

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Frank Addy, Jr., Circuit Court Judge
Case No. 2016A4010200091
Indictment No. 2016GS40003525

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NOV 03 2016
SC Court of Appeals

The State, Respondent,

-verses-

John Tomsic, III, Appellant

Appellate Case No. 2016-002051

LEGAL GROUNDS OR BASIS

I, John Tomsic, III, pray to the Court my arguable grounds and basis to the effect there are issues preserved for appeal for the conviction and sentence on the charge of criminal domestic violence third degree as the guilty plea pursuant to North Carolina v. Alford on the date of September 22, 2016 in the Court of General Sessions imposed by the Honorable Judge Frank Addy, Jr., as follows:

1. The Judge had improper discussions with the State and the alleged victim's Family Court counsel before the plea hearing. The Judge biased the outcome of the sentencing for the plea hearing. Before the plea hearing, the Judge held a private meeting in his chambers regarding the disruption, misconduct and violation of the rules of professional conduct of the alleged victim's Family Court attorney. This discussion allowed the Judge to be influenced by the alleged victim's Family Court attorney and resulted in a change of the previously signed plea agreement between the Solicitor and the Defendant's counsel. The original agreement incorporated no jail time. The Judge conducted an abuse of discretion in his imposed sentence that was grossly too harsh for the plea.
2. The Judge erred in permitting the Solicitor to state the wrong recitation of evidence used before the Defendant as a record for the Court. This erroneous evidence statement will eventually be

used before and against the Defendant in Family Court, thus giving the alleged victim an advantage upon obtaining the transcript of the plea hearing. The Judge was previously presented by the Defendant's counsel that divorce proceedings between the parties were currently in progress. The statement will be used in Family Court purposes to aid in the alleged victim's advantage. The Judge erred in not correcting or clarifying the Solicitor upon her announcement. The meeting in chambers influenced the Judge and Solicitor to allow this misrepresentation. The evidence statement by the Solicitor at the plea hearing doesn't reflect the actual evidence presented in discovery of the case or match that was presented by the Solicitor during the revoke of bond hearing earlier that late morning.

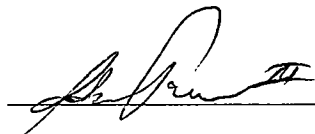
3. Prejudicial misconduct was conducted by the State in changing the evidence before the Court since the Judge heard different statements of evidence presented by the Solicitor from the revoke of bond hearing earlier that morning and the plea hearing in the early afternoon.
4. The State acted improperly before and during the plea hearing. The State failed to disclose the proper discovery evidence during the plea hearing. The Judge did not question the State, therefore, the alleged victim's Family Court attorney influenced the court and the Judge permitted this to occur in his Court.
5. The State failed to honor its representation for no jail time for sentencing when the judge ordered 90 days jail time. The signed plea agreement between the parties "Advice of Rights" agreement included no jail time.
6. The Defendant did not admit to the facts presented by the State but to the evidence presented before him referring to the discovery that was submitted to Defendant counsel. The Judge erred in continuing with the questions check off and did not reaffirm the Defendant's voluntary action with comment.
7. The "Advice of Rights" form indicated no jail time as a part of the agreement that was signed by the Defendant, Solicitor, and Defendant's attorney. This form was mysteriously misplaced and was refused to be reproduced by the Solicitor, Judge and the Court Administration. The

misrepresentation is indicative of the State and Court in not retaining pertinent Court documents as required.

