted that the petitioner had decided to withdraw his request for a trial by jury (App. P.15, lines 19-22). However, the judge did not go through the standard questions developed by South Carolina Court Administration to determine if the Petitioner's plea was entered freely, voluntarily, and intelligently. Therefore, for instance, the Municipal Court Judge did not know if Petitioner was under the influence of drugs or alcohol at the time his plea was entered. Additionally, the Judge did not know if the Petitioner was suffering from any mental incapacity that may have rendered his judgment faulty.

In Brown v. State, 412 S. E. 2d 399 (S.C. 1991), the Supreme Court found that the trial Judge erred when he misinformed Petitioner concerning Petitioner's eligibility for parole prior to Petitioner's guilty plea. The Supreme Court determined that because of the trial judge's misinformation, Petitioner's guilty plea was not made knowingly and voluntarily.

Petitioner asserts that his case is similar to the Brown case supra, in that, the trial judge's failure to question petitioner, failed to alert Petitioner that with regard to sentencing there is no

difference between a guilty plea and a plea of nolo contendere. Petitioner did not comprehend that the sentence imposed for a nolo contendere plea is no different than a sentence imposed for a guilty plea. As a result, Petitioner unknowingly participated in a hearing that caused him to have a criminal record. The trial Court with knowledge that Petitioner was Pro Se failed to ascertain whether Petitioner understood the consequences of his actions.

CONCLUSION

For the reasons stated, Petitioner asks this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

July 15, 2013

/s/ George E. Counts
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Attorney for Petitioner

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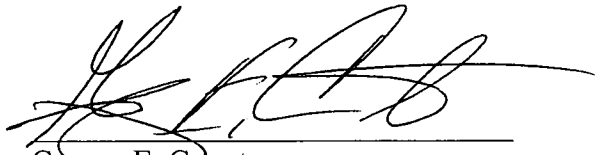
AFFIDAVIT OF SERVICE

PERSONALLY, appeared before me, George E. Counts of COUNTS & HUGER, LLC, who says under oath that he served the Petition For Writ of Certiorari on Ashleigh R. Wilson, on July 10, 2013, at her office located at P.O. Box 11549, Columbia, SC 29211-1549.



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July 10, 2013

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July 15, 2013

The Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: Donald James Hurlbert v. State of South Carolina
Appellate Case No. 2012-212353
Docket # 2011-CP-10-4018

Dear Honorable Shearouse:

Enclosed please find original and six (6) copies of Appellant's Petition for Certiorari and Appendix in the matter above-referenced and Affidavits of Service on all counsel of record and Mr. Hurlbert.

With kind regards,

Sincerely,

George E. Counts

GEC/qb

Enclosure

cc: Donald James Hulbert (w/ encl.)
Ashleigh R. Wilson, Esq. (w/ encl.)