

NOTICE OF APPEAL

ANEW

EXPLANATION

PURSUANT RULE 203(c)(1)(B)(i)

RECEIVED
JUN 04 2014
SC Court of Appeals

IN THE COURT OF APPEALS
FOR THE STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDANT

- VS -

RECEIVED

JUN 04 2014

SC Court of Appeals

Akeem Alim-Nafis Abdullah-Malik

APPELLANT

NOTICE OF APPEAL


INDICTMENT NO. 2013-GS-04369,
2013-GS-04371

APPEAL FROM YORK COUNTY
PAUL BURCH, CIRCUIT COUNTY JUDGE

Akeem Alim-Nafis Abdullah-Malik, hereinafter,
APPELLANT, APPEALS THROUGH PROVIDING NOTICE
OF APPEAL FROM THE CONVICTION AND SENTENCE
IMPOSED BY HONORABLE CIRCUIT JUDGE PAUL BURCH
ON MARCH 10th 2014, PURSUANT TO GUSTY PLEA
PAGE 1 OF 2

TITLES SAID 19th day MAY month
Twenty Thousand & Fourteenth year

RESPECTFULLY SUBMITTED


Akeem Alim-Nafis Abdullah-Malik
Appellant, Pro-Se
York County Deputies Center
1675-3A YORK HIGHWAY
YORK, SOUTH CAROLINA (29745)

CERTIFICATE OF SERVICE

I am, Akeem Alim-Nafis Abdullah-Malik, Appellant in
SAID MATTERS, duly deposed on SAID 19th day MAY month
Twenty Thousand & Fourteenth year I did deposit in U.S. MAIL
DEPOSITORY PREPAID ADDRESSED TO CL: BELOW PURSUANT
TO HOUSTON J. LACK 487 U.S. 266 (1988) NOTICES
OF APPEAL AND THE EXPLANATION REQUIRED BY
RULE 203(d)(4)(B)(iv)

CL: IN THE S.C. COURT OF APPEALS
P.O. Box
COLUMBIA, SOUTH CAROLINA (29210)

SINCERELY,



CL: IN THE COURT OF COMMON SESSIONS
PO Box 649
YORK, SOUTH CAROLINA (29745)

MR Akeem Alim-Nafis Abdullah-Malik
Appellant Pro-Se

CL: 16th JUDICIAL CIRCUIT SOLICITORS
ATTN: RYAN R. NEWKIRK
1675-1A YORK HWY
YORK, SOUTH CAROLINA, (29745)

IN THE COURT OF APPEALS
FOR THE STATE OF SOUTH CAROLINA

APPEAL FROM COURT OF GENERAL SESSIONS

Paul Burrell, Circuit Court Judge
YORK COUNTY

INDICTMENT No. 2013-GS-46-04369
2013-GS-46-04371

THE STATE OF SOUTH CAROLINA
RESPONDANTS,

-VS-

RECEIVED
JUN 04 2014
SC Court of Appeals

Akeem Alim-Nafis Abdullah-Malik
APPELLANT.

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

APPELLANT, hereby, brings forth, explains why the issues to be raised on appeal may be reviewed on appeal, and this explanation includes identification of the issues to be raised on appeal and the factual basis for the issues - Pursuant South Carolina Appellate Court Rules ("SCACR") Rule 203(d)(1)(B)(iv)

As an initial matter, it must be recognized and acknowledged by this Court that this explanation is related "ONLY" to issues emanating from Appellant's "guilty plea" and does not apply to Appellant's appeal from Appellant's sentence which is separate and distinct from the guilty plea. See, Rule 203(d)(1)(B)(iv), SCACR (explanation required regarding appeal from guilty plea only); Easter vs STATE, 584 S.E.2d 117, 355 S.E. 79 (S.C. 2003) ("sentencing although often combined with admission of guilt in a hearing, is a separate issue from guilt and distinct phase of criminal proceedings.")