8. The conditions and process of the plea was an act of coercion and intimidation by the Court and State to the Defendant. Adequate time was not given to the Defendant to make a decision with advice from his counsel. The timeframe was way too short between the initiation of the Defendant's bond revoke with subsequent detainment and the offer of a plea from the Solicitor. Intimidation and pressure was felt by the Defendant upon detainment with extensive jail time being imminent in waiting for a trial date. The Solicitor already delayed the process by arranging a "3rd Appearance". The Solicitor's schedule is unable to support the Defendant's trial therefore the Solicitor influenced the bond revoke hearing (3rd Appearance) results to get Solicitor's plea accepted and the trial off State's schedule. This along with the disruption and misconduct by the alleged victim's Family Court to the Court and the availability of the Solicitor the Defendant with his counsel were prohibited to negotiate a proper, lesser, reasonable and just plea with the Solicitor. Also due to the alleged victim's Family Court attorney's disruption in court, the Defendant's attorney was unavailable to answer questions regarding expungement and Gun Control Act, 18 U.S.C 922 (g). The Judge was occupied with the Defendant's counsel, Solicitor and the alleged victim's Family Court counsel which made the Defendant's attorney unavailable and inaccessible. This judge permitted this misconduct to occur in his Court.

Whereas these are the issues preserved for appeal by:

Sincerely,



10-31-2016

John Tomsic, III, Appellant
416 Plantation Drive
Lexington, SC 29072



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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October 03, 2016

Mr. Carl B. Grant, Esquire
PO Box 1203
Orangeburg SC 29116

Re: The State v. John Tomsic, III
Appellate Case No. 2016-002051

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SC Court of Appeals

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,

Tommy Abbott Kitching

CLERK

cc: Robert Michael Dudek, Esquire
Laura Alliman Gregg, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire

CERTIFICATE OF SERVICE

I, La'Asia Graham, the undersigned employee of The Law Firm of Carl B. Grant, P.A., hereby certify that a copy of the following documents have been served on the following individual by placing a copy of the same in the U.S. mail via Certified Mail Return Receipt, properly addressed, and with the correct amount of postage affixed thereto:


DOCUMENTS: Notice of Intent to Appeal
Letter from The South Carolina Court of Appeals dated
October 3, 2016
Letter to John Tomsic dated October 13, 2016

SERVED ON: John Tomsic, III
416 Plantation Drive
Lexington, SC 29072

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SC Court of Appeals


La'Asia Graham
Legal Assistant
The Law Firm of Carl B. Grant, P. A.

October 13, 2016
Columbia, South Carolina

The Law Firm of Carl B. Grant, P.A.

TRIAL LAWYER

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Areas of Practice:
Personal Injury
Criminal Defense
Workers' Compensation
Medical Malpractice
Family Law
Contracts
Military Law
General Law

Via: Certified Mail Return Receipt: 7006 2150 0001 6963 4222

October 13, 2016

John Tomsic, III
416 Plantation Drive
Lexington, SC 29072

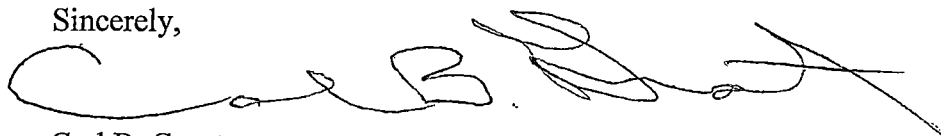
RE: The State, Respondent, v. John Julian Tomsic, III, Appellant

Dear Mr. Tomsic:

Pursuant to the directive I received from the Clerk of the South Carolina Court of Appeals in the enclosed letter dated October 3, 2016, I am enclosing a copy of the Notice of Intent to Appeal that I filed on your behalf that outlines my explanation for appealing your case as required by South Carolina Appellate Court Rule 203(d)(1)(B)(iv). You have twenty days from the above date on this letter to inform the South Carolina Court of Appeals in writing of any arguable basis that there are issues preserved for appeal. You must mail that information to the following address: South Carolina Court of Appeals, P.O. Box 11629, Columbia, SC 29211.

With kind regards, I am

Sincerely,



Carl B. Grant
Attorney at Law

Enclosure

CBG/llg

cc: Jenny Abbot Kitchings, Clerk

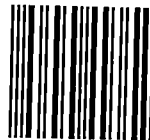
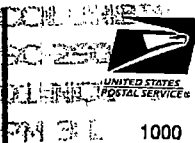
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SC Court of Appeals

CERTIFIED MAIL

Tomsic
416 PLANTATION DR.
LEXINGTON, SC 29072



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