

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY

Circuit Court

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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

---

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHARLESTON

3 CITY OF CHARLESTON,

4 Plaintiff,

5 vs.

6 DONALD JAMES HURLBERT

7 Defendant.

IN THE MUNICIPAL COURT  
NINTH JUDICIAL DISTRICT  
TICKET NO.94310DV

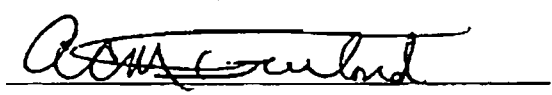
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12 THE TRANSCRIPT of the taped proceedings  
13 in the above -- entitled matter that was made  
14 before the Honorable Arthur C. McFarland, Municipal  
15 Court Judge, City of Charleston Municipal Court,  
16 180-B Lockwood Boulevard, Charleston, South  
17 Carolina.

18 THESE PROCEEDINGS were recorded on the  
19 4<sup>th</sup> day of March, 2009, relative to Gase  
20 Number/Ticket Numbers 94310DV.

21  
22



23 Arthur C. McFarland  
24 MUNICIPAL COURT JUDGE

25

1 APPEARANCES OF COUNCIL:

2 PLAINTIFF,  
3 CITY OF CHARLESTON:

4 (Unidentified)

5 ATTORNEYS FOR THE DEFENDANT  
6 DONALD JAMES HURLBERT:

7 Pro se  
8 Donald James Hurlbert:  
9 8759 Yearling Drive, Apt. 7F  
10 North Charleston, SC  
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1 APPEARANCES OF COUNCIL:

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3 CITY OF CHARLESTON:

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24  
25

1                   This cause came to be heard on the 4<sup>th</sup>  
2 day of March, 2009, before the Honorable Thomas  
3 Morrison, Judge, held in the Charleston Municipal  
4 Court at Charleston, South Carolina.

5

6

7

TRANSCRIPT OF PROCEEDINGS  
(10:02 a.m.)

8

9

10

\* \* \* \* \*

11

12

THE COURT: Okay. This is the case of  
13 Donald James Hurlbert. Mr. Hurlbert is charged with  
14 public drunkenness. He has filed a couple of motions  
15 that we are going to address this morning. And  
16 council for the City is here and he is prepared to  
17 (... inaudible) to the motion. Mr. Hurlbert did in fact  
18 file a written motion that is dated January 20, 2009,  
19 moving for dismissal of the charge on the public  
20 grounds. Mr. Hurlbert let me hear from you first with  
21 respect to the basis of your motion, then I'll hear  
22 responses (... inaudible).

23

THE WITNESS: (... inaudible).

24

THE COURT: Okay. So your position basic-  
25 ally is that Officer (... inaudible) do not have

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1 authority to arrest you on this charge because he was  
2 off duty working as a private as a private Security  
3 (... inaudible) probably a private Security Guard.

4 THE WITNESS: (... inaudible).

5 THE COURT: Okay.

6 THE WITNESS: (... inaudible).

7 THE COURT: Alright.

8 THE WITNESS: (... inaudible).

9 THE COURT: I have a copy of it.

10 THE Attorney: (... inaudible).

11 THE COURT: Mr. Hurlbert do you want to

12 Respond (... inaudible).

13 THE WITNESS: (... inaudible).

14 THE COURT: If you, are you (... inaudible).

15 I understand that this arrest took place at Market and  
16 East Bay Streets. That you were in the public street  
17 at the time you were taken into custody by Officer  
18 Pastva. Is that right?

19 THE WITNESS: (... inaudible).

20 THE COURT: Well, let me, were you, well let  
21 me ask it another way. Were you in the hotel, the  
22 Market Pavilion Hotel, at the time of your arrest?

23 THE WITNESS: (... inaudible).

24 THE COURT: Okay. And that is where Officer  
25 Pastva's off-duty assignment would have (... inaudible).

1 authority to arrest you on this charge because he was  
2 off duty working as a private as a private Security  
3 (... inaudible) probably a private Security Guard.

4 THE WITNESS: (... inaudible).

5 THE COURT: Okay.

6 THE WITNESS: (... inaudible).

7 THE COURT: Alright.

8 THE WITNESS: (... inaudible).

9 THE COURT: I have a copy of it.

10 THE Attorney: (... inaudible).

11 THE COURT: Mr. Hurlbert do you want to  
12 Respond (... inaudible).

13 THE WITNESS: (... inaudible).

14 THE COURT: If you, are you (... inaudible).

15 I understand that this arrest took place at Market and  
16 East Bay Streets. That you were in the public street  
17 at the time you were taken into custody by Officer  
18 Pastva. Is that right?

19 THE WITNESS: (... inaudible).

20 THE COURT: Well, let me, were you, well let  
21 me ask it another way. Were you in the hotel, the  
22 Market Pavilion Hotel, at the time of your arrest?

23 THE WITNESS: (... inaudible).

24 THE COURT: Okay. And that is where Officer  
25 Pastva's off-duty assignment would have(... inaudible).

1 Is that correct?

2 THE WITNESS: (... inaudible).

3 THE COURT: Okay. And so are you contending  
4 then that if Officer Pastva was acting or taking you  
5 into custody off the premises of the hotel would that  
6 be considered within the scope of the off-duty assign-  
7 ment; that is something happening in the public street  
8 away from the hotel is still within the scope of his  
9 off-duty assignment?

10 THE WITNESS: (... inaudible).

11 THE COURT: Okay. Well, the ticket says  
12 Market and East Bay. So, I'm not , that is why I'm  
13 just trying to clarify. My central point is that,  
14 his, as you understand it, his off-duty assignment was  
15 at the Market Pavilian Hotel. This incident happened  
16 in the public way. That is Market or East Bay  
17 Streets. And are you contending that he had not  
18 authority to act with respect to any criminal act  
19 occurring in the public street under this 23-24-30  
20 that you signed?