THEREFORE, the Appellant's appeal from his sentence "must" proceed to briefing regardless of this Court's determination as to whether Appellant's below explanation makes a sufficient showing respecting his appeal from the guilty plea pursuant SCACR, Rule 203(d)(1)(B)(iv) because by pleading guilty, defendant did not waive his right to challenge violation of his constitutional rights that occurred at sentencing hearing. TERRY vs. COMMONWEALTH, 500 S.E.2d 843 (Va. App. 1998).

ISSUE FOR REVIEW:

ISSUE ONE

DID THE TRIAL COURT ERROR
IN DETERMINING DEFENDANT'S
MENTAL COMPETENCY ITSELF
WITHOUT BENEFIT OF VETERAN'S
EXPERT OR MENTAL HEALTH
AGENCY MENTAL HEALTH EXAMINATION
REPORT?

ARGUMENT

TRIAL COURT ERRED IN DETERMINING
DEFENDANT'S MENTAL COMPETENCY ITSELF WITH-
OUT RELIANCE ON APPELLANT'S VETERAN'S EXPERT
MENTAL HEALTH OR MENTAL HEALTH AGENCY PROFESSIONAL
EXAMINATION REPORT...

THROUGHOUT THE CRIMINAL PROCEEDINGS THE APPELLANT SELF-
REPRESENTED, BEING PERMITTED TO PROCEED PRO-SE, APPELLANT
RAISED THE ISSUES OF HIS MENTAL COMPETENCY MULTIPLE
TIMES DURING VARIOUS STAGES OF THE OVERALL BEGINNING TO
END TO PRESENT OF THE CRIMINAL PROCEEDINGS. PARTICULARLY,

he sought a mental health examination of/ to the extent whether he was mentally competent to assist in his own defense. Although the trial judge denied Appellant's Request to a Mental examination And Plea OF MENTAL ILL, the trial judge nonetheless included in his sentencing order a recommendation for placement for mental health counseling, which indicates the trial judge had reason to believe Appellant has some mental impairment.

THE law of South Carolina is clear: "Whenever a judge of the circuit court... has reason to believe that a person on trial before him, charged with the commission of a criminal offense, is not fit to stand trial because such person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:

- 1). Order examination of such person by two examiners designated by the Department of Mental Health
- 2). Order such person committed for examination and observation to an appropriate facility"

Id., S.C. Code Ann § 44-23-410 (supp. 2010) . . .

In the case at bar, the trial judge had "reasons" to order examination of Appellant because the trial judge realized that Appellant has a mental impairment/as demonstrated by the judge's order for mental health counseling. Moreover, the trial judge was not authorized to determine the mental competency of Appellant because he is not a qualified examiner designated by the Department of Mental Health.

Inasmuch as Appellant raised the issue of his mental competency throughout the proceedings, indicated the right was not waived. see, e.g., State vs. Blair, 273 S.E.2d 536 (S.C. 1981) (finder's failure to request competency hearings did not waive right to such a hearing because the issue was raised throughout the proceedings.)

ISSUE TWO

DID THE TRIAL COURT ERROR IN REFUSING TO DEFER SENTENCE OF INCARCERATION IN FAVOR OF VETERAN'S ADMINISTRATION CLINICAL APPROACH

ARGUMENT

TRIAL COURT ERRED IN REFUSING
TO DEFER SENTENCE OF INCARCERATION
IN FAVOR OF CLINICAL APPROACH
BY THE VETERANS ADMINISTRATION

Throughout the criminal proceedings as to date
Appellant relied upon THE GUARANTEED, PRESERVED
AND EXCLUSIONARY PROTECTED RIGHTS OF THE
UNITED STATES CONSTITUTION INCLUDING EQUAL
PROTECTION OF LAWS APPLIED IN THE STATES UNDER
THE 14th AMENDMENT. CONJUNCTIVE WITH THE
SOUTH CAROLINA CONSTITUTION. AND FAIR IMPARTIAL
SENTENCING.

