

REF: Notice of Appeal

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S.C. SUPREME COURT

Dear Clerk:

Please find enclosed for filing my Notice of Appeal from cases therein I was pro se in. I file this pro se, but request counsel. I am indigent.

Thank you.

Respectfully,

Perry Gilmore

Perry Gilmore #344879

RCI, Beaufort A-45

P.O. Box 2039

Ridgeland, SC 29936

(APPELLANT) (PRO SE)

CC: Alan Wilson, Atty. Gen.; Bradley Pogue, Asst. Solicitor  
of Lexington County.

October 30, 2017  
Ridgeland, SC

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY 11<sup>th</sup> JUDICIAL CIRCUIT GENERAL SESSIONS COURT  
HONORABLE JUDGE WILLIAM P. KEESLEY

WARRANT/INDICTMENT NO.s: 5102P0030607/2017GS3202180 (Hit & Run); 2017A4021600-  
601/2017GS3202177 (Assault & Battery, 2<sup>nd</sup> Degree); and 2016A3221100654/2017GS32-  
02179 (Indecent Exposure).

PERRY DRAKE GILMORE JR. . . . . APPELLANT

v.

STATE OF SOUTH CAROLINA . . . . . RESPONDENT

NOTICE OF APPEAL

Appellant, above-named, hereby files this Notice of Appeal from the above-captioned cases. My reasons to exclude in my Motion to Exclude, from same, are incorporated by reference as my grounds for appeal. I request counsel.

CERTIFICATE OF SERVICE

I certify I below-date served Attorney General Alan Wilson with a copy of this Notice of Appeal at Dennis Bldg., Box 11549, Columbia, SC 29211, and Assistant Solicitor Bradley Pogue at 205 East Main St., Ste. 309, Lexington, SC 29072, via United States Postal service, postage paid.

October 30, 2017  
Ridgeland, South Carolina

Alan Wilson  
Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
(RESPONDENT)

Perry Gilmore  
Perry Gilmore #344879  
RCI, Beaufort dorm, A-45  
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Ridgeland, SC 29936  
(APPELLANT) (PRO SE)

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA OCT 12 PM 12:27

COUNTY OF LEXINGTON

LISA H. COOPER  
CLERK OF COURT  
LEXINGTON SC

IN THE COURT OF GENERAL SESSIONS

The State of South Carolina,

-vs-

Perry Drake Gilmore, Jr.,

Defendant.

)  
)  
) ORDER DENYING MOTION  
) TO WITHDRAW PLEAS AND  
) FOR RECONSIDERATION  
) 2016A3221100654 / 2017GS3202179  
) 2017A4021600601 / 2017GS3202177  
) 5102P0030607 / 2017GS3202130  
)  
)  
)

The defendant moved to withdraw his pleas and/or to have the court reconsider the sentences imposed upon him. A hearing was held on October 2, 2017. The motion is denied.

WPK  
#1

On August 23, 2017, the defendant appeared in a self-represented capacity and the court accepted his pleas of no contest on charges of indecent exposure, assault and battery in the second degree, and hit and run involving property damage. At the time of the pleas, he indicated that he wanted to plead no contest, but mentally ill, and the court indicated that there was no such plea. The defendant freely, knowingly, and voluntarily elected to go forward with his no-contest pleas. In exchange for his pleas, the State dismissed one other indecent exposure charge and one other assault and battery charge which were from incidents that were allegedly separate and distinct from each other and from the charges to which he entered his pleas. The court sentenced the defendant to the maximum sentences, but did not run them consecutively. That allowed the defendant to receive credit for his pre-plea detention on all charges.

Earlier in the day that he pleaded no contest, the court conducted a *Faretta* hearing on the record. An order had previously been entered by the Honorable Grace G. Knie that relieved

counsel based on the defendant's motion. Because of concerns about whether a *Faretta* hearing had been conducted, the undersigned judge, as Chief Judge for Administrative Purposes, had directed that Mr. Gilmore be brought to court to determine that issue. The defendant renewed his desire to act *pro se*. A motion in one or more of the files for a *M'Naughten* evaluation has never been ruled upon, and the court saw nothing to indicate that the defendant was incompetent and knew nothing about whether a *M'Naughten* issue would be presented by the defendant.

Motion said I will  
plea but mentally  
ill.

Later, Mr. Gilmore appeared, indicated that he had reached a plea agreement, and entered his pleas of no contest. He did not request to consult with stand-by counsel. He now states that he wants to be housed in a more therapeutic setting. He believes that the State had agreed not to make a recommendation based on the indication on the sentence sheet and, when the State conveyed to the court in the sentencing proceeding that one or more of the victims wanted the defendant to do time for the offenses, that the State had violated the no-recommendation provision. He also stated that he has newly-discovered evidence in mitigation related to the victim of the wreck stating that she developed carpal tunnel syndrome from the wreck. This apparently is because of his argument that carpal tunnel can only be developed through repetitive motion. The information about carpal tunnel syndrome had no impact upon the court's sentence.

