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June 17, 2016

JUN 30 2016

SC Court of Appeals

Kenneth Boynton #192112
Walden C.I. Bldg-3 W-2 7-T
4340 Broad River Road
Columbia, SC29210

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

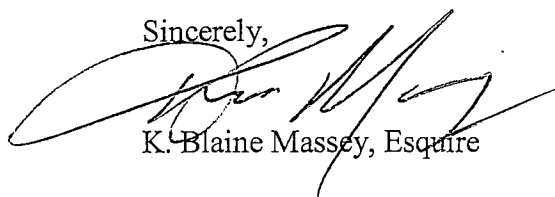
Dear Mr. Boynton:

Enclosed you will find a clocked copy of our Amended Notice of Appeal that was filed with the Court of Appeals on June 20, 2016. Please be advised that you have twenty (20) days from the date of our transmittal letter to inform the Court in writing of any arguable basis that there are issues preserved for appeal. Please direct your correspondence to the Court at the following address:

South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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: S.C. Court of Appeals, Clerk of Court
Robert Michael Dudek, Esquire
Joshua David Holford, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire



RECEIVED

JUN 30 2016

The South Carolina Court of Appeals **SC Court of Appeals**

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 23, 2016

Mr. Kenneth Blaine Massey, Esquire
200 Elm Street
Conway SC 29526

Re: The State v. Kenneth R. Boynton
Appellate Case No. 2016-001153

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.

RECEIVED
JUN 20 2016
SG Court of Appeals

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

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.

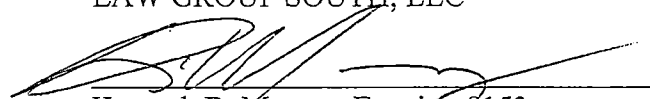
Dated this 27th day of June, 2016 in Conway, South Carolina.

Respectfully Submitted,

Other Counsel of Record:

LAW GROUP SOUTH, LLC

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


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: 1960 SS#: _____
Address: 5650 Old Bucksville Rd
City, State, Zip: Conway, SC 29526
DL#: _____ SID#: _____

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

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: PWID/Dist. of Cocaine/LSD/other Narcotic drugs in Sch. I(b) & (c)/Sched. II, 1st offense (0.15 yrs)

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183
 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: DC 100039 Kenneth Boynton James J. ... 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 § 17-25-135

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 PTUP _____ days/hours Public Service Employment

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(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 4.00
TOTAL		\$ 288.40 + 400.00 = \$ 688.40

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 1/15/15
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

FILED
Horry County
2015 SEP 16 PM 5:05
CLERK OF COURT
MELANIE HUGGINS WARD

Clerk of Court/ Deputy Clerk Melanie Huggins Ward
Court Reporter: Grace Hurley
SCCA/217 (03/2011)

Presiding Judge Margaret Culberson
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

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

2016 MAR -3 3:05 PM 2:05

4410117

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

COLUMBIA
SC 294
JUN 28 2016
PM 11



South Carolina Court of Appeals
V. Claire Allen, Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

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JUN 30 2016

SC Court of Appeals

29211-162929

