

STATE OF SOUTH CAROLINA)
 COUNTY OF Richland)
 STATE)
 VS.)
Curtis James Simms)
 AKA:)
 Race: White Sex: Male Age: 27)
 DOB: 05-22-1985 SS#:)
 Address: Elmwood Blvd North)
 City, State, Zip: Summerville 29045)
 DL#) SID#)

IN THE COURT OF GENERAL SESSIONS

2011 INDICTMENT/CASE#: 10-9-10
 - GS - 40 - 0829 ✓

AW#: M720628
 Date of Offense: 10-9-10
 S.C. Code §: 17-25-30 & 28-5-150
 CDR Code #: 0 / 9 / 5 / 5

CASE RESTORED
 SENTENCE SHEET
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Breach of Peace - High and Aggravated
 in violation of § 17-25-30 of the SC Code of Laws, bearing CDR Code # 0 / 9 / 5 / 5

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 initial)

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

ATTEST:
Juanita McBride Solicitor Curtis Simms Defendant Greg Harris Attorney for Defendant

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 _____ years and/or to pay a fine of \$ _____; provided that upon the service of 5 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
 Total: \$ _____ plus 20% fee. \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. if needed
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: NO contact with victims or victims family except as a part of therapy in judicial setting or occassions. Zero alcohol
 Appointed P~~B~~ or appointed other counsel. §35 13 TP
 Requires \$500 be paid to Clerk during probation.

Recipient:		
*Fine		\$ _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211(A)(1) (Conv Surcharge)	\$100	\$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§35 13 (Public Def/Prob)	\$500	\$ _____
§73 3, 1B TP (Law Enforce Funding)	\$25	\$ _____
§33 7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)		\$ _____
TOTAL		\$ _____

Jeanette McBride
 Clerk of Court/ Deputy Clerk
 Court Reporter: Adams, Cummins, Holmes

PRESIDING JUDGE: [Signature]
 Judge Code: _____
 Sentence Date: February 5, 2013

for drug and alcohol; must successfully complete drug management counseling.
 SCCA/217 (9/2010)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
STATE OF SOUTH CAROLINA,)
)
)
vs.)
)
CURTIS JAMES SIMMS,)
)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NO.: 2011-GS-40-0829

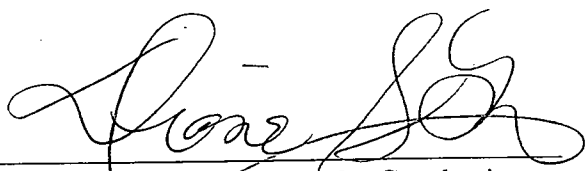
ORDER


This matter is before the Court pursuant to the Defendant's February 8, 2013 Motion for a New Trial, or in the Alternative, Motion for a Judgment of Acquittal.

In light of this Court's order regarding Defendant's Motion to Reduce Sentence, the Defendant's Motion for a New Trial, or in the Alternative, Motion for a Judgment of Acquittal is hereby denied.

AND IT IS SO ORDERED.

JEANETTE W. McBRIDE
C.P. & G.S.
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FILED
RICHLAND COUNTY


The Honorable Diane Schafer Goodstein


~~Columbia~~, South Carolina
~~April~~ _____, 2013
May 13

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF RICHLAND)
) INDICTMENT NO.: 2011-GS-40-0829
 STATE OF SOUTH CAROLINA,)
)
 vs.)
)
 CURTIS JAMES SIMMS,) **ORDER**
 Defendant.)
 _____)

This matter is before the Court pursuant to the Defendant's February 8, 2013 Motion to Reduce the Sentence that was imposed on the Defendant on February 5, 2013.

The Defendant was indicted during the February 2011 grand jury term for Involuntary Manslaughter and Breach of Peace, High and Aggravated, under S.C. Code 17-25-30 and 22-5-150, as a result of an incident that took place on October 9, 2010. On February 5, 2013, a Richland County jury acquitted the Defendant of the Involuntary Manslaughter charge, thus determining that the Defendant was not proximately and therefore not legally responsible for the decedent's death. The Defendant has requested that the Court reduce the sentence currently imposed. A hearing on the Defendant's motion was held before this Court on March 12, 2013. The Defendant and his attorneys, Jonathan S. Gasser and Gregory P. Harris, were present. The State was represented by Assistant Solicitors Luck Campbell, Joanna McDuffie, and Meghan Walker.

The Defendant urged the Court to consider a number of reasons that would justify a reduction in Defendant's sentence. Defendant urged the Court consider his history and character which he depicted as being 27 years old with no prior criminal record. He represented that he is engaged to be married and has a full-time job with benefits available to him upon his release. He is described as an only child and one who has

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 CLERK OF COURT
 STEPHEN W. BRIDGE
 C. P. & G. S.

substantial support amongst his friends and co-workers who live and work in the Columbia area.

A second factor Defendant states the Court may consider is the nature and characteristics of the offense, and the need for the sentence to reflect the seriousness of the offense. Defendant urges that Breach of Peace, High and Aggravated is characterized as a nonviolent misdemeanor. It is neither a "most serious" or "serious" offense as defined by section 17-25-45 of the S.C. Code.

Another factor argued to the Court to consider is the need for the sentence to promote respect for the law and to afford an adequate deterrence to criminal conduct. He states any period of incarceration on a breach of peace conviction sends a message of deterrence to the community.

Finally, Defendant argues this Court may consider the need to protect the public when framing an appropriate sentence. Defendant reiterates he has no prior history of unlawful behavior other than the breach of peace conviction for which he now stands convicted. The Court has considered the arguments of the Defendant and the arguments propounded by the State.

