

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM LEE COUNTY
W. Jeffrey Young, Circuit Court Judge**

Appellate Case No.: 2014-001403

The State of South Carolina, . . . Respondent

V.

Gary Nelson . . . Appellant

INITIAL BRIEF OF APPELLANT, GARY NELSON

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Attorney for Appellant
Gary Nelson

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SC Court of Appeals

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TABLE OF AUTHORITIES

Cases:

Johnson vs. The State of SC, 364 S.E. 2d 201, 294 S.C. 310

Anders vs. California, 386 U.S. 738 (1967)

STATEMENT OF THE CASE

The Appellant was tried in his absence in the Court of General Sessions in Sumter County on charges of Financial Transaction Card Theft, Financial Transaction Card Fraud and Financial Card Transaction Theft. The trial of the Appellant in his absence was held on December 16-17, 2013 before the Honorable W. Jeffrey Young, Circuit Court Judge.

The Appellant was not present at the time of sentencing as he was not present at the trial. The Appellant received his sentence on February 3, 2014 whereby the sealed sentence was presented and read by The Honorable J. Cordell Maddox, Jr. The Appellant was given an aggregate sentence of three (3) years.

The Appellant in this matter was not present at the hearing in his General Sessions matter due to medical reasons. The Appellant provided to the Court at the filing of his Motion for Reconsideration of Sentence a copy of that medical excuse for the time of the General Sessions trial in this matter. The Motion for Reconsideration of Sentence was filed with the Lee County Clerk of Court's offices on February 7, 2014 and properly served upon all necessary and interested parties herein.

On June 11, 2014 the Honorable W. Jeffrey Young heard arguments on the Appellant's Motion for Reconsideration of Sentence and thereafter the Motion for Reconsideration was denied. A Notice of Appeal was filed by the Appellant.

ISSUES OF LAW

- I. DID THE TRIAL COURT COMMIT ERROR WHEN IT DID NOT GRANT THE APPELLANT'S MOTION FOR RECONSIDERATION OF SENTENCE AND ALLOW THE PROVIDED MEDICAL EXCUSE AS A VALID REASON FOR THE APPELLANT'S ABSENCE FROM HIS GENERAL SESSIONS TRIAL?

ARGUMENT

APPELLANT UNKNOWNLY DID NOT APPEAR FOR HIS GENERAL SESSIONS TRIAL.

On December 17, 2013 the Appellant unknowingly did not appear for his General Sessions trial on the charges pending against him in Lee County (Case No.: 2013-GC-31-124) after having been notified that his presence was required. The Appellant offered to the Court a faxed work excuse from Carolina Pines Hospital stating that the Appellant had been treated and released from the Emergency Department and was able to return to work duties on December 19, 2013. Upon investigation of the Court it was determined that the Appellant was seen by staff at the Emergency Department for shoulder pain which would not have prevented his attendance at the General Sessions Jury Trial on his criminal charges.

ANALYSIS

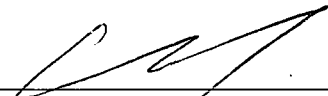
Counsel in this matter has conducted a full review of the record and has considered the facts and legal issues in the case. After a full review, counsel has concluded that by the Appellant's voluntary absence and failure to make appearance at this General Sessions trial on his charges.

Based upon the above analysis, counsel is of the opinion that Nelson has no arguable grounds for appeal in this case. Therefore, in accordance with the requirements of *Johnson* and *Anders*, this appeal has been noted and Nelson will have his opportunity to file his *pro se* supplemental brief to raise those arguments he deems appropriate.

CONCLUSION

Counsel has reviewed the record and concluded that Nelson knowingly and voluntarily failed to appear for his General Sessions trial and feels that the Court did not err in denying the Appellant's Motion for Reconsideration of Sentence in this matter, and that the Court trial court was within its discretion to impose the sentence it imposed. In accordance with the requirements of Johnson vs. The State of SC, 364 S.E. 2d 201, 294 S.C. 310 and Anders vs. California, 386 U.S. 738 (1967), counsel has reviewed the facts and legal issues in the case. It is counsel's opinion that there are no arguable grounds for appeal in this case. Counsel will further submit his Motion for Relief as Counsel in this matter. A copy of the Motion and of this Brief has been served on Appellant.

RESPECTFULLY SUBMITTED



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11/11, 2014

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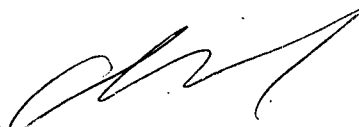
MOTION TO WITHDRAW AS COUNSEL

COMES NOW counsel for the Appellant, Gary Nelson, and moves to withdraw as counsel for the following reasons:

1. On June 11, 2014 the General Sessions Court issued its denial of the Motion for Reconsideration of Sentence in this matter for the Appellant.
2. Counsel believes, after a conscientious examination of the Court's order and opinion, the applicable law, and the considerations for review that an appeal of these matters would be frivolous. Therefore, counsel requests permission to withdraw from further representation of the Appellant.

Respectfully Submitted this 31st day of October, 2014.

October 31, 2014



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