

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JANICE L. KILGORE,

APPELLANT

APPELLATE CASE NO 2016-001578

RECORD ON APPEAL

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INDEX

INDEX..... i

GUILTY PLEA TRANSCRIPT DATED JANUARY 28, 2016 1

MOTION TO RECONSIDER SENTENCE FILED FEBRUARY 2, 2016..... 20

ORDER DENYING DEFENDANT’S MOTION FOR RECONSIDERATION
OF SENTENCE FILED JULY 22, 2016..... 24

CERTIFICATE OF COUNSEL..... 25

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) 2015-GS-39-2384 (Kilgore)
 COUNTY OF PICKENS) 2015-GS-39-2385 (Kilgore)
) 2015-GS-39-2386 (Kilgore)
) 2015-GS-39-2387 (Kilgore)
) 2015-GS-39-2315 (Stanton)
) 2015-GS-39-2316 (Stanton)
) 2015-GS-39-2317 (Stanton)
 STATE OF SOUTH CAROLINA,) 2015-GS-39-2374 (Gray)
 PLAINTIFF,) 2015-GS-39-2375 (Gray)
) 2015-GS-39-2376 (Gray)
 vs.) 2014-GS-39-1075 (Hendricks)
)
 JANICE KILGORE; DILLON)
 STANTON; MICHELLE GRAY and)
 ANDREW HENDRICKS,) TRANSCRIPT OF RECORD
 DEFENDANTS.)
 _____)

January 28, 2016
 Pickens, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE

A P P E A R A N C E S:

JOHN BAKER CLEVELAND, ESQ.
 Attorney for the Plaintiff

JOHN MAXWELL GRAVLEE, ESQ.
 Attorney for Defendant Kilgore

DAVID D. CANTRELL, ESQ.
 Attorney for Defendants Stanton and Gray

DOROTHY A. MANIGAULT, ESQ.
 Attorney for Defendant Hendricks

CHERYL A. SMITH
 Circuit Court Reporter

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INDEX

PAGE

Sentence of the Court for Janice Kilgore	12
Sentence of the Court for Dillon Stanton	14
Sentence of the Court for Michelle Gray	16
Sentence of the Court for Andrew Hendricks	18
Certificate of Reporter	19

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits marked.

1 THE COURT: Gray?

2 DEFENDANT GRAY: No, sir.

3 THE COURT: Hendricks?

4 DEFENDANT HENDRICKS: No, sir.

5 THE COURT: Ever been treated for substance abuse or
6 mental illness? Kilgore?

7 DEFENDANT KILGORE: Yes, sir.

8 THE COURT: What?

9 DEFENDANT KILGORE: Anderson County Behavioral Health.

10 THE COURT: For?

11 DEFENDANT KILGORE: Outpatient rehab for meth.

12 THE COURT: When was that?

13 DEFENDANT KILGORE: About two years ago.

14 THE COURT: Sober today?

15 DEFENDANT KILGORE: Yes, sir.

16 THE COURT: Stanton?

17 DEFENDANT STANTON: Yes, sir. I go to Recovery
18 Concepts in Easley.

19 THE COURT: For what?

20 DEFENDANT STANTON: Opiate addiction.

21 THE COURT: When did you do it?

22 DEFENDANT STANTON: I started in October and I still
23 go.

24 THE COURT: Sober today?

25 DEFENDANT STANTON: Yes.

1 THE COURT: How about you, Gray?

2 DEFENDANT GRAY: Yes. I've actually just completed
3 the IOP class through the BHS from Pickens.

4 THE COURT: For?

5 DEFENDANT GRAY: For crack cocaine, and I've been
6 clean for six months.

7 THE COURT: All right. Hendricks?

8 DEFENDANT HENDRICKS: No, sir.

9 THE COURT: All right. Kilgore and Gray, you each
10 have an indictment that has not been presented to the grand
11 jury. You have an absolute right to require the State to
12 present the cases to the grand jury where they would have
13 to prove more probably than not that a crime was committed
14 and you did it. Do you want to give that right up which
15 would let you go forward today? Kilgore?