Appellant at all times objected orally, written to
the Prosecution Defaults the total to end to prevent Criminal
Proceedings, Reserving the Records. Appellant, A 3-TIME Honorable
Discharged E-6 Staff Sgt Promotable US Army Veteran, THROUGHOUT
Sought Relief From Excessive Bail, Retractions, DISCRIMINATION.

to the extent of Immediate Release. Release to THE
CUSTODY OF THE VETERANS ADMINISTRATION MEDICAL CENTER
CONJUNCTIVE WITH THE BILL HERRICK (VAMC) SALLYWAY
NORTH CAROLINA AND CHARLOTTE COMMUNITY BASE OUTPATIENT CLINIC
CHARLOTTE, NORTH CAROLINA, OR COLUMBIA (VAMC) COLUMBIA,
SOUTH CAROLINA. Appellant sought VETERANS TREATMENT COURT
(VTC) FOR NON-VIOLENT VETERAN OFFENDERS INTRODUCED
through H.R. BILL 3179 REP. Todd Rutherford
MOVEMENT ON SENTENCING REFORM by U.S. ATTORNEY
ERIC HOLDER. To include MODERN DAY AMELIORATION
TO FAIR SENTENCING PRACTICE OF THE 21ST CENTURY
EVOLVING INTO 22ND CENTURY PRACTICE. Opposing the
ANTIQUATED ARTIFICIAL PRACTICE. AT BAR before you.
Appellant sought a MORE CONSCIOUS DEFERMENT IN
SENTENCING A CLINICAL APPROACH FURTHER ADDRESSING
Appellant's HISTORY, AXIS IV DIAGNOSIS, CHRONIC
CARE NEEDS DIAGNOSED. WARRANTED REFORMATORY,
AND REHABILITATION, ADDRESSING WARRANTED CONTINUED
PSYCHOLOGICAL, AND EDUCATIONAL NEEDS. Ultimately
REMOVING THE UNWARRANTED STRANGLIZATION ON
THE COMMON FOLK TAXPAYERS WHO FOOT THE COST

OF A NON-VIOLENT OFFENDER. WHOM AT THE TIME OF ARREST SUFFERED DIMINISHED CAPACITY DUE TO ADDICTIONS AND DIAGNOSED PTSD. HOWEVER, APPELLANT WAS A FULL-TIME COLLEGE STUDENT AT CENTRAL PIEDMONT COMMUNITY COLLEGE [C.P.C.C.], SEEKING TO GRADUATE AND TRANSFER TO U.N.C.L. UNIVERSITY OF NORTH CAROLINA WITH ASPIRATIONS TO ATTEND AND GRADUATE LAW SCHOOL...

THE CONSTITUTIONAL LAW 270 (1) (2)

DUE PROCESS CLAUSE IS IMPLICATED AT SENTENCING and a defendant has a right to challenge the procedure leading to a imposition of his sentence GARDNER - VS - FLORIDA 413 US 349, 358. 97 S. CT 1197, 1204, NO 1205, 51 L. ED. 2D 393 (1979)

"CULPABILITY" THE OFFENDERS CULPABILITY FOR HIS CRIMINAL ACTS THE DEGREE OF THE DEFENDANTS BLAMEWORTHINESS IS THUS OF CENTRAL IMPORTANCE TO THE of the sentence.

CALIFORNIA V. BROWN 429 US 538, 545; 107 S. CT 837, 841; 93 L. ED. 2D 934 (1987) EMPHASIS ON THE "CULPABILITY" IN SENTENCING DECISIONS HAS LONG BEEN REFLECTED IN ANGLA-

AMERICAN JURISPRUDENCE

no Eddings reflect

the belief that punishment should be directly related to the culpability of the criminal defendant.

U.S. vs. STEVENS 851 F.2d 140 (6th Cir. (1988)) ("Convicted defendants even those who plead guilty have a due process right to a FAIR SENTENCING PROCEDURE WHICH INCLUDES THE RIGHT TO BE SENTENCED ON BASIS OF ACCURATE INFORMATION.")

