

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of General Session/Drug Court

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

JUN 20 2016

SC Court of Appeals

Appeals Court Case Number: 2016-001153
General Sessions Case No.: 2015A2610400139
Drug Court Case No.: 15D150119

The State,

Respondents,

v.

Kenneth Ray Boynton,

Appellant.

AMENDED NOTICE OF APPEAL

Kenneth Ray Boynton was sentenced to Drug Court by the Honorable Benjamin Culbertson on September 16, 2015. Kenneth Ray Boynton was thereafter terminated from the Horry County Drug Court program by the Honorable Kathy Ward by Order dated March 2, 2016. The Drug Court Order of March 2, 2016 imposed the original sentence of the aforementioned Court Order dated September 16, 2015. Appellant thereafter filed a Rule 59(e) Motion to Alter or Amend the Judgment of the Probate Courts termination from its program and request to remand the case to the Court of General Session for sentencing under the original charges. Accordingly, Appellant appeals his conviction, termination from the drug court program, sentence imposed thereafter, and denial of the Rule 59(e) Motion made by the Honorable Judge Culbertson on May 23, 2016. Appellant has not received a written notice of entry of this Judgment as of June 1, 2016.

Issues on Appeal:

1. Whether the Court disregarded the finding of State vs. Perkins, 378 S.C. 57 (2008) in its decision to deny Appellants Rule 59(e) motion?
2. Whether the Court considered the purpose of the Horry County Drug Court program in its finding and the overall chilling effect of early termination under the program.

3. Whether the Court adequately considered the possibility remanding the case back to Drug Court for consideration under the State vs. Perkins holding.
4. Whether it is Constitutional to have each county in South Carolina implementing a different standard for review and termination of a Drug Court program and the procedure for handling same and sentencing Appellant thereunder.
5. Whether it is Constitutional to have different courts handling the Drug Court programs in each county in South Carolina with uneven rules.
6. Whether it is Constitutional not to have a written guideline of rules for handling Drug Court cases in the County of Horry from the sentencing through the implementation, termination and appeals process of said termination.
7. Whether a Probate Judge has the authority to implement a criminal sentence based on its decision to terminate an individual from the Drug Court program.
8. Whether Appellant's conduct rose to the level requiring termination from the program in that the program is designed for the Appellant, authorities, solicitors, therapists, and counselors to jointly attempt rehabilitation.
9. Whether the County of Horry's new policy of execution of contracts for the admission to the Drug Court Program shows the Drug Court procedural failures for Appellant Boynton and the lack of clear, consistent and distinct clarity in its administration.

Facts

On March 2, 2016, in its Order, subsequent to a hearing of even date, the Honorable Probate Court terminated Appellant's participation in the Horry County Drug Court Program. Appellant had previously tested positive a number of times for illicit substances over a short period of time which gave rise to the hearing. This action had the result of the Probate Judge Ward terminating the Appellant's participation in the Drug Court program and imposing the original sentence of the Appellant established in the Court of General Sessions, which original sentence was reached in exchange for Appellant's cooperation in the program.

Without any further hearing, argument or discussion in the Court of General Sessions about the extent of imposition of said charges, Appellant's Drug Court participation was terminated. This action was challenged at the 59(e) hearing due to the lack of authority of the Probate Judge to implement a criminal sentence. Judge Culbertson indicated uncertainty about the exact procedure for remanding or reconsidering the original sentence based on the lack of authority and clarity on this issue under the law. On May 23, 2016, the Honorable Judge Culbertson denied Appellant's motion to alter or amend the Drug Court's termination from the program.

The Honorable Culbertson was not able to adequately address the aforementioned issues pursuant to these well plead facts because of the vagueness of law and the recent implementation of the Drug Court Program in Horry County and the uneven rules about such cases across the State of South Carolina.

As an apparent remedial measure, the County of Horry has implemented new clear, consistent and distinct procedures for handling the Drug Court Program including executing contracts with said participants.

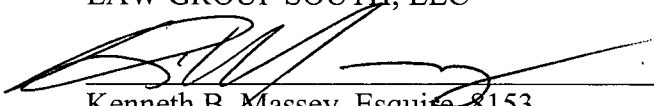
Dated this 22 day of June, 2016 in Conway, South Carolina.

