

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH RAY BOYNTON,

APPELLANT

APPELLATE CASE NO 2016-001153

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit
Post Office Drawer 1276
Conway, SC 29526
(843) 915-5460

ATTORNEYS FOR RESPONDENT

RECEIVED

JUN 23 2017

SC Court of Appeals

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED SEPTEMBER 16, 2015.....	1
SENTENCING	10
NOTICE OF TERMINATION HEARING FOR KENNETH BOYNTON.....	13
ORDER OF DISMISSAL FROM DRUG COURT AND ORDER OF REMAND TO THE SCDC AND RELEASE OF HOLDS FILED MARCH 3, 2016	14
DEFENDANT’S MOTION TO ALTER/AMEND JUDGMENT AND ORDER; MOTION TO VACATE; MOTION TO REMAND FILED MARCH 7, 2016	15
STATE’S REPLY TO DEFENDANT’S MOTIONS FILED MARCH 14, 2016.....	23
HEARING ON DEFENDANT’S MOTION TRANSCRIPT DATED MAY 23, 2016.....	28
MOTION DENIED.....	51
NOTICE OF APPEAL FILED MAY 27, 2016.....	53
AMENDED NOTICE OF APPEAL FILED JULY 11, 2016.....	55
RULE 203(d) GUILTY PLEA EXPLANATION DATED JULY 11, 2016.....	58
ORDER IN A CRIMINAL CASE FILED JULY 20, 2016.....	61
15 TH CIRCUIT DRUG COURT PROGRAM RULES AND GUIDELINES DATED SEPTEMBER 16, 2016	62
LETTER EXPLAINING NO WRITTEN ORDER AFTER THE MAY 23, 2016 HEARING DATED DECEMBER 21, 2016	65
INDICTMENT AND SENTENCING SHEET	66
CERTIFICATE OF COUNSEL	69

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry) 2015-GS-26-02379

The State,)	
)	
Plaintiff,	)	Transcript of Record
)	
vs.	)	September 16, 2015
)	
Kenneth R. Boynton,	)	Guilty Plea
)	
Defendant.)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

David Tyler Bratton, Esquire
Attorney for Plaintiff

James C. Galmore, III, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

E X H I B I T S

(There were no exhibits marked during the hearing.)

State v. Boynton (9-16-15)

3

1 (On the record, September 16, 2015. Defendant is sworn
2 by the clerk.)

3 MR. BRATTON: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. BRATTON: Tyler Bratton for the State standing in for
6 Mr. David Caraker. This is State of South Carolina versus
7 Kenneth Ray Boynton, true-billed indictment number 2015-GS-26-
8 2379 for distribution of heroin, carries 15 years. The State
9 recommends 10 years suspended to drug court level II.

10 THE COURT: All right. Now, the indictment, the
11 indictment is for distribution of heroin third offense.

12 MR. BRATTON: Third offense, yes, sir.

13 THE COURT: Okay. So this is a lesser included?

14 MR. BRATTON: Yes, sir. This is a lesser included
15 offense. My apologies.

16 THE COURT: That's all right.

17 All right. Mr. Galmore, you represent Kenneth Ray
18 Boynton on the charge of distribution of heroin first offense?

19 MR. GALMORE: Yes, sir.

20 THE COURT: Have you discussed with your client the
21 charge against him, his rights as a Defendant and the
22 consequences of being convicted of this crime?

23 MR. GALMORE: Yes, sir.

24 THE COURT: In your opinion does your client understand
25 the charge against him, his rights as a Defendant and the

1 consequences of being convicted of this crime?

2 MR. GALMORE: Yes, sir.

3 THE COURT: Does he wish to plead guilty or not guilty?

4 MR. GALMORE: Guilty, Your Honor.

5 THE COURT: Do you agree with his decision to plead
6 guilty to this charge?

7 MR. GALMORE: Yes, sir.

8 THE COURT: Based upon the information you have, if this
9 case proceeded to trial do you feel that the State could prove
10 your client's guilt beyond a reasonable doubt?