As a beginning point the Court must acknowledge the family of Mr. Gasque and their absolute heartbreak and devastation over the loss of their loved one. While the Court empathizes with and for this family and the terrible circumstances of this case, this Court cannot and must not sentence the Defendant on that which the jury has exonerated. The jury found this Defendant not guilty of Involuntary Manslaughter. The jury however did convict the Defendant on the charge of Breach of Peace, High and Aggravated. The State alleged in the indictment on this offense that the Defendant disturbed the public

order and/or disrupted traffic during a fight that occurred after the football game in Columbia, South Carolina on October 9, 2010. Given the evidence presented to the jury, it was clearly within the jury's purview to convict Defendant of Breach of the Peace, High and Aggravated. The Defendant's conduct could be described as being devoid of even the slightest regard for peace and order that is sought after and required in our communities and in our society.

In addition to those areas urged by the Defendant, the Court has also considered the character of Defendant's conduct and its effect on the community and the peace of the community on October 9, 2010. The Court must consider that we often find ourselves in close proximity to one another for the purpose of congregating for any number of reasons. In a world where people spend so much of their time involved in the day to day stresses, the opportunity to come together for the simple pleasure of watching a football game ought not be disrupted by the kind of hubris of this Defendant. For this Defendant to believe he could obfuscate the orderly flow of traffic because he had decided that it was his turn to enter the roadway (if one takes the Defense witnesses' version of events); or that Defendant became enraged with Mr. Gasque, a complete stranger, and exited his vehicle to confront and strike Mr. Gasque, a man much smaller and younger than he (which while this was the State's version of the event, the altercation was uncontroverted), the Defendant's conduct is intolerable in a civilized world.

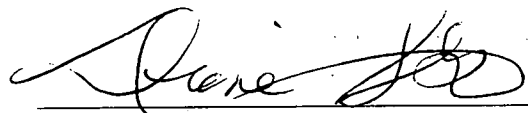
The question for the jury turned on whether the state had proved beyond a reasonable doubt that Mr. Gasque died as a proximate result of Defendant's conduct. We now know the jury found the Defendant's conduct was not the proximate cause of the Mr. Gasque's death.

The Court has reconsidered the sentence of the Defendant. In doing so, the Court has focused on whether, considering the Defendant's conduct is striking Mr. Gasque and the ensuing disruption which that conduct would cause but not including the disruption which was exacerbated by the death of Mr. Gasque, the Court gave much consideration regarding whether a lesser sentence would accomplish those goals for which a greater one was imposed. The intention of the Court was to fashion a sentence which met the characteristics of the offence on October 9, 2010 as described above, and to dissuade by example this kind of conduct, and also give credence to Defendant's lack of a criminal record.

The Court in considering all these matters believes and finds that a sentence of commitment to the South Carolina Department of Corrections for a period of ten years suspended based upon the service of three years' service to be followed by a period of probation of three years with the same conditions of probation previously imposed, giving Defendant credit for the time he has served, will accomplish the Court's intention.

Thus, based on the above-stated reasons, the Court grants the Defendant's Motion to Reduce the Sentence and hereby imposes a sentence of ten years suspended upon the service of three years, to be followed by a probationary term of three years with the identical conditions of probation previously imposed and incorporated herein as if set forth verbatim. Defendant is to be given credit for the time that he has served.

AND IT IS SO ORDERED.



The Honorable Diane Schafer Goodstein

St. George, South Carolina
April 25, 2013

HARRIS & GASSER
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TELEPHONE (803) 779-7080
FACSIMILE (803) 746-0480

GREGORY P. HARRIS
greg@harrisgasserlaw.com

JONATHAN S. GASSER
johnny@harrisgasserlaw.com

June 13, 2013

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JUN 14 2013
SC Court of Appeals

Re: *The State v. Curtis J. Simms*
Appellate Case No.: 2013-001219

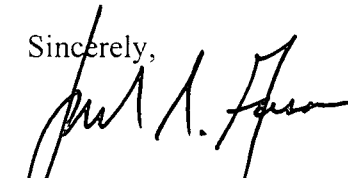
Dear Madam Clerk:

Pursuant to correspondence from your office dated June 5, 2013, please find enclosed the following order(s) and/or judgment(s) challenged on appeal to supplement our notice of appeal in the above-entitled matter filed on June 3, 2013:

- Trial jury guilty verdict and sentencing sheet;
- Judge Goodstein's order denying defense motion for new trial;
- Judge Goodstein's order denying defense motion to set aside sentence; and
- Judge Goodstein's order reducing defendant's sentence.

I have provided copies of these documents to Salley W. Elliott with a certificate of service. I apologize that these documents were not properly enclosed with the intent to appeal notice. If you or your staff has any questions regarding these particular matters, please contact me at your convenience.

Sincerely,



Jonathan S. Gasser
SC Bar # 9904

JSG/awk
Enclosures

cc: Robert Michael Dudek, Esquire
Salley W. Elliott, Esquire
Joanna Ashlyn McDuffie, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No.: 2013-001219

The State,

Respondent,

v.

Curtis James Simms,

Appellant.

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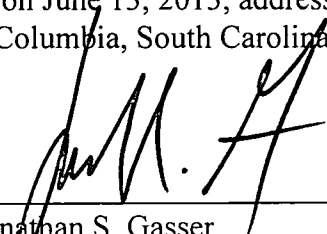
JUN 14 2013

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served copies of the order (s) and/or judgment (s) challenged on appeal to supplement our notice of appeal in the above-entitled matter on the State by depositing a copy of it in the United States Mail, postage prepaid, on June 13, 2013, addressed to its attorney of record, Salley W. Elliott, P.O. Box 11549, Columbia, South Carolina 29211.

June 13, 2013


Jonathan S. Gasser
1529 Laurel Street
Columbia, South Carolina 29201
(803) 779-7080
Attorney for Appellant