16 DEFENDANT KILGORE: Yes, sir.

17 THE COURT: Gray?

18 DEFENDANT GRAY: Yes, sir.

19 THE COURT: The first indictment, Kilgore, alleges you
20 did, in Pickens County, April 10, 2015, resist arrest by
21 Officer Robinson with the Easley Police Department.
22 Carries a year. Do you understand?

23 DEFENDANT KILGORE: Yes, sir.

24 THE COURT: The next one alleges you did, in Pickens
25 County, April 10, 2015, shoplift merchandise from Walmart

1 with two prior property offense convictions. Ten years.
2 Do you understand?

3 DEFENDANT KILGORE: Yes, sir.

4 THE COURT: The next one alleges you did, in Pickens
5 County, April 10, 2015, injure Kathy Young. You attempted
6 to bite her. She worked for Walmart. 30 day offense. Do
7 you understand?

8 DEFENDANT KILGORE: Yes, sir.

9 THE COURT: The next alleges you did, in Pickens
10 County, April 10, 2015, unlawfully injure Bret Sosby
11 [phonetic]. You tried to bite him. He worked for Walmart.
12 It's another 30 days. Do you understand?

13 DEFENDANT KILGORE: Yes, sir.

14 THE COURT: Stanton, the first one alleges you did, in
15 Pickens County, April 8, 2015, steal a handicap placard, a
16 Lone Ranger tin box and a Ziploc with miscellaneous items
17 from Joseph Miller. It's 30 days. Do you understand?

18 DEFENDANT STANTON: Yes.

19 THE COURT: The next one alleges you did, in Pickens
20 County, April 8, 2015, possess with intent to distribute a
21 quantity of alprazolam, pleading to possession. Six
22 months. Do you understand?

23 DEFENDANT STANTON: Yes, sir.

24 THE COURT: The next one alleges you did, in Pickens
25 County, April 8, 2015, break into a Kia Rio belonging th

1 Joseph Miller. That's five years. Do you understand?

2 DEFENDANT STANTON: Yes.

3 THE COURT: Gray, the first one alleges you did, in
4 Pickens County, May 13, 2015, resist arrest by Officer
5 Finley with Easley PD. It carries a year. Do you
6 understand?

7 DEFENDANT GRAY: Yes.

8 THE COURT: The next one alleges you did, in Pickens
9 County, May 13, 2015, have in your possession a quantity of
10 methamphetamine. Three years, \$5,000. Do you understand?

11 DEFENDANT GRAY: Yes.

12 THE COURT: The next one alleges you did, in Pickens
13 County, May 13, 2015, being the legal custodian, parent or
14 guardian, place the child AH at unreasonable risk of harm.
15 That's 10 years. Do you understand?

16 DEFENDANT GRAY: Yes, sir.

17 THE COURT: Hendricks, your indictment alleges you
18 did, in Pickens County, February 19, 2014, attempt to kill
19 Benjamin Vinson, pleading to a three years assault and
20 battery. Do you understand?

21 DEFENDANT HENDRICKS: Yes, sir.

22 THE COURT: Understanding the nature of the charges
23 and the maximum possible punishment, how do you want to
24 plead? Kilgore?

25 DEFENDANT KILGORE: Guilty.

1 THE COURT: Stanton?

2 DEFENDANT STANTON: Guilty.

3 THE COURT: Gray?

4 DEFENDANT GRAY: Guilty.

5 THE COURT: Hendricks?

6 DEFENDANT HENDRICKS: Guilty.

7 THE COURT: Is that your free and voluntary decision?

8 Kilgore?

9 DEFENDANT KILGORE: Yes, sir.

10 THE COURT: Stanton?

11 DEFENDANT STANTON: Yes.

12 THE COURT: Gray?

13 DEFENDANT GRAY: Yes.

14 THE COURT: Hendricks?

15 DEFENDANT HENDRICKS: Yes, sir.

16 THE COURT: Do you understand all your rights at a

17 trial by jury? Kilgore?