21 THE WITNESS: (... inaudible).

22 THE COURT: Okay.

23 THE WITNESS: (... inaudible).

24 THE COURT: But I'm saying, I think  
25 you're contending that he loses his police powers by

1 virtue of this assignment. And that he only  
2 lose it when he is acting within the scope of that  
3 assignment, or does he lose it for all other purposes.  
4 That is if he walks out of (... inaudible) during that  
5 assignment, he walks onto the street and he sees some-  
6 body assaulting another, assaulting a citizen would he  
7 not be in power to use his police power in that  
8 instance to intervene? Or because he is not within,  
9 because he is on an assignment he is outside  
10 of his hotel he can't exercise that police power to  
11 intervene in a criminal act that he witnesses.

12 THE WITNESS: (... inaudible).

13 THE COURT: Right.

14 THE WITNESS: (... inaudible).

15 THE COURT: I think this, and that's my  
16 question because if he witnesses a criminal act  
17 occurring, for all purposes, outside of the  
18 assignment, that is, (... inaudible) the assignment is  
19 at this hotel and he witnesses a criminal act, are you  
20 saying that while he is in uniform and with all of the  
21 indicia of police authority that he cannot use that  
22 because somehow he is limited by this 23-24-30?

23 THE WITNESS: (... inaudible)..

24 THE COURT: Okay.

25 THE WITNESS: (... inaudible).

1 virtue of this assignment. And that he only  
2 lose it when he is acting within the scope of that  
3 assignment, or does he lose it for all other purposes.  
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10 of his hotel he can't exercise that police power to  
11 intervene in a criminal act that he witnesses.

12 THE WITNESS: (... inaudible).

13 THE COURT: Right.

14 THE WITNESS: (... inaudible).

15 THE COURT: I think this, and that's my  
16 question because if he witnesses a criminal act  
17 occurring, for all purposes, outside of the  
18 assignment, that is, (... inaudible) the assignment is  
19 at this hotel and he witnesses a criminal act, are you  
20 saying that while he is in uniform and with all of the  
21 indicia of police authority that he cannot use that  
22 because somehow he is limited by this 23-24-30?

23 THE WITNESS: (... inaudible)..

24 THE COURT: Okay.

25 THE WITNESS: (... inaudible).

1 THE COURT: So, you're saying that the  
 2 (... inaudible) assaulting committed on the street that  
 3 he witnesses during the time that he is on this  
 4 assignment although it occurs, not occurring within  
 5 the scope of that assignment he cannot use his police  
 6 power to or exercise his police power to intervene in  
 7 that assault?

8 THE WITNESS: (... inaudible).

9 THE COURT: Okay. Alright. We will now  
 10 (... inaudible).

11 THE WITNESS: (... inaudible).

12 THE COURT: Well, I think it's, you know, he  
 13 asked for corresponding interpretation of the appli-  
 14 cation of this particular statutes to his case and  
 15 I guess that's asking me to make that decision with  
 16 first impression. But I guess if you can't find  
 17 (... inaudible) application of the statute but at least  
 18 having been addressed by our fellow Courts and so I  
 19 take him as presenting this issue to the Court. For  
 20 a decision, my problem Mr. Hurlbert, my problem is  
 21 that this statute starts off by saying off-duty work  
 22 performed by law enforcement officers. And that's  
 23 where I have to make a distinction. If this had,  
 24 if you had been arrested in the hotel, which is as  
 25

1 I understand it, there according to your argument,  
2 your motion, he was assigned, then there may be  
3 some application here sort of like what we have at  
4 (... inaudible). That is whether he has (... audible)  
5 powers as a private citizen or private Security  
6 Guard (... inaudible). But here we  
7 have a situation that occurred in the public way, and  
8 I would have difficulty with the suggestion that the  
9 Officer witnessing a criminal act is without authority  
10 to intervene to us his police powers simply because of  
11 this statute which says "off-duty work performed."  
12 His intervening with you is important. Without find-  
13 ing that the report is accurate but reporting the case  
14 that you were in the street, I believe or lying in  
15 the street it seems like what I understood. Am I  
16 correct about that? That's what the testimony would  
17 show that that is what he was, that brought him in  
18 contact with you. And I would say that that's out  
19 ... side of the scope of his off-duty assignment, but  
20 clearly within the scope of his police powers.  
21 Because if, I believe there is a citation somewhere  
22 (... inaudible) we were talking the other day that the  
23 Police Department has policies which states that an  
24 officer is considered on duty 24-7. I would think  
25 that that's where, you do not have to be redeputized

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3 some application here sort of like what we have at  
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23 Police Department has policies which states that an  
24 officer is considered on duty 24-7. I would think  
25 that that's where, you do not have to be redeputized

1 by the Sheriff in order for a police to act. Other-  
2 wise, we would have no protection. And the off-duty  
3 issue here did not occur in the Pavilion Hotel. I  
4 think that would have given, it might put a different  
5 light on this case, if in fact, he had arrested you  
6 in the Pavilion Hotel taking you into custody, putting  
7 you in had cuffs. I guess in this case, he probably  
8 had to call somebody to transport you (... inaudible).