W.P.M.  
#2

On August 29, 2017, the defendant filed motions to withdraw his pleas or, in the alternative, to have the court reconsider the sentences imposed. What the defendant seems to want is to change his pleas to guilty but mentally ill, and to have the court reduce his sentences and/or grant him probation.

#### GUILTY BUT MENTALLY ILL

As for the change of pleas from no contest to guilty but mentally ill, the defendant has no expert witness to offer in an attempt to meet the provisions of that affirmative defense. Guilty but

mentally ill is a statutory creation that grew out of concerns about what some perceived as the all-or-nothing consequence of being found not guilty by reason of insanity. Under the common law, a person who is unable to distinguish right from wrong is incapable of forming the criminal intent necessary to commit a crime.

The legislature made the following changes in South Carolina under statutes that provide, in part:

**SECTION 17-24-10. Affirmative defense.**

(A) It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.

...

(C) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the defense of insanity.

HISTORY: 1984 Act No. 396, Section 1; 1988 Act No. 323, Section 1; 1989 Act No. 93, Section 1.

**SECTION 17-24-20. Guilty but mentally ill; general requirements for verdict.**

(A) A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

(B) To return a verdict of "guilty but mentally ill" the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill as defined in subsection (A).

...

**(D) A court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in Section 17-24-20(A). [Emphasis added.]**

HISTORY: 1984 Act No. 396, Section 2; 1988 Act No. 323, Section 2; 1989 Act No. 93, Section 2.

*W.P.C.  
#3*

**SECTION 17-24-70.** Sentencing of defendant found guilty but mentally ill.

If a verdict is returned of "guilty but mentally ill" the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty, however:

(A) If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence.

(B) If the sentence includes a probationary sentence, the judge may impose those conditions and restrictions on the release of the defendant as the judge considers necessary for the safety of the defendant and of the community.

HISTORY: 1984 Act No. 396, Section 7; 1988 Act No. 323, Section 4.

*W.P.M.  
#4*

So, under guilty but mentally ill provisions, the only difference in the sentencing is that the defendant is first taken to a facility of the Department of Corrections for treatment, but only kept there until the Department determines that the defendant can safely be moved to the general population. He then serves the sentence. This defendant had been in the local jail for an extended time before his plea. No psychiatrist or psychologist has provided evidence that the defendant meets the standard for guilty but mentally ill at the time(s) of the alleged offense(s). The defendant has only produced his statements about his diagnosis of impulse control disorder, which is insufficient to establish that he is entitled to this defense. The motion to change his pleas is denied.

MODIFICATION OF SENTENCE

The defendant believes that the sentence imposed is excessive and was, at least in part, the result of the State improperly telling the court that a victim wanted the defendant to be incarcerated for the crime. The court denies the motion.

*doesn't explain the below*

First, the standard-form sentence sheet has three possible options to be checked: (1) that the plea is a negotiated plea, meaning that the court can accept the plea bargain or reject it, but cannot modify it; (2) that the plea is based on a recommendation from the State regarding sentencing, which means that the court can vary from the recommendation entered in the plea bargain; or, (3) that the plea is without negotiations or recommendation, which basically means that the sentencing is entirely within the discretion of the judge. Mr. Gilmore is placing a meaning on the provision about no recommendation that does not comport with common understanding of the term in practice. It is understandable why he has that interpretation, but it is not what the form means in common practice, and there is no indication that the State did anything in this case to give him an incorrect impression. Further, the State did nothing inappropriate in communicating to the court what the victim wanted the court to hear. In fact, it was obligated to do so under the South Carolina Constitution.

*WAC  
#5*

In 1998, the Constitution was amended to add the Victim's Bill of Rights. In Article I, Section 24, victims have the specific right to "be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing," and, to "confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition . . . [.]

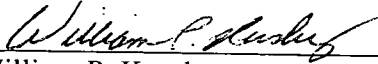
Secondly, the decision to impose the sentences was based on several factors that the court deems appropriate to justify the incarceration imposed and have little, if anything, to do with the victims' statements read to the court by the Assistant Solicitor. The incidents occurred on various dates. At least one demonstrates violence. They indicate a lack of respect for the requirements of law. One deals with improper sexual conduct. Most significantly, they were

mental illness  
committed by someone who has a criminal record that began in 2002 and has run to the present  
day, which includes various assaults, a strong-arm robbery, and malicious damage to property.

THEREFORE, IT IS ORDERED that the motion is denied:

AND IT IS SO ORDERED.

October 9, 2017

  
\_\_\_\_\_  
William P. Keesley  
Circuit Judge

#6

County of Lexington  
Clerk of Court, Suite 123 LP  
Lexington County Judicial Center  
205 East Main Street  
Lexington, SC 29072

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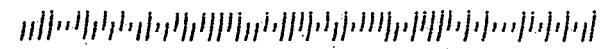
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**OCT 20 2017**

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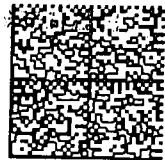
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OCT 30 2017



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**RIDGELAND CORRECTIONAL  
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OCT 30 2017

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