18 DEFENDANT KILGORE: Yes, sir.

19 THE COURT: Stanton?

20 DEFENDANT STANTON: Yes.

21 THE COURT: Gray?

22 DEFENDANT GRAY: Yes.

23 THE COURT: Hendricks?

24 DEFENDANT HENDRICKS: Yes, sir.

25 THE COURT: Are you guilty? Kilgore?

1 DEFENDANT KILGORE: Yes, sir.

2 THE COURT: Stanton?

3 DEFENDANT STANTON: Yes.

4 THE COURT: Gray?

5 DEFENDANT GRAY: Yes.

6 THE COURT: Hendricks?

7 DEFENDANT HENDRICKS: Yes, sir.

8 THE COURT: Are you totally satisfied with your
9 lawyer? Kilgore?

10 DEFENDANT KILGORE: Yes, sir.

11 THE COURT: Stanton?

12 DEFENDANT STANTON: Yes.

13 THE COURT: Gray?

14 DEFENDANT GRAY: Yes.

15 THE COURT: Hendricks?

16 DEFENDANT HENDRICKS: Yes, sir.

17 THE COURT: Do you know what the evidence is the State
18 has against you? Kilgore?

19 DEFENDANT KILGORE: Yes, sir.

20 THE COURT: Stanton?

21 DEFENDANT STANTON: Yes.

22 THE COURT: Gray?

23 DEFENDANT GRAY: Yes.

24 THE COURT: Hendricks?

25 DEFENDANT HENDRICKS: Yes, sir.

1 THE COURT: Okay.

2 MR. CLEVELAND: Regarding Ms. Kilgore, Your Honor,
3 this occurred on April 10, 2015. The defendant was stopped
4 by loss-prevention personnel at Walmart in Easley as she
5 attempted to leave the store with \$669 worth of sporting
6 goods and other items without paying. She physically
7 struggled with the two loss-prevention officers and was
8 still fighting with them as police arrived. She actually
9 tried to bite them. She refused to give up, and officers
10 had to tase her to get her under arrest. A vehicle
11 actually pulled up and was trying to pull her into the
12 vehicle away from the officers when the police arrived, and
13 that vehicle sped off. Never caught that guy.

14 Two employees suffered some minor injuries in the
15 struggle.

16 Prior to this, she has 29 prior property offenses not
17 including fraud checks dating back to 1983.

18 The recommendation in this case is 42 months straight
19 time, credit for 253 days.

20 THE COURT: Tell me her record.

21 MR. CLEVELAND: 57 pages is her NCIC. I've got it
22 written down, but I can hit the highlights.

23 THE COURT: Hit the highlights for me.

24 MR. CLEVELAND: Her first shoplifting was in '83, some
25 public disorderly conducts went through the '90s until '93

1 when she had, it looks like, seven, eight, nine counts of
2 forgery and a breach of trust -- a felony breach of trust;
3 '94 probation revocation; a DUI in '95; a string of fraud
4 checks through the late '90s, about 36 of them. Then in
5 2005, receiving stolen goods. Going back a little bit,
6 2003 she got a DUI and some receiving stolen goods; 2004,
7 resisting arrest and 10 counts of third property offense
8 which she did three years in prison followed by five years
9 probation; three forgeries in '06; some driving offenses
10 through the late 2000's until she got -- 2011 when she had
11 a bunch of fraud checks, it looks like 17, 18 of them, and
12 obtaining signatures by false pretenses. She got a
13 probation revocation then, too. Did two years on that.
14 And then in 2013, a fraud check and a shoplifting.

15 THE COURT: Is all that true and correct?

16 DEFENDANT KILGORE: Yes, sir.

17 THE COURT: What do you want to tell me? Anybody?
18 Anything you want to say?

19 MR. GRAVLEE: Your Honor, she's expressed to me that
20 she's been in on some priors now in SCDC for about a year.
21 She feels that she'd be convicted at trial and is guilty of
22 the crimes charged and remaining in SCDC to serve her time.

23 THE COURT: What do you want to tell me?

24 DEFENDANT KILGORE: I don't know.

25 THE COURT: You don't know.

1 57 pages NCIC criminal history.