9 THE WITNESS: (... inaudible).

10 THE COURT: He transported you himself?

11 Okay, well he did all of that. I think that  
12 might have, that would have been a different situa-  
13 tion. But I think on the public street, I could not  
14 find that an Officer lose his (... inaudible) under  
15 this Statute. I think the Supreme Court would have  
16 difficulty with me making that decision to suggest  
17 that they could not act that the police Officer would  
18 have to stand by, call somebody else to come and in-  
19 tervene in the criminal act that is going on in his  
20 presence. And not only that, I think the City would  
21 incur this tremendous liability, if in fact, I'm being  
22 assaulted and the Police Officer standing there and he  
23 says I can't do anything because I've got this  
24 assignment. I think you would be the first one to  
25 complain if somebody were assaulting you on the

1 street. You saw a uniform Officer standing there and  
2 he says I can't do anything because I'm working at  
3 this hotel. It just, I'm sorry, but I just have to  
4 apply more of a common sense approach because I don't  
5 have the authority. But this (... inaudible) does help  
6 me some. Because I think if this had occurred within  
7 the jurisdiction of, within the City limits, this (...  
8 not clear) would have turned out different, because  
9 the Officer although off duty would have still been  
10 authorized to intervene in this case and stop Mr. (...  
11 inaudible) and so forth. But The Court said he really  
12 didn't have jurisdiction, and that's the question, you  
13 know, (... inaudible) jurisdiction in this case, or  
14 authority in this case (... inaudible) 23-24-30  
15 (... inaudible). What might happen the Officer gets  
16 injured, for instance, while intervening in some fight  
17 within the hotel. The City says we're not going to be  
18 liable (... inaudible) for this injury to this Officer.  
19 That's why (... inaudible) protection for (... inaudible).

20 THE COURT: On your motion, I would have to  
21 deny on the basis that 23-24-30 would prohibit the  
22 intervention of Officer Pastva in this particular  
23 arrest. That he was, in fact, as a City Police  
24 Officer in act occurring within the jurisdiction of  
25 the City of Charleston and on the public way sidewalk

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3 this hotel. It just, I'm sorry, but I just have to  
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18 liable (... inaudible) for this injury to this Officer.  
19 That's why (... inaudible) protection for (... inaudible).

20 THE COURT: On your motion, I would have to  
21 deny on the basis that 23-24-30 would prohibit the  
22 intervention of Officer Pastva in this particular  
23 arrest. That he was, in fact, as a City Police  
24 Officer in act occurring within the jurisdiction of  
25 the City of Charleston and on the public way sidewalk

1 or street whichever the situation might be (... in-  
2 audible) assignment at the hotel. So, the motion is  
3 denied and I think with respect to your citation of  
4 the (... inaudible) Supreme Court case (... inaudible). I  
5 have not fully read that case (... inaudible) ap-  
6 plication (... inaudible) as to (... inaudible). Now  
7 having said that (... inaudible). Alright, so, you  
8 know.

9 THE WITNESS: (... inaudible).

10 THE COURT: Let's go off the record here.

11 THE WITNESS: (... inaudible).

12 THE COURT: At the time of the incident or,  
13 I think what you were, you were presented with the  
14 citation, as I recall from your motion, at the time  
15 of your release from the Detention Center. You were  
16 presented at least with the citation with respect  
17 within the Warrant. But I don't believe what you  
18 alleged that you were not told what you had been  
19 arrested for prior to receiving the citation.

20 THE WITNESS: (... inaudible).

21 THE COURT: Okay. I don't know

22 of any requirement that you receive the citation at  
23 time of your arrest. The Warrants are generally pre-  
24 pared after one's arrest, as a matter of practice.

25 And so, I'm not sure what Constitutional violation are

1 you alleging.

2 THE WITNESS: (... inaudible).

3 THE COURT: Yes, I don't. Because you were  
4 presented with it at the time of your release would  
5 have been the appropriate time to present that to you.  
6 Now informing you of the charge, of course, would have  
7 been, is required under the law and the reason for  
8 your arrest. But the written document having been  
9 presented to you had been prepared at some point fol-  
10 lowing your arrest and before your release having been  
11 presented to you, that procedural error was not  
12 (... inaudible) for dismissal of the charge  
13 (... inaudible).

14 THE WITNESS: (... inaudible).

15 THE COURT: He was arrested for, well no,  
16 because they; first of all, the DUI charge generally  
17 if you look at your ticket there is a space at the  
18 bottom. I mean there is no way you could present a  
19 ticket at the time of the, on the street arrest. But  
20 if you look at the bottom there is a block for B.A.  
21 Level. And so, the document can't be completed until  
22 you've gone through the B.A. process, then you're  
23 already under arrest at that point. So you are given,  
24 at some point before your release you are given the  
25 ticket, which is what happened in your instance. I'm

1 you alleging.

2 THE WITNESS: (... inaudible).

3 THE COURT: Yes, I don't. Because you were  
4 presented with it at the time of your release would  
5 have been the appropriate time to present that to you.  
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20 if you look at the bottom there is a block for B.A.  
21 Level. And so, the document can't be completed until  
22 you've gone through the B.A. process, then you're  
23 already under arrest at that point. So you are given,  
24 at some point before your release you are given the  
25 ticket, which is what happened in your instance. I'm

1 sure that there must have been something else in that  
2 case that made a difference in why (... inaudible) on  
3 the basis of the citation not having been presented  
4 to him. It must not have been presented to him at  
5 the time of his release. I just don't, I can't,  
6 that's the only thing I can imagine that would have  
7 happen because it couldn't have been fully prepared  
8 prior to the conducting of the breathalyzer and  
9 ... inaudible) Detention Center (... inaudible) occur.