11 MR. GALMORE: Yes, sir.

12 THE COURT: Has your client received a competency
13 evaluation?

14 MR. GALMORE: No, sir.

15 THE COURT: Do you feel that he needs a competency
16 evaluation?

17 MR. GALMORE: No, sir.

18 THE COURT: Sir, your name is Kenneth Ray Boynton?

19 MR. BOYNTON: Yes, sir.

20 THE COURT: All right. Mr. Boynton, you have been
21 charged and indicted by the Grand Jury with distribution of
22 heroin third offense. Now, this indictment covers all lesser
23 included offenses of which distribution of heroin second, I
24 mean first offense, is a lesser included offense, and
25 according to your attorney you wish to plead guilty to

1 distribution of heroin first offense. Is that correct?

2 MR. BOYNTON: Yes, sir.

3 THE COURT: All right. Before I can accept your guilty
4 plea I've got to go over some questions with you to be sure
5 that you understand the charge against you, that you
6 understand your rights as a Defendant, that you understand the
7 consequences of pleading guilty, and I must be sure you're
8 pleading guilty voluntarily. Now, during the past 72 hours
9 have you taken any medication, consumed any alcohol or drugs
10 or been under any influence that would affect your ability to
11 know why you're here?

12 MR. BOYNTON: No, sir.

13 THE COURT: Do you understand why you're here today?

14 MR. BOYNTON: Yes, sir.

15 THE COURT: Is there anything about this hearing that you
16 want to ask your lawyer or ask me before we proceed?

17 (Mr. Galmore and Mr. Boynton confer.)

18 MR. BOYNTON: I'm, I'm good.

19 THE COURT: All right. If you have any questions let me
20 know. Okay?

21 MR. BOYNTON: Okay.

22 THE COURT: All right. Now, even though you've been
23 indicted by the Grand Jury, under the Constitution of the
24 United States you're presumed innocent of this crime, and you
25 have the right to have your guilt or innocence determined by a

1 jury trial of your peers. The State bears the burden of
2 proving your guilt beyond a reasonable doubt. You do not have
3 to prove your innocence and you cannot be compelled to testify
4 against yourself. You also have the right to confront and
5 cross examine anybody who testifies against you. If you
6 choose you can present a defense to this charge, but when you
7 plead guilty you give up those rights. Do you understand
8 that?

9 MR. BOYNTON: Yes, sir.

10 THE COURT: And do you want to give up those rights and
11 plead guilty to this charge?

12 MR. BOYNTON: Yes, sir.

13 THE COURT: All right. Even though the State's made a
14 recommendation on your sentencing I'm not bound by that
15 recommendation and for this crime I could send you to prison
16 for 15 years and fine you \$25,000. Do you understand that?

17 MR. BOYNTON: Yes, sir.

18 THE COURT: Do you understand that?

19 MR. BOYNTON: Yes, sir.

20 THE COURT: All right. Now, you understand that if I
21 follow the recommendation of the State I will sentence you to
22 a term of imprisonment, but I'll suspend it upon your
23 enrollment and hopefully successful completion of drug court.

24 MR. BOYNTON: Yes, sir.

25 THE COURT: As long as you complete drug court then the

State v. Boynton (9-16-15)

7

1 case will be reopened and the charges against you will be
2 dismissed. However, if you fail to complete drug court then
3 you will simply go and serve the suspended sentence, and the
4 issue of your guilt or innocence or the sentence to be imposed
5 will no longer be before the Court because you're pleading
6 guilty and you're being sentenced at this time. Do you
7 understand that?

8 MR. BOYNTON: Yes, sir.

9 THE COURT: Do you also understand that this crime
10 carries an enhanced sentence? What I mean by that is if
11 you're ever convicted of another drug possession charge the
12 sentence you could receive for that subsequent conviction will
13 be enhanced from the possible sentence you now face for a
14 first offense and the State'll use this guilty plea against
15 you to show another drug possession conviction on your record.
16 Do you understand that?

17 MR. BOYNTON: Yes, sir.

18 THE COURT: Knowing your rