

CERTIFIED CIRCUIT
COURT MEDIATOR

ALSO ADMITTED
GEORGIA BAR

LAW OFFICE OF
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P.O. BOX 5550
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29938

September 19, 2013

Via U.S. Mail

Honorable V. Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

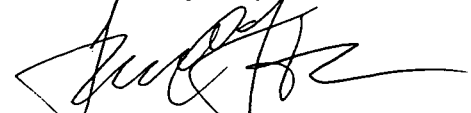
Re: State v. DeCarlo; Appellate Case No. 2013-001232; Reply to letter of Court dated September 16, 2013

Dear Clerk Allen:

In response to your letter to me of September 16, 2013, please find enclosed a copy of the letter I have sent to Mr. DeCarlo today, along with copies of the enclosures also sent, all as per your instructions.

Please advise me if you have any questions. Thank you.

Yours very truly,



Thomas C. Taylor

TCT/dpt

cc: John DeCarlo
Robert M. Dudek and Salley W. Elliott, Office of Appellate Defense, SCCID
Bill Harvey, Esq. and Bill Foster, Esq., via email
Ms. Martha Foster via email

RECEIVED
SEP 23 2013
SC Court of Appeals

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29938

September 19, 2013

Mr. John DeCarlo
c/o Leiber Correctional Facility
Wando C 166
SCDC 355553
P.O. Box 205
Ridgeville, SC 29472

RECEIVED

SEP 23 2013

Re: State v. DeCarlo; Appellate Case No. 2013-001232

SC Court of Appeals

Dear Mr. DeCarlo:

As you know, I filed a Notice of Appeal as to your sentencing based upon the argument that Judge Goldsmith had the legal option of sentencing you to less than the 15 year minimum for Burglary 1.

In connection with the Notice of Appeal, under the Appellate Court Rules, I filed a Rule 203(d)(1)(B)(iv) Written Explanation of Issue That Can Be Reviewed on Appeal. A copy is enclosed. On August 13, 2013, the Court sent me a letter requesting that I provide an explanation as to whether any objections to the sentence were made on the record during the plea hearing. On August 15, 2013, I sent the Court a Written Explanation As To Whether Any Objections To The Sentence Were Made On The Record During The Plea Hearing. A copy of that filing is also enclosed herein.

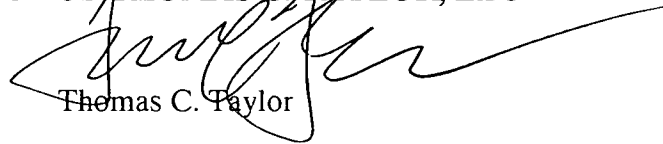
On September 18, 2013, I received another letter from the Court, which was sent out on September 16, 2013. A copy of that letter is also enclosed. As you can see, it acknowledges the Court's receipt of my August 15, 2013 Explanation, and directs me to send you a copy of it along with a letter advising you that you have twenty (20) days from the date of this letter to inform the Court in writing of any arguable basis that there are issues preserved for appeal.

I am hereby notifying you that you have twenty (20) days from September 19, 2013 to send the South Carolina Court of Appeals, P.O. Box 11629, Columbia, SC 29211, a letter or petition setting forth for the Court any arguable basis that there are issues preserved for appeal. I am also herewith providing you with a copy of the earlier filed Written Explanation of Issue That Can Be Reviewed on Appeal and Written Explanation As To Whether Any Objections To The Sentence Were Made On The Record During The Plea Hearing.

Please understand Mr. DeCarlo, that when the Court provides a time limit such as this, it is imperative that you meet that time limit. So, please make sure to provide the Court any written input you may desire on the question by October 9, 2013.

I am providing a copy of this letter to Bill Foster and Bill Harvey, as well as your mother, and you may want to discuss this issue with them. If you desire any input from me, please call or write as soon as possible.

Yours very truly,
LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor

TCT/dpt

cc: V. Claire Allen, Deputy Clerk of Court, Court of Appeals
Bill Harvey, Esq. and Bill Foster, Esq., via email attachment
Ms. Martha Foster, via email
Robert M. Dudek and Salley W. Elliott, SC Office of Appellate Defense

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2011-GS-07-01813
Case No. 2011-GS-07-01758
Case No. 2011-GS-07-01744

The State

Respondent

v.