2 DEFENDANT KILGORE: Well, it was basically a drug
3 history, but I'm not on drugs anymore. I was involved with
4 a younger man. He was on drugs. I tried to support his
5 habit, my habit, and it ended me back in prison again.
6 Since then, I ended that relationship and I'm more focused
7 on my 90-year-old mamma and getting home to her. And I am
8 clean and sober today and will remain that way.

9 THE COURT: Good. Five years on the shoplifting, one
10 year on the resisting, time served on the other two. Good
11 luck to you.

12 MR. CLEVELAND: Thank you, Your Honor.

13 THE COURT: Okay. Stanton.

14 MR. CLEVELAND: Mr. Stanton. This occurred on
15 April 8, 2015. Defendant broke into victim Joseph Miller's
16 Kia Rio, stole a handicap placard, a Lone Ranger tin box, a
17 Ziploc bag of miscellaneous items and other items less than
18 \$2,000. Search incident to arrest revealed the defendant
19 was in possession of 28 1/2 long white pills identified as
20 Xanax for which he did not have a prescription.

21 Recommendation is a YOA suspended on probation.

22 THE COURT: True?

23 DEFENDANT STANTON: Yes, sir.

24 THE COURT: What do you want to tell me?

25 DEFENDANT STANTON: I've just been clean now, been

1 going to rehab classes and everything trying to do my best.

2 THE COURT: How long have you been on drugs?

3 DEFENDANT STANTON: I've been taking -- I took pills.
4 I don't take -- I don't do anything now. Before I was just
5 like two or three years, three or four maybe.

6 THE COURT: Doing what?

7 DEFENDANT STANTON: Pills. Pills and weed.

8 THE COURT: Why do you like that stuff?

9 DEFENDANT STANTON: I don't know.

10 THE COURT: Huh?

11 DEFENDANT STANTON: Honestly, I don't know.

12 THE COURT: Why would you do it?

13 DEFENDANT STANTON: The night that I did that, I was
14 -- I was -- took a good bit of Xanax, and I was just
15 blacked out.

16 THE COURT: I thought Xanax knocked you out.

17 DEFENDANT STANTON: It just made me sleep, I guess you
18 can say.

19 THE COURT: Mr. Cantrell?

20 MR. CANTRELL: Your Honor, he is on the road to
21 recovery, and we would ask you to accept the
22 recommendation.

23 THE COURT: Did you graduate high school?

24 DEFENDANT STANTON: Yes.

25 THE COURT: Well, I hope you understand that if you

1 keep this up, you're going to go to prison. Do you
2 understand?

3 DEFENDANT STANTON: Has.

4 THE COURT: All right. YOA not to exceed five,
5 balance are suspended, probation 30 months, substance abuse
6 counseling, random drug and alcohol testing, \$500 public
7 defender fund. I was going to give him time served on the
8 other two so we don't have to mess with it. Oh, and pay
9 restitution as a condition of probation. All right.

10 MR. CANTRELL: Thank you, Your Honor.

11 THE COURT: Good luck.

12 MR. CLEVELAND: Thank you, Your Honor.

13 Ms. Gray, May 13, 2015, at 119 Pathfinder Circle in
14 Easley, the defendant and her mother were arguing about her
15 taking her children with her. Mother of the defendant
16 called law enforcement because she thought the defendant
17 was under the influence of drugs. Police arrived, and she
18 was screaming profanities at her mother and appeared to be
19 jittery, red eyed and had pinpoint pupils. Defendant got
20 in her car and yelled she's not going to jail, attempted to
21 start the car. Law enforcement pulled the defendant out
22 and arrested her for public disorderly conduct. The
23 defendant resisted and attempted to run from law
24 enforcement, pushing the officer.

25 When they arrested her, they found crack in a crack

1 pipe in the defendant's purse, and an inventory search of
2 -- during an inventory search of the car. The children
3 were ages 3 and 2 at the time during this ordeal.