Booker vs U.S. 543 U.S. 220 (2005) STRIKING DOWN THE FEDERAL SENTENCE GUIDANCE NULLIFYING AN UNCONSTITUTIONAL APPLICATION BOOKER - US WASHINGTON 542 US 296 AS THE BASIS FOR Booker. 6th AMENDMENT RIGHT OF FACTS ADMITTED BY DEFENDANT OR PROVEN BY JURY OR DETERMINED BY PEERS. ULTIMATELY PERMITTING JUDGE THE DISCRETION TO SENTENCE WITHIN STATUTORY PROVISIONS, TO EVEN DEFER WITH FACTS OF MITIGATING FACTS OR ACCURATE INFORMATION TO WARRANT DEPARTMENT.

S.C. SENTENCING HAS IN PLACE JUDGES DISCRETION NOT BEING BOUND TO A DETERMINATE SENTENCING STRUCTURE. JUDGE DISCRETION WITHIN PERIOD OR STATUTORY PROVISIONS OF THE CRIMINAL STATUTE. TO SENTENCE DEFENDANTS AT THE LEAST, MODERATE, OR SEVERELY PENALTY THE STATUTORY MAXIMUM PROVISION ONLY WHEN THEIR WARRANTED INFORMATION ABOUT MITIGATING FACTS OR PRESENCE OF AGGRAVATING FACTS OR ISSUES TO

Page 9 of 13

WARRANT ENHANCEMENTS WHEN NOTICE HAS BEEN ISSUED
UPON THE DEFENDANT IN A WIDE TIME AFFORDING THE DEFENDANT
TIME TO OBJECT AND PREPARE A DEFENSE... BEING SENTENCES
IS SUCH A CRITICAL TIME FOR DEFENDANT ...

IN THE CASE AT BAR, THE TRIAL JUDGE ERRED IN INSTANCE
AND SEPARATELY FROM ISSUE ONE PERMITTING UNOBTAINING, WANT
IF PROSECUTION, PROSECUTOR BAR PROSECUTION, DUE PROCESS
IMPEDEMENTS AND DETERIALS FORCING APPELLANT TO WITHDRAW
TRIAL THROW IN THE TOWEL, FORCED GUilty PLEA
ABOUT DUE PROCESS TO VOID OJIBE, ISSUANCE
IF UNOBTAINING DEFENSE EXPERT TESTIMONY / WITNESSES
CLINICAL PSYCHIATRIST, PSYCHOLOGIST, AND TREATMENT TEAM
OF THE [VAME] VETERANS ADMINISTRATION MEDICAL CENTER
AND WARRANTED SUBPOENA

APPELLANT A U.S. ARMY VETERAN DIAGNOSED WITH
A AXIS IV PSYCHOLOGICAL IMPAIRMENT PTSD, EBD, AND
PROVIDES INFORMATIONAL DIAGNOSES UNDER SEAL DUE TO
TRIAL COUNSEL INEFFECTIVENESS TO THE VETERANS REHABILITATION
ACT TITLE 38 CFR VIA AMERICAN DISABILITY ACT
HAS NOW FURTHER DEPRIVED A VETERAN NOW VIOLENT OFFENSE
WITH NO SOUTH CAROLINA CRIMINAL RECORD. ADEQUATE
VETERANS RELIEF WITHIN VETERANS TREATMENT COURT
PAGE 10 OF 13

AND DEFERRMENT WOULD HAVE NOT ADDED TO THE HISTORICAL STATISTICS OF THE Bureau of Justice Special Report. REVISION DATE September 29, 2000 ...