Respectfully Submitted,

Other Counsel of Record:

Horry County Solicitor's Office
Joshua Holford, Assistant Solicitor
Post Office Box 1276
Conway, SC 29526

LAW GROUP SOUTH, LLC



Kenneth B. Massey, Esquire, 8153
Keith A. Dame, Esquire, 70601
Attorneys for Appellant
200 Elm Street
Conway, SC 29575
Telephone: (843) 488-3777
Fax: (843) 488-3779

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

Kenneth Ray Boynton

AKA: _____

Race: BLACK Sex: M Age: 55

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Conway, SC 29526

DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: PWID/Dist. of Cocaine/LSD/other Narcotic drugs in Sch. I(b) & (c)/Sched. II, 1st offense

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # _____

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ 100039 _____ 9376

Caraker, Jr., David P.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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

for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for Level II Drug Court

months/years and subject to ~~South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.~~

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 8.40

TOTAL \$ 288.40 + 40.00 = \$328.40

Clerk of Court/ Deputy Clerk

Melanie Huggins Ward

Court Reporter:

Grace Hurley

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2602379

A/W#: 2015A2610400139

Date of Offense: 1/15/2015

S.C. Code § : 44-53-0370(b)(1)

CDR Code #: 0185

RECEIVED
SENTENCE SHEET

CONVICTED OF 10 yrs to Drug Court Level 2

SC COURT OF Appeals

FILED
Horry County
2015 SEP 16 PM 6:08
MELANIE HUGGINS WARD
CLERK OF COURT

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 2500 beginning 10/16/15

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

M. J. ...

Judge Code: 2148

Sentence Date: Sept. 16, 2015

STATE OF SOUTH CAROLINA)

IN THE Horry COUNTY DRUG COURT

IN THE MATTER OF:)

CASE NO. 15D150119)

WARRANT NO: 2015A2610400139)

Kenneth Boynton,
Participant)

ORDER OF DISMISSAL FROM DRUG)
COURT AND ORDER OF REMAND TO)
THE SOUTH CAROLINA DEPARTMENT)
OF CORRECTIONS AND RELEASE OF)
HOLDS)

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SC Court of Appeals

2016 MAR -3 3PM 2:55

To: All the Sheriffs, Deputy Sheriffs, Constables, and other Peace Officers
the State:

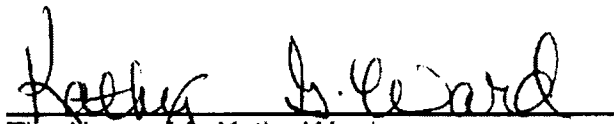
WHEREAS, the above named individual was voluntarily admitted into the
Horry County Drug Court having requested admission, found appropriate for
admission and sentenced to said program on September 16, 2015 and

WHEREAS, the Court has now determined that the above named, Kenneth
Boynton, has failed to comply with the requirements of the Horry County Drug
Court and, therefore, is disqualified from remaining a participant of the Drug Court.

Therefore, it is hereby

ORDERED that the above named, Kenneth Boynton, is hereby dismissed
from the Horry County Drug Court, that he is hereby REMANDED to the custody
of the South Carolina Department of Corrections for the execution of the sentence
imposed by the Honorable Benjamin Culbertson on September 16, 2015 (that
sentence being 10 years), that Kenneth Boynton should not receive credit for any
time served at J. Reuben Long Detention Center while in the Horry County Drug
Court, and any preexisting hold orders for Drug Court are hereby released.

IT IS SO ORDERED.



The Honorable Kathy Ward
Judge of the Horry County Drug Court

MARCH 2, 2016
Conway, South Carolina

Law Group South, LLC

200 Elm Street
Conway, SC 29526
Office: (843) 488-3777
Fax: (843) 488-3779

Attorney Kenneth B. Massey

Blaine@lawgroupsouth.com
Cell: 843-458-2507

Attorney Keith Dame

Keith@lawgroupsouth.com
Cell: 843-333-4845

June 17, 2016

South Carolina Court of Appeals
V. Claire Allen, Clerk of Court
1220 Senate Street
Columbia, SC 29201

Re: The State vs. Kenneth Ray Boynton
General Sessions Case No.: 2015A2610400139
Drug Court Case No.: 15D150119
Appeals Court Case No.: 2016-001153

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SC Court of Appeals

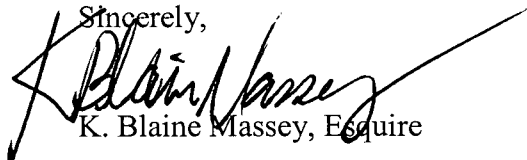
Dear Ms. Allen:

In response to your letter dated June 7, 2016, enclosed you will find an original and three copies of my client's Amended Notice of Appeal, along with my Certificate of Mailing same. Please file the original and return the clocked copies to my attention in the return envelope provided.

At present, we do not have an executed Order from Judge Culbertson for the Hearing held on May 23, 2016.

Thank you for your assistance in this matter. Should you have any questions or require anything further, please do not hesitate to contact my office.

Sincerely,



K. Blaine Massey, Esquire

KBM/lw

Enclosures

cc: Kenneth R. Boynton
Robert Michael Dudek, Esquire
Joshua David Holford, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire

P

US POSTAGE PAID
\$6.45

Origin: 29526
Destination: 29201
0 Lb 5.30 Oz
Jun 17, 18
4518600526-15

1024

PRIORITY MAIL® 1-Day

Expected Delivery Day: 06/18/2016

C076

USPS TRACKING NUMBER



9505 5134 4961 6169 0010 74

Law Group South, LLC
200 Elm Street
Conway, SC 29526

4
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V. Claire Allen, Clerk of Court
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