10 THE WITNESS: (... inaudible).

11 THE COURT: No, the site is for County Jail.  
12 It's not on the street. Because, otherwise, they  
13 would have to have breathalyzer. I can tell you, I've  
14 been here for 33 years. It's either always been done  
15 the (... inaudible) site under that Statute. We  
16 have a number of these cases every week. Site means  
17 the breathalyzer site. The breathalyzer site is the  
18 place in either Police Department or a Detention  
19 Center where it can be administer. It has always been  
20 at the site. The site has always been off the street.  
21 The street is where you get the sobriety test. You do  
22 the sobriety test on the street. If you do the  
23 sobriety test at the site, the (... inaudible) breath-  
24 alyzer (... inaudible) machine (... inaudible) you would  
25 have to go through a whole process. I can tell

1 you that that's not (... inaudible). Now, if you all  
2 could perhaps (... inaudible) Mr. Hurlbert has, Mr.  
3 Hurlbert certainly has presented a (... inaudible)  
4 effort in researching time to challenge his arrest.  
5 And while I find that the arrest certainly was proper  
6 under our law, it just seems to me that whatever  
7 reason you were arrested, whatever reason there might  
8 have been for your conduct, it seems to me that if  
9 this case, this case would be one I would think of  
10 would be subject to a what we call a deferral for a  
11 year. And if you have no further problems, I think  
12 this City would dismiss it. I mean, that way we  
13 won't have to go to a jury trial. You certainly, I  
14 think you've been (... inaudible) that you had no prior  
15 arrest. I don't even need to know what the circum-  
16 stances were of this situation. But, you know, I  
17 think the City ought to consider that. That puts this  
18 case almost two years out since the incident occurred,  
19 and you haven't had an arrest since then. (... in-  
20 audible) July 3<sup>rd</sup> and it certainly (... inaudible) that  
21 you would be the kind of person that would benefit  
22 (... inaudible) deferral. So, if that's something  
23 you all want to talk about, I don't (... inaudible)  
24 respond (... inaudible) my (... inaudible) suggestion for  
25 the obvious matter in the way that a one year deferral

1 you that that's not (... inaudible). Now, if you all  
2 could perhaps (... inaudible) Mr. Hurlbert has, Mr.  
3 Hurlbert certainly has presented a (... inaudible)  
4 effort in researching time to challenge his arrest.  
5 And while I find that the arrest certainly was proper  
6 under our law, it just seems to me that whatever  
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18 case almost two years out since the incident occurred,  
19 and you haven't had an arrest since then. (... in-  
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21 you would be the kind of person that would benefit  
22 (... inaudible) deferral. So, if that's something  
23 you all want to talk about, I don't (... inaudible)  
24 respond (... inaudible) my (... inaudible) suggestion for  
25 the obvious matter in the way that a one year deferral

1 (... inaudible).

2 THE WITNESS: (... inaudible).

3 THE COURT: Alright, you know that could  
4 come no matter what even if he plead not guilty, if  
5 he is found guilty, he still could say, you know, from  
6 a civil stand point, you know, that he wants to do  
7 that. I don't know that that will (... inaudible) way,  
8 he says he isn't (... inaudible) and he has no interest  
9 but you know, he can change his mind (... inaudible) he  
10 can always bring it back. There is nothing that stops  
11 you from bringing it back, so that you can try it (...  
12 inaudible) on that basis.

13 THE WITNESS: (... inaudible).

14 THE COURT: Well, I will leave that to Mr.  
15 Hurlbert. You'll let me know. I'm just, you know,  
16 I think it's, I understand, I'm just caution (... in-  
17 inaudible).

18 THE WITNESS: (... inaudible).

19 THE COURT: We have a single conference with  
20 respect to one (... inaudible) a jury trial and as I  
21 understand that you are withdrawing your request for a  
22 trial by jury. Is that correct?

23 THE WITNESS: (... inaudible).

24 THE COURT: Alright, and I will (...  
25 inaudible) note for the record that you did make a

1 request for the continuance on the basis that you have  
2 just learned about the second (... inaudible). With  
3 that respect, I deny the motion on the basis of (... in-  
4 audible) the second Officer (... inaudible) at the time  
5 of the arrest or at the time of the incident or both.  
6 And, so I did deny that motion so that (... inaudible).

7 THE WITNESS: (... inaudible).

8 THE COURT: I'm not sure that you believe  
9 the motion, but I didn't mention, I don't recall there  
10 being, should we motion that (... inaudible)? But I'll  
11 take your word that you wanted to have the second  
12 witness excluded I believe on the basis that you were  
13 not aware, as of, coming in, that (... inaudible) until  
14 this mornig that there would be the second witness.  
15 So I'm not (... inaudible) if I didn't already, I deny  
16 that motion to exclude (... inaudible) witness on the  
17 basis that there was no notice until immediately be-  
18 fore the trial.

19 THE COURT: Alright, and so, on the basis  
20 that we are going to proceed with a bench trial,  
21 instead of a jury trial, how do you plead to the  
22 charge of public drunkenness?

23 THE WITNESS: (... inaudible).

24 THE COURT: Alright, then I'll accept your  
25 plea of no contest; is that what I understand to the

1 request for the continuance on the basis that you have  
2 just learned about the second (... inaudible). With  
3 that respect, I deny the motion on the basis of (... in-  
4 audible) the second Officer (... inaudible) at the time  
5 of the arrest or at the time of the incident or both.  
6 And, so I did deny that motion so that (... inaudible).

7 THE WITNESS: (... inaudible).

8 THE COURT: I'm not sure that you believe  
9 the motion, but I didn't mention, I don't recall there  
10 being, should we motion that (... inaudible)? But I'll  
11 take your word that you wanted to have the second  
12 witness excluded I believe on the basis that you were  
13 not aware, as of, coming in, that (... inaudible) until  
14 this mornig that there would be the second witness.  
15 So I'm not (... inaudible) if I didn't already, I deny  
16 that motion to exclude (... inaudible) witness on the  
17 basis that there was no notice until immediately be-  
18 fore the trial.

19 THE COURT: Alright, and so, on the basis  
20 that we are going to proceed with a bench trial,  
21 instead of a jury trial, how do you plead to the  
22 charge of public drunkenness?

23 THE WITNESS: (... inaudible).

24 THE COURT: Alright, then I'll accept your  
25 plea of no contest; is that what I understand to the

1 charge of public drunkenness? And your sentence is a  
2 period of (interrupted by witness, did not complete  
3 sentence).