4 Recommendation is nine months HIP followed by
5 probation.

6 THE COURT: Whose got your kids?

7 DEFENDANT GRAY: As of yesterday, my mom's got full
8 custody, and I am back in the home and everything, so . . .

9 MR. CANTRELL: Your Honor, she's got a good job. She
10 is on -- she is on the road to recovery also and has been
11 actively involved in that process for months now and is
12 clean. We would ask the Court to accept the
13 recommendation.

14 THE COURT: DSS involved?

15 DEFENDANT GRAY: Not no more. It was closed
16 yesterday.

17 THE COURT: Do you got a bad record?

18 MR. CLEVELAND: She's got -- she showed some arrests,
19 but no convictions on her NCIC.

20 DEFENDANT GRAY: Just got in the path with the wrong
21 people.

22 THE COURT: Well, whose fault was that?

23 DEFENDANT GRAY: Mine.

24 THE COURT: Don't you ever forget it.

25 DEFENDANT GRAY: I'm sorry?

1 THE COURT: Don't ever forget it.

2 DEFENDANT GRAY: Oh, I won't. This stuff is for the
3 birdies.

4 THE COURT: Did she graduate high school?

5 DEFENDANT GRAY: I dropped out in the 11th grade.

6 THE COURT: All right. Five years provided upon nine
7 months HIP, probation for 30 months, get your GED,
8 substance abuse counseling, random drug and alcohol
9 testing, \$500 public defender fund, three suspended during
10 probation on the assault and battery and the drugs, one
11 suspended on resisting arrest.

12 Good luck.

13 MR. CANTRELL: Thank you, Your Honor.

14 MR. CLEVELAND: Thank you, Your Honor.

15 Lastly, Mr. Hendricks. This occurred back on
16 February 19, 2014.

17 THE COURT: I gave you -- sentenced Ms. Gray to
18 Mr. Hendricks' offense. Sorry. Go ahead.

19 MR. CLEVELAND: About 11:30 that night on the 19th,
20 the defendant went to the Pickens County home of the
21 victim. The victim was awakened by the defendant beating
22 on the door, yelling loudly. Once he got inside, they
23 began to fight.

24 The victim -- defendant fled the scene, but he was
25 identified by a witness as being the man on the scene

1 there. She could tell he was charged high.

2 Very big factual discrepancy in this case. The victim
3 is actually in SCDC now on voluntary manslaughter. He shot
4 and killed a guy about a week or two later.

5 Recommendation in the case is time served to assault
6 and battery second. He's done 183 days in the jail, and
7 he's been on an ankle monitor for bond for 526 days and
8 stayed out of trouble, so give him credit for all that.

9 THE COURT: How'd you do that?

10 DEFENDANT HENDRICKS: I just stayed away from
11 everyone, Your Honor, and just been living right, sir.

12 THE COURT: Huh?

13 DEFENDANT HENDRICKS: Been living right, sir.

14 THE COURT: What is that? What is living right? I'm
15 going to send you down to the LEC and tell them what that
16 is. What is it?

17 DEFENDANT HENDRICKS: Well, in my eyes, just staying
18 as close to God as I can.

19 THE COURT: Okay.

20 DEFENDANT HENDRICKS: Doing the right things.

21 THE COURT: You wouldn't be reading a book a week and
22 the Bible every night, would you?

23 DEFENDANT HENDRICKS: No, sir. I don't -- I don't
24 stay on the Bible like I should, but keep my prayers, and
25 my personal life is -- I try to do -- I just try to do

1 right.

2 THE COURT: Yeah? Who was this? One of your old
3 buddies or something?

4 DEFENDANT HENDRICKS: It was actually at a residence
5 of some people that I knew, but I didn't actually even know
6 the -- the alleged victim.

7 THE COURT: Anything, Ms. Manigault?

8 MS. MANIGAULT: Thank you, Your Honor, for time
9 served.

10 THE COURT: I haven't done anything yet.

11 MS. MANIGAULT: Thank you for time served.

12 THE COURT: You stay on the straight and narrow. Good
13 luck to you.

14 MR. CLEVELAND: Thank you, Your Honor.

15 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 28th day of January, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 28, 2016



Cheryl A. Smith, CVR-M
Court Reporter

2015 on an unrelated offense.