NOTING. AS OF 1997 VETERANS MADE UP OVER 12.5% OF STATE PRISONERS 14.5% OF FEDERAL PRISONERS. 11.7% OF LOCAL JAIL POPULATION. 58.6% STATE AND 58.4% OF THOSE ARE/WERE U.S. ARMY VETERANS. VETERANS SENTENCES AVERAGE (3) THREE YEARS LONGER THAN OTHER STATE PRISONERS. INCARCERATED VETERANS WERE LIKELY TO HAVE BEEN HOMELESS WHEN ARRESTED. VETERANS ABUSE OF LEGAL JUSTICE [WWW.OIP.USDOJ.GOV/BIS/](http://www.oip.usdoj.gov/bis/) ...

MOREOVER TRIAL JUDGE CONJECTURE APPLIED PREJUDICES TO THE APPELLANT AS TO DUE PROCESS AND EQUAL PROTECTION OF LAWS. DEFERRMENT OF SENTENCING TO APPROPRIATE SENTENCING COURT OR VETERANS TREATMENT COURT OR VETERANS SENTENCING JUDGE

INASMUCH TRIAL JUDGE IMPOSITIONS WERE ESPECIALLY APPLIED AND DISCRIMINATED AGAINST A U.S. ARMY 3-TIME HONORABLE DISCHARGED VETERAN. FORMER FEDERAL GOVERNMENT WORKER.


AT TIME OF ARREST FULL TIME SCHOLARSHIPPED
COMMUNITY COLLEGE STUDENT SEEKING TO TRANSFER
INTERNAL SELF-TAUGHT EDUCATION INTO FORMAL
EDUCATION. UNDER THE VETERANS RETRAINING ASSISTANCE
PROGRAM (VRAP) APPELLANT WAS UNDER VIABLE CONDUCTIVE
MENTAL HEALTH AND MEDICAL CARE. SUFFERING Axis IV
MENTAL HEALTH DIAGNOSIS. INSPITE APPELLANT PLEA OF
MENTALLY ILL AND MOVE FOR NON-INCARCERATED
ALTERNATIVE SENTENCE DEFERMENT TO THE (AMC)
SALISBURY AND CHARLOTTE NORTH CAROLINA TRIAL JUDGE
EXAGGERATED SENTENCES APPELLANT TO CONSECUTIVE
SENTENCES AMOUNTED TO 8 1/2 YEARS IN A
NON-CONDUCTIVE SETTING. ABDUCTING APPELLANT
FROM TODAY'S AMERICIZED REFORMATION
REHABILITATION AND EDUCATION CONCEPT OF WHAT
A CONVICTED PERSON WOULD BECOME RE-INTEGRATED.
RE-INTEGRATED WITH MODERN DAY SOCIETY.

WHEREFORE HAD APPELLANT MITIGATING FACTS BEEN
ADEQUATELY CONSIDERED IN APPROPRIATE VETERANS AFFAIRS TREATMENT
COURT WE MAY NOT HAVE THIS MATTER REFERRED TO YOU...
THAT A MORE CONDUCTIVE DECREASED SENTENCE WOULD HAVE
BEEN EMPLOYED..

BASED upon the aforementioned foregoing
reasons and facts, Appellant hereby move this
Court to allow this EXPLANATION Filed and processed
as required. Pursuant to 203(c)(1)(B)(iv) ("SCACR").

THIS SAID 19th day MAY month
TWENTY THOUSAND NINETEENTH year

Respectfully Submitted,

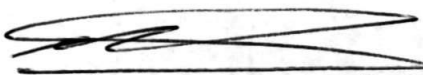

Alkeem Alim-Nafis Abdulh-Malik
Appellant, Pro-Se
Turkville Correctional Institution
PO Box 252
Turkville, South Carolina 29162

CERTIFICATE OF SERVICE

I, duly depose and certify on said 19th day MAY month
TWENTY THOUSAND NINETEENTH year. I have served a copy and CC to below
listed by depositing the same in the U.S. MAIL postpaid directed to:

THIS SAID 19th day MAY month
TWENTY THOUSAND NINETEENTH year

SINCERELY,


Mr. Alkeem Alim-Nafis Abdulh-Malik