John DeCarlo

Appellant

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SEP 23 2013
SC Court of Appeals

SCACR 203(d)(1)(B)(iv) WRITTEN EXPLANATION
OF ISSUE THAT CAN BE REVIEWED ON APPEAL

Pursuant to SCACR 203(d)(1)(B)(iv), Counsel for the Defendant John DeCarlo hereby advises the Court that this appeal from guilty pleas and sentence of 15 years concurrent is based upon the legal argument that Judge Goldsmith had the ability to suspend a portion of the sentence for Burglary First (S.C. Code Section 16-11-311) in his discretion. Counsel advises the Court that Judge Goldsmith heard counsel and the Solicitor in chambers prior to the plea, and counsel provided Judge Goldsmith at the time with a copy of State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621(2011). Counsel argued to Judge Goldsmith that Jacobs should be read strictly and restricted to its facts, which therein included a request to suspend a portion of the minimum 15 year sentence and place Mr. Jacobs on probation. In our case, we urged Judge Goldsmith to examine the numerous mitigating factors set forth in the Psychological Evaluation of John DeCarlo performed by David R. Price, Ph.D., (submitted as a Court's Exhibit and a true and correct copy being attached to this Written Explanation) and to give Mr. DeCarlo a sentence that would comport with the findings of Dr. Price, to include supervised home arrest and drug and alcohol counseling. Judge Goldsmith indicated on the record during the plea, that he found the factors surrounding Mr. DeCarlo's earlier drug and alcohol abuse, along with physical abuse he suffered at the hands of his father, to be compelling, but said he was constrained by Section 16-

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SEP 23 2013
SC Court of Appeals

11-311 and Jacobs to sentence Mr. DeCarlo to a minimum of 15 years in a South Carolina prison.

Counsel respectfully argues that the intention of the Legislature and the plain reading of the current statutes in South Carolina, allows our Circuit Court Judges discretion to craft a sentence to comport with the facts of the case and provide alternative time under supervised house arrest and treatment. Mr. DeCarlo requests that the Court so rule and remand the case for sentencing by Judge Goldsmith in conformity with his findings and conclusions.

Law Office of Thomas C. Taylor, LLC

By: 

Thomas C. Taylor
Attorney For The Defendant
P.O. Box 5550
Hilton Head Isl., SC 29938
843-785-5050
E-mail: tom@thomastaylorlaw.com



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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September 16, 2013

Mr. Thomas Calvin Taylor
PO Box 5550
Hilton Head Island SC 29938-5550

Re: The State v. John DeCarlo
Appellate Case No. 2013-001232

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

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

Please send your letter to your client within ten (10) days, with a copy to this Court.

Very truly yours,

V. Claire Allen, Deputy
CLERK

cc: Robert Michael Dudek
Salley W. Elliott

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2013-001232

The State

Respondent

v.

John DeCarlo

Appellant

WRITTEN EXPLANATION
AS TO WHETHER ANY OBJECTIONS TO THE SENTENCE
WERE MADE ON THE RECORD DURING PLEA HEARING

In response to a letter from the Clerk of Court dated August 13, 2013, Counsel for Mr. DeCarlo hereby advises the Court that he argued to Judge Goldsmith during the plea hearing on the record that the Court had the inherent authority to suspend a portion of the sentence for Burglary First (S.C. Code Section 16-11-311) in his discretion. Counsel advises the Court that, to his recollection, he provided the Court at the time with a copy of State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621(2011) and argued to Judge Goldsmith that Jacobs should be read strictly and restricted to its facts, which therein included a request to suspend a portion of the minimum 15

year sentence and place Mr. Jacobs on probation. In our case, we urged Judge Goldsmith to examine the numerous mitigating factors set forth in the Psychological Evaluation of John DeCarlo performed by David R. Price, Ph.D., (submitted as a Court's Exhibit) and to give Mr. DeCarlo a sentence that would comport with the findings of Dr. Price, to include supervised home arrest and drug and alcohol counseling. Judge Goldsmith indicated on the record during the plea hearing, that he found the factors surrounding Mr. DeCarlo's earlier drug and alcohol abuse, along with physical abuse he suffered at the hands of his father, to be compelling, but said he was constrained by Section 16-11-311 and Jacobs to sentence Mr. DeCarlo to a minimum of 15 years in a South Carolina prison. He then entered that sentence.

Relying on memory, Counsel for Mr. DeCarlo does not believe that he made an objection to the sentence then handed down by Judge Goldsmith at the plea hearing.

Law Office of Thomas C. Taylor, LLC

By: 

Thomas C. Taylor
Attorney For The Defendant
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843-785-5050
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August 15, 2013
Hilton Head Island, South Carolina