4 THE WITNESS: (... inaudible).

5 THE COURT: No, it's a, you know, we're a  
6 Summary Court, and the Court has been made aware of  
7 the circumstances and if we need to (incomplete  
8 sentence). Do you want to put it on the record?  
9 I'll give you, I'll let you, the record is open, so  
10 whatever is necessary from your perspective (...  
11 inaudible).

12 THE ATTORNEY: (... inaudible) the City would  
13 offer evidence that (... inaudible) Mr. Hurlbert was  
14 in the public roadway laying down drunk and (...  
15 inaudible) disputed issue but that's the evidence  
16 that offer.

17 THE COURT: Alright, then his plea is no  
18 contest and, therefore, I will accept the plea of no  
19 contest to the charge of public drunkenness and, Mr.  
20 Hurlbert, your sentence is a period of one day con-  
21 finement and I will give you credit for one day of  
22 time served. And, you can go out to the Clerk with  
23 respect to any conviction fees that (... inaudible).  
24 What's the conviction fee? It's no more than, we all  
25 know it's no more than \$50, but it just depends on

1 (... inaudible). If you can go downstairs, they will  
2 tell you (... inaudible).

3 THE WITNESS: (... inaudible).

4 THE COURT: I think there is the (... in-  
5 audible) the Court takes position (... inaudible):.

6 THE WITNESS: (... inaudible) notice that the  
7 fact that the Citation (... inaudible) Market?

8 THE COURT: Market and East Bay and (... in-  
9 audible).

10 THE WITNESS: (... inaudible).

11 THE COURT: Pardon?

12 THE WITNESS: (... inaudible):.

13 THE COURT: Okay. Alright, we will let that  
14 be the notation for the record and that's it. Yes,  
15 thank you sir. Good luck to you.

16 (The proceedings were concluded at  
17 11:38:25 a.m.)

18 \* \* \* \* \*

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1 (... inaudible). If you can go downstairs, they will  
2 tell you (... inaudible).

3 THE WITNESS: (... inaudible).

4 THE COURT: I think there is the (... in-  
5 audible) the Court takes position (... inaudible)..:

6 THE WITNESS: (... inaudible) notice that the  
7 fact that the Citation (... inaudible) Market?

8 THE COURT: Market and East Bay and (... in-  
9 audible).

10 THE WITNESS: (... inaudible).

11 THE COURT: Pardon?

12 THE WITNESS: (... inaudible).

13 THE COURT: Okay. Alright, we will let that  
14 be the notation for the record and that's it. Yes,  
15 thank you sir. Good luck to you.

16 (The proceedings were concluded at  
17 11:38:25 a.m.)

18 \* \* \* \* \*

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CERTIFICATE OF REPORTER

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I, Carolyn Robinson, Transcriptionist at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 29<sup>th</sup> day of April, 2009 at Charleston, Charleston County, South Carolina.

*Carolyn Robinson*  
Carolyn Robinson  
Transcriptionist

*James H. Moody, Jr.*  
Name:  
Notary Public  
My Commission Expires  
February 24, 2010

2011-CP-10-4018

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Donald James Hurlbert )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

FILED  
 JUN - 6 PM 4:43  
 JULIE J. HARRINGTON  
 CLERK OF COURT  
 BY \_\_\_\_\_

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention N/a.
2. Name and location of Court which imposed sentence City of Charleston Municipal Court, Charleston, S.C.
3. Name(s) of co-defendant(s) (if any) N/a.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Unkown/"Public Drunk," City Code Section.
  - (b) N/a.
  - (c) N/a.
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 4<sup>th</sup> March 2009/1 day confinement & Costs (\$56.00).

- (b) N/a.
- (c) N/a.
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty N/a.
  - (b) after a plea of not guilty N/a.
  - (c) after a plea of nolo contendere X.
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes.
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. Court of Common Pleas for Charleston County.
    - ii. N/a.
    - iii. N/a.
  - (b) the result in each such Court to which you appealed:
    - i. Affirmed.
    - ii. N/a.
    - iii. N/a.
  - (c) the date of each such result:
    - i. 18<sup>th</sup> June 2010
    - ii. N/a.
    - iii. N/a.
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. Unkown.
    - ii. N/a.
    - iii. N/a.
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) N/a.
  - (b) N/a.
  - (c) N/a.
- 10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) I am not being held in custody at this time; however, refer please to the attached copy of "Appeal" for the 1<sup>st</sup> through 10<sup>th</sup> like grounds.

(b) I am not being held in custody at this time; however, refer please to the attached copy of "Motion to Amend Notice of Appeal" for the 11<sup>th</sup> through 12<sup>th</sup> like grounds.

(c) I am not being held in custody at this time; however, refer please to the attached copy of "Application (Motion) for Default Judgment" for the 13<sup>th</sup> like ground.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Refer please to the attached copy of "Appeal" for the facts which support the above.

(b) Refer please to the attached copy of "Motion to Amend Notice of Appeal" for the facts which support the above.

(c) Refer please to the attached copy of "Application (Motion) for Default Judgment" for the facts which support the above.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/a.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/a.

ii. N/a.

iii. N/a.

iv. N/a.

(b) the name and location of the Court in which each was filed:

i. N/a.

Revised 3/2003

- ii. N/a.
- iii. N/a.
- iv. N/a.
- (c) the disposition thereof:
  - i. N/a.
  - ii. N/a.
  - iii. N/a.
  - iv. N/a.
- (d) the date of each such disposition:
  - i. N/a.
  - ii. N/a.
  - iii. N/a.
  - iv. N/a.
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. N/a.
  - ii. N/a.
  - iii. N/a.
  - iv. N/a.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes.

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
  - i. All grounds set forth in (10) were presented at the time of the said appeal, etc...
  - ii. ...
  - iii. ...
- (b) the proceedings in which each ground was raised:
  - i. Appeal, etc...
  - ii. ...
  - iii. ...

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/a.
  - (b) N/a.
  - (c) N/a.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Unknown.
  - (b) your trial, if any? No.
  - (c) your sentencing? No.
  - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.
  - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
    - i. Unkown.
    - ii. N/a.
    - iii. N/a.
  - (b) the proceedings at which each such attorney represented you:
    - i. Unkown.
    - ii. N/a.
    - iii. N/a.
19. State clearly the relief you seek in filing this application:  
Exoneration.
20. Are you now under sentence from any other court that you have not challenged?  
No.

STATE OF SOUTH CAROLINA )  
 )  
County of CHARLESTON )

VERIFICATION

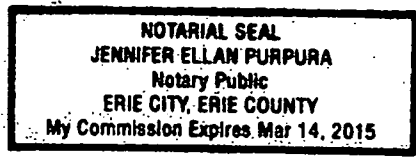
I, Donald J. Hurlbert, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Donald J. Hurlbert

SWORN to and subscribed before me this 5<sup>th</sup>  
day of June, 2011

Jennifer Ellan Purpura (L.S.)  
Notary Public

My Commission Expires: March 14, 2015



**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

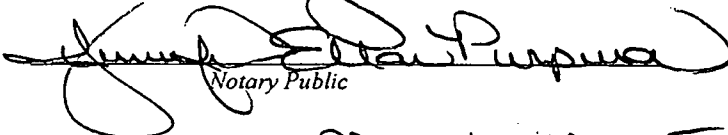
I, Donald J. Hurlbert, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

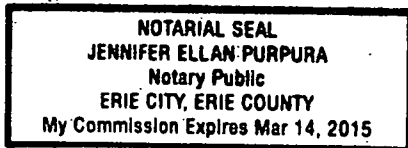
  
Applicant

SWORN or affirmed to and subscribed before me this

30 day of June, 2011

  
Notary Public

My Commission Expires: March 14, 2015



APPEAL

State of South Carolina  
County of Charleston

March 12, 2009  
Date of Request

City of Charleston

Versus

Donald J Hurlbert  
8759 Yearling Drive Apt 7f  
North Charleston, SC 29412

FILED  
2009 DEC 17 PM 12:53  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Work #:	_____	Home#:	843-737-0554
Case #:	94310DV	Officer:	Benjamin Pastva
Trial:	3/4/2009	Time:	8:30 AM
Charge:	Public Drunk		

Please write below the full explanation of your reason to appeal the judge's decision.

I, Donald J. Hurlbert, have appealed the order of the Honorable Arthur C. McFarland, dated 4<sup>th</sup> March 2009, which affirmed my conviction in municipal court. The grounds therefore included:

1.) I have appealed the order of the Honorable Arthur C. McFarland, dated 4<sup>th</sup> March 2009, which affirmed his denial of my motion for a continuance. 2.) I have appealed the decision of the Honorable Arthur C. McFarland, dated 4<sup>th</sup> March 2009, which

affirmed his denial of my motion to have suppressed evidence and/or (cont'd on reverse)

1. An appeal bond must be posted until final disposition of your appeal hearing.
2. After filing your appeal with the Municipal Court, the Court will then file your appeal along with the Judge's Return to the Court of General Sessions.
3. You will be notified by the County Clerk's office as to your hearing date for your appeal.

MAR 12 5:44:25

I disagreed with his apparent, judicial accord with the inclusion of such evidence.  
1) I disagreed with his prejudicial position, both, while trial by jury was demanded  
and as indicated by his accusation made, which preceded my 'objection' in the course  
of his discourse on 4<sup>th</sup> March 2009, 4.) I have appealed the order of the Honorable  
Arthur C. McFarland, dated 4<sup>th</sup> March 2009, which affirmed his denial of my motion, which  
was dated 2<sup>nd</sup> March 2009 and was to have dismissed the charge alleged, drunkenness  
, public (94)10DV), 5.) I disagreed with his shift of burden of proof, onto I, the  
accused, defendant, on the 2<sup>nd</sup> March 2009, and in the matter which pertained to my  
violation of civil liberties, i.e.s. 6.) I disagreed with his general course of argument  
while trial by jury was still demanded, on 2<sup>nd</sup> March 2009, and of arguments that ought to  
have been made by the prosecution instead. 7.) I have ~~heretofore~~<sup>with</sup> appealed the order  
of the Honorable Arthur C. McFarland, dated 4<sup>th</sup> March 2009, which affirmed his denial of  
my motion, dated 20<sup>th</sup> January 2009. 8.) I disagreed with the delay of proceedings  
between 2<sup>nd</sup> and 4<sup>th</sup> March 2009. 9.) I have appealed the decision of the Honorable  
Arthur C. McFarland, dated 4<sup>th</sup> March 2009, which affirmed his denial of my motion,  
dated 30<sup>th</sup> January 2009. 10.) I have appealed the order of the Honorable Thomas P.  
Morrison, dated 19<sup>th</sup> December 2008, which affirmed his denial of my motion,  
dated 19<sup>th</sup> December 2008. I believed the Summary Court Judges committed  
errors in the above ways; and I reaffirmed my arguments therefore,  
which were included in the record, of which I have as of yet to have  
received a (request) copy. Nevertheless, whether expressed herein  
explicitly or not, I have ~~asserted my rights~~<sup>Do not</sup>, hereby asserted my rights  
again.

Donald J. Hurbert  
Donald J. Hurbert  
759 Yearling Dr. Apt 7F  
1. Charleston, SC 29406

Dated: 12<sup>th</sup> March 2009

606029

~~Telephone~~

E-mail address: dubjen@hobmail.com

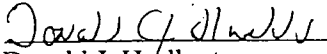


easily, if the record had been intact. I prayed that the Court may have taken the initiative to have remanded for a hearing to have reconstructed any lapses in the record of proceedings or a hearing to have determined that any reconstructions of the above were not feasible. I reserved nevertheless and, or hereby continued to have preserved any right to have moved for a like remand.

(c) I have given, in good faith, notice of appeal from a judgment and, or order in the instant matter. If I failed to have perfected the appeal, then the appeal ought to have been amended in the interest of justice, so to have cured any failure or all failures to have otherwise perfected the appeal. In consideration of the above, I hereby clarified my intent of the appeal. I preferred that the Court have exonerated I. If that preference may not have been just and, or practicable, then the Court ought to have ordered a "new" trial (by jury).

(d) I hereby asserted that the Respondent ought to have paid court costs (if any) in furtherance of any just consideration, such as that accorded to S.C. Code § 18-1-100.

29<sup>th</sup> December 2009

  
Donald J. Hurlbert  
8759 Yearling Dr. Apt. 7F  
North Charleston, SC 29406  
843-553-9733  
*Pro Se*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Donald James Hurlbert, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No. 2011-CP-10-4018

**RETURN AND MOTION TO DISMISS**

The Respondent, making its Return to the application for post-conviction relief filed June 6, 2011, would respectfully show this Court:

I.

The Applicant was issued a ticket for public drunk (Ticket #94310DV) for an incident occurring on July 3, 2008. The Applicant proceeded upon that charge without counsel.

On March 4, 2009, the Applicant pled no contest to the charge. He was sentenced by the Honorable Arthur C. McFarland to one (1) day of confinement, with credit for the one (1) day he already served.

The Applicant filed a notice of appeal in the circuit court (2009-CP-10-7840). By order dated and filed June 18, 2010, the Honorable Thomas L. Hughston, Jr. denied all of the Applicant's outstanding motions and affirmed the conviction.

Attached herewith and incorporated herein by reference are the records of the City of Charleston regarding the subject convictions and the March 4th hearing transcript.

II.

In the application for post-conviction relief, the Applicant does not make any specific

allegations. Rather, the Applicant refers to allegations and issues raised during his appeal to the circuit court:

1. The municipal court judge erred in accepting the plea of “no contest” to this charge.

### III.

The Respondent submits this Court should summarily dismiss the application for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore

moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

April 23, 2012



STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Donald Hurlbert,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 11-CP-10-4018
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

**TRANSCRIPT OF HEARING**

The within Hearing was held on May 22, 2012, before The Honorable Kristie Harrington, in Courtroom 4B of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by Counsel, as follows:

**APPEARANCES:**

George E. Counts, Esq.  
COUNTS & HUGER  
P O Box 80399  
Charleston, SC 29407  
Appearing for Applicant

Ashleigh Wilson, Esq.  
Karen Ratigan, Esq.  
OFFICE OF ATTORNEY GENERAL  
P O Box 11549  
Columbia, SC 29211-1549  
Appearing for State of South Carolina

**DEBORAH GARRISON**  
*Circuit Court Reporter - 9<sup>th</sup> Judicial Circuit*  
Post Office Box 901  
Johns Island, South Carolina 29457  
[dGarrison@sccourts.org](mailto:dGarrison@sccourts.org)

1 THE COURT: Are you ready on  
2 Hurlbert?

3 MS. RATIGAN: Yes, Your Honor.  
4 We have a Motion to dismiss and the PCR counsel  
5 moves for a continuance. He is here today, Mr.  
6 Counts.

7 THE COURT: You have made a Motion  
8 to dismiss?

9 MS. RATIGAN: Yeah.

10 THE COURT: Has Mr. Hurlbert been  
11 transported? Or I guess he is not incarcerat-  
12 ed?

13 MS. RATIGAN: He is in  
14 Pennsylvania.

15 MR. COUNTS: Good morning, Your  
16 Honor. My name is George Counts. I have been  
17 appointed to represent Mr. Hurlbert. Of  
18 course, I received this file about -- I think  
19 last week. I had an opportunity to speak to  
20 Mr. Hurlbert ---

21 THE COURT: Where had the file been  
22 before last week?

23 MR. COUNTS: I received it in the  
24 mail last week.

25 THE COURT: But you've been

1 appointed and this has been on the docket for  
2 several months. You agree?

3 MR. COUNTS: Yeah, I just got it.  
4 I just got it about a week and a half ago from  
5 the AG's Office.

6 MS. RATIGAN: Judge, Mr. Counts  
7 wasn't appointed until May 7<sup>th</sup>.

8 THE COURT: All right. Thank you.

9 MR. COUNTS: And so I had an  
10 opportunity to speak briefly with Mr. Hurlbert.  
11 He is not going to be here today. As counsel  
12 said, he's in Pennsylvania. So in my  
13 conversation with him, I was not able to fully  
14 explore the issue or issues with him. And he  
15 was not going to be here today, and there is no  
16 witness in the case. I told him that I would  
17 ask for a continuance on the case so that I can  
18 come up to speed on the case.

19 THE COURT: All right. Let me hear  
20 you on your Motion to dismiss.

21 MS. RATIGAN: Thank you, Your  
22 Honor, may it please the court. Mr. Hurlbert  
23 was given a ticket for public drunkenness in  
24 July of 2008.

25 He plea *no contendre* before Judge

1 McFarland on March 4<sup>th</sup>, 2009, and received time  
2 served.

3 He then filed a notice of appeal in  
4 Circuit Court in March of '09. Judge Hughston  
5 affirmed his conviction June 18<sup>th</sup>, 2010.

6 Mr. Hurlbert then filed this PCR.

7 I filed a return Motion to dismiss  
8 because he has failed to articulate a valid  
9 reason he is entitled to post-conviction relief  
10 under the Act. My return, on the second page,  
11 lists all of the different grounds for which  
12 you can get relief under post-conviction. The  
13 State alleges that he has failed to articulate  
14 how his allegations fit under any of these  
15 crimes, so we would move to dismiss.

16 THE COURT: Okay. Your response to  
17 that?

18 MR. COUNTS: My response to that,  
19 Your Honor, is that -- again, I would renew my  
20 Motion for a continuance. But I would argue  
21 that if I were allowed -- if I were granted a  
22 continuance, I would then again ask the court  
23 to give me leave to amend his application to  
24 perhaps articulate what his issue is with his  
25 conviction in the lower court. As he stated in

1 his appeal to the Common Pleas Court, there are  
2 issues that he believes that the judge in the  
3 municipal court did not allow him to  
4 articulate. One being that he felt that he was  
5 coerced into pleading in the case.

6 I think that if he -- if you were to  
7 grant a continuance, that I would amend his  
8 application and perhaps under Section 4-17-2720  
9 concerning the existence of evidence of  
10 material facts not previously presented and  
11 heard, that perhaps is the Code section under  
12 which he should have based his application.

13 THE COURT: Anything further,  
14 counsel?

15 MS. RATIGAN: My response to that  
16 would be that it appears, based on his  
17 pleadings that he is raising the same issues  
18 that he did on appeal to Judge Hughston: that  
19 he was coerced into the plea, that the officer  
20 didn't have the authority to arrest him. We'd  
21 simply argue that he has had an opportunity to  
22 raise these issues on appeal.

23 THE COURT: I agree. I am granting  
24 your Motion to dismiss based upon the  
25 information that has been presented here today.

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned, Deborah Garrison,  
4 official court reporter for the 9<sup>th</sup> Judicial  
5 Circuit of the State of South Carolina, do  
6 hereby certify that the foregoing is a true,  
7 accurate and complete transcript of the hearing  
8 held before The Honorable Kristie Harrington on  
9 May 22, 2012;

10 I further certify that I am neither kin  
11 nor counsel to any of the parties and have no  
12 interest in the outcome of this action.

13

14



15

Deborah Garrison

16

Circuit Court Reporter

17

9<sup>th</sup> Judicial Circuit

18

19

20

21

22 Charleston, South Carolina

23 June 9, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Donald Hurlbert, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 2011-CP-10-4018

**ORDER OF DISMISSAL  
 WITH PREJUDICE**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 6, 2011. The Respondent made its return and motion to dismiss on April 23, 2012. A hearing was convened at the Charleston County Courthouse on May 22, 2012 at which time the Applicant was represented by George E. Counts, Esquire. The Applicant, who resides in Pennsylvania, was not present. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General. At the hearing, the Respondent made a Motion to Dismiss, arguing the Applicant failed to articulate a cognizable claim for relief.

**I. PROCEDURAL BACKGROUND**

The Applicant was issued a ticket for public drunkenness (Ticket #94310DV) for an incident occurring on July 3, 2008. The Applicant proceeded upon that charge without counsel.

On March 4, 2009, the Applicant entered a nolo contendere plea to the charge. He was sentenced by the Honorable Arthur C. McFarland to one (1) day of confinement, with credit for the one (1) day he already served.

The Applicant filed a notice of appeal in the circuit court (2009-CP-10-7840). By order

dated and filed June 18, 2010, the Honorable Thomas L. Hughston, Jr. denied all of the Applicant's outstanding motions and affirmed the conviction.

## **II. ALLEGATIONS**

This Court notes the Applicant did not make any specific allegations in his PCR application. Rather, the Applicant refers to the same allegations and issues raised in his direct appeal to the circuit court:

1. The municipal court judge erred in accepting the Applicant's plea of no contest to this charge.
2. The arresting officer was without authority to make the arrest.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the records of the subject conviction, the plea transcript, the appeal documents, and the pleadings and makes the following findings of fact and conclusions of law.

Pursuant to the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003), an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003)..

This Court notes the issues mentioned in the PCR application are the same issues raised in the Applicant's direct appeal of his conviction to the circuit court. The Applicant has not, however, specifically articulated how he may pursue these issues under the Uniform Post-Conviction Procedure Act. This Court finds and concludes this matter should be summarily dismissed for failure to state a claim cognizable under the Act.

#### IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds the PCR application must be dismissed based upon the Applicant's failure to articulate a cognizable claim for relief under the Uniform Post-Conviction Procedure Act. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED THAT:**

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE.**

**AND IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

---

Kristi L. Harrington  
Presiding Judge  
Ninth Judicial Circuit

\_\_\_\_\_, South Carolina.

STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-04018

Donald James Hurlbert

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 40(j), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: The State of South Carolina's Motion to Dismiss for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act is GRANTED

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:  
N/A

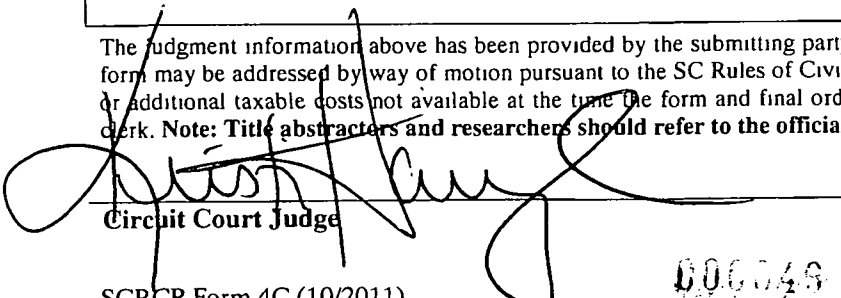
The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

FILED  
MAY 25 AM 9:48  
JULIE J. ARMSTRONG  
CLERK OF COURT



2151

5/24/12

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** Deborah Garrinson

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