2. Counsel for Defendant advised Defendant before the entry of the plea that, should the Court be inclined to not follow the recommendation from the solicitor, Counsel would make a motion to attempt to withdraw the plea.

3. Before having the opportunity to make such a motion, the Court imposed a sentence of greater duration than initially recommended by the assistant solicitor.

4. Counsel could not make a motion to attempt to withdraw the plea after the imposition of the sentence, and Defendant was therefore denied an opportunity to make such a request from the Court.

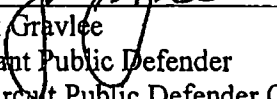
5. Although Counsel acknowledges the Court is not bound to follow the recommendation and “[t]he withdrawal of a guilty plea is generally within the sound discretion of the trial judge,” State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982), Counsel for Defendant nevertheless urges this Honorable Court to reconsider the sentencing based on Counsel’s inability to make any such motion prior to the upward departure from the sentencing recommendation.

WHEREFORE, for the above-stated reasons, as well as any other reasons which may appear to this Court, Defendant prays that this Court grant her motion and order:

1. Defendant’s sentence be reconsidered and adjusted to reflect the 42 month recommended sentence discussed with Defendant prior to the plea.

2. In the alternative, Defendant's sentence be vacated to allow Defendant the opportunity to reevaluate her decision to plead or proceed to trial on the charges listed above.

Respectfully submitted,



J. Max Gravlee
Assistant Public Defender
13th Circuit Public Defender Office
214 E. Main Street
Pickens, SC 29671
(864) 898-5246
Attorney for Defendant

FEBRUARY 2, 2016
Pickens, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

) IN THE COURT OF GENERAL SESSIONS
) 2015-GS-39-2384; 2015-GS-39-2385;
) CLERK OF COURT
) PICKENS COUNTY 2015-GS-39-2386; 2015-GS-39-2387
) SOUTH CAROLINA

)
) 2016 FEB 2 P 2:29
)

STATE OF SOUTH CAROLINA

vs.

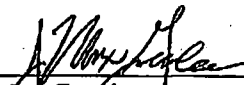
CERTIFICATE OF SERVICE

JANICE LYNN KILGORE,

Defendant.

I certify that on this date I served the Motion to Reconsider Sentence in the above-captioned case on The State of South Carolina by delivering copies of these documents to the State's attorney of record, Assistant Solicitor Baker Cleveland, by delivering said copies to his office located at The Office of the Solicitor, Thirteenth Judicial Circuit, Pickens County Courthouse, Second Floor, 214 East Main Street, Pickens, South Carolina 29671, and leaving them with his clerk or other person of authority at said office.

Respectfully submitted,



J. Max Gravlee
Assistant Public Defender
13th Circuit Public Defender Office
214 E. Main Street
Pickens, SC 29671
(864) 898-5246
Attorney for Defendant

February 2, 2016
Pickens, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS)

THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)

INDICTMENT NOS: 2015GS392384

2015A3920400438

2016 JUL 22 P 1:42

vs.

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION
OF SENTENCE**

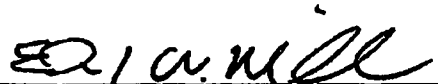
JANICE LYNN KILGORE,

Defendant.

THIS MATTER is before the Court on the Defendant's Motion for Reconsideration of Sentence. After careful consideration of the issues raised in the Motion, the Motion is denied and the Court's previous sentence is reaffirmed.

THEREFORE, it is ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for Reconsideration of Sentence is DENIED.

IT IS SO ORDERED.

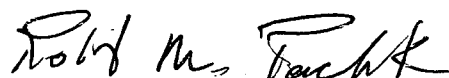

The Honorable Edward W. Miller
Judge, Thirteenth Judicial Circuit

Dated: 7/12/16
Greenville, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of January, 2017.

RECEIVED
JAN 12 2017
SC Court of Appeals