

STATE OF SOUTH CAROLINA)

IN THE COURT OF APPEALS)

State of South Carolina)

-vs-)

Manuel John Austin Jr.)

Defendant.)

Indictment Nos.: 2023-GS-46-05675
and 2022-GS-46-04541

RECEIVED

DEC 27 2023

SC Court of Appeals

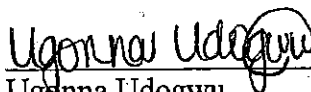
FILED-RECEIVED
2023 DEC 19 AM 9:11
ANGIE M. BRYANT
C.C.C.P. & GS
YORK COUNTY, SC

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), the issue to be raised on appeal is whether the trial court abused its discretion when it imposed the sentence upon the Honorable William A. McKinnon, the Appellant pled guilty to Breach of Trust with Fraudulent Intent Value more than \$2,000 but less than \$10,000 (Indictment No. 2023-GS-46-05675) for a sentence of Two years and Sixty Seven days credit for time served. Probation Revocation (2022-GS-46-0454) was revoked in full for Two years. Both sentences are to run concurrent with each other.

The undersigned does not have a good faith basis to believe that this issue is 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, 705 (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,



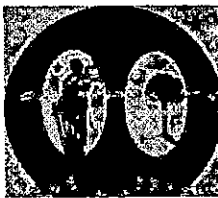
Ugenna Udogwu
P.O. Box 691
York, South Carolina 29745
(803) 628-3031
Attorney for Manuel S. Austin Jr.

York, South Carolina

December 18, 2023

**Sixteenth Circuit
Public Defender
Office**

Moss Justice Center
1675-1E York Highway
P.O. Box 691
York, S.C. 29745



Bryson J. Barrowclough
Sixteenth Circuit Defender

FILED-RECEIVED

2023 DEC 19 AM 9:23

ANGIE M. BRYANT
C.C.C.P. & GS
YORK COUNTY, SC
RECEIVED

DEC 27 2023
SC Court of Appeals

Melissa A. Inzerillo
Phillip L. Smith
Deputy Public Defender

Stacey D. Coleman
Juvenile Division

Toni L. Johnson
Sr. Assistant Magistrate Division

Assistant Public Defenders
Mark T. McKinnon
Thomas L. Bowen Jr.
Chris Bonds
Ryan Newkirk
Ugonna Udogwu
Fred Davis
David Tyler Bratton
Deondra Sexton
Melissa Rogers
Arthur Hays
Jeremy Hayes
William Barbieri
Katie T. Cummings
Devon Nielson
Jason LaBlanc
Derek Banov

Union County Public Defender
Erik D. Delaney
Laura Hicks

December 19, 2023

Manuel John Austin Jr.
Inmate at YCDC
Moss Justice Center
York, S.C. 29745

Re: Indictments Nos. 2023-GS-46-05675 and 2022-GS-46-04541

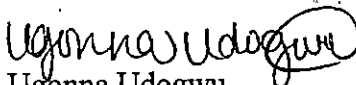
Dear Mr. Austin:

Enclosed please find certified copies of the Notice of Appeal, Rule 203 (B) Explanation and Certified Certificate of Service regarding your recent plea. Please note that you must inform the South Carolina Court of Appeals in writing, within **twenty (20) days** of the date of this letter, of any arguable basis that there are issues preserved for appeal.

You must send your arguments for your appeal to the following address:

**South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211**

Sincerely,


Ugonna Udogwu
Assistant Public Defender
Sixteenth Judicial Circuit

UU/jbb

Enclosures

Cc: South Carolina Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

CERTIFIED TRUE COPY

STATE

VS.

2023 DEC 19 PM 2:24

INDICTMENT/CASE#: 2023-GS-46-05675

MANUEL J AUSTIN, JR

AKA: John Manuel Austin Jr., Austin Manuel Jr.

Race: W Sex: M Age: 54

DOB: SS#

Address:

City, State, Zip:

DL#* SID# SC02413912

ANGIE M. BRYAN W/W#:
CLERK OF COURT
YORK COUNTY, SC

2023A4610100476

Date of Offense: 04/22/2023

S.C. Code §: 16-13-0230(A) and 16-1-57

CDR Code #: 3590

ORIGINAL

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: Breach of Trust with Fraudulent Intent, Third or Subsequent Property Crime (NMT 10 years)

re 2 yrs
active

In violation of § 16-13-0230(A) and 16-1-57 of the S.C. Code of Laws, bearing CDR Code # 3590

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:

/s Amber Brooke Holt	103192	/s Manuel J Austin, Jr	/s Ugonna O. Udogwu	103845
Solicitor	SC Bar #	Defendant	Attorney for Defense	SC Bar #

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

for a determinate term of 2 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: probation, violations

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.

67 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
 - Attend Voc. Rehab. Or Job Corp
 - Mental Health Counseling
 - Sex Offender Registry pursuant to S.C. Code § 23-3-430
 - Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
 - Other: _____
- Completion of GED
 - No Contact with Victim
 - May serve W/E beginning: _____
 - Public Service Employment _____ days/hours
- Random Drug/Alcohol Testing
 - Domestic Violence Intervention Program

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 pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ 100
§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	\$ 25
§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			\$ 125

Clerk of Court/Deputy Clerk: Angie Bryant
Court Reporter: Shannon McGillberry

Presiding Judge: _____
Judge Code: McKinnon 2761
Sentence Date: December 18, 2023

WITNESSES

YCSO

Witnessing Officer: *Schifferle*

ARREST WARRANT NUMBER

2023A4610100476

ACTION OF GRAND JURY

TRUE BILL

Dana Simmons
Foreperson of Grand Jury
Date: *12/14/23*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2023-GS-46-05675

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 27, TERM 2023

THE STATE

VS.

MANUEL J AUSTIN, JR

INDICTMENT FOR

**BREACH OF TRUST WITH FRAUDULENT
INTENT, THIRD OR SUBSEQUENT
PROPERTY CRIME**

SC Code: § 16-13-0230(A) and 16-1-57
CDR Code: 3590

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

AB
2023 DEC 19 PM 2:24
CERTIFIED TRUE COPY
ANGIE M. BRYANT
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK


INDICTMENT

At a Court of General Sessions, convened on November 27, 2023, the Grand Jurors of York County present upon their oath:

**BREACH OF TRUST WITH FRAUDULENT INTENT, THIRD OR SUBSEQUENT
PROPERTY CRIME**

The defendant, Manuel J Austin Jr, did on or about April 22, 2023, in York County, South Carolina, after having been entrusted by Santos Serrano with the care, keeping, and possession of 2004 Black Chevrolet PT Cruiser, valued at more than two thousand dollars (\$2,000) but less than ten thousand dollars (\$10,000), feloniously convert and appropriate said items to his or her own use and purpose, with the intent to deprive Santos Serrano thereof, and said defendant has been convicted of two or more offenses for which the term of imprisonment is contingent upon the value of the property involved. All in violation of Section 16-13-0230(A), *Code of Laws of South Carolina* (1976, as amended).

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


AMBER BROOKE HOLT
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of York
STATE VS

Indictment Number:
22 - GS - 46 - 04541

Probation C/W#s & issuance dates:

C-46-23-0200 & 10/2/2023

W-46-23-0302 & 11/3/2023

Name of Original Offense: Breach of Trust w/ Fraud Intent

Original A/W#: 2022A4610201506

Date of Original Offense: 7/12/2022

Conviction S.C. Code §: 16-13-0230(A) & 16-1-57

Conviction CDR Code #: 3 / 5 / 9 / 0

Original Sentence: 2 yrs plus 10 dys + HS bal SUS

4 yrs prob. cts 10 dys.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 1 / 24 / 23 in the Court of General Sessions of York County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____, as set forth in the attached warrant(s) or citation(s). After hearing the evidence and being duly advised, in the presence (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

1, 3, 6, 7, 9, 10, & 11

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve the remainder of the original sentence.
- the suspended sentence be partially revoked and the above named defendant be required to serve _____ days/months/years of the original sentence; and
 - Terminate the balance of probation.
 - Continue/reinstate probation, subject to the conditions set forth in the original sentence and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on electronic monitoring pursuant to §23-3-540.
- Financial Obligations: Order satisfies:
 - Department fees (arrearage)
 - Fines and other fees (arrearage / balance)
 - Restitution (and 20%) (arrearage / balance)
 Civil judgment:
 - Department fees
 - Fines and other fees
 - Restitution (and 20%)
- Additional Conditions ordered by the Court (Jail time credits should not be reported in this section):

no AM.

run concurrent w/ ind. 2023-GS-46-05675

- The defendant is given credit for _____ days/months/years of pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant is to be given credit for _____ days/months/years of Hayes credit (N/A if defendant has served prior SCDC time).
- No pre-revocation hearing detention time to be awarded because a citation was issued.
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 18 day of December, 2023
York, SC

[Signature]
Presiding Judge 16th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature
unable to sign
Signed this 18th day of December 2023 at _____
Day Month Year

Witnessed by
Morgan Nashis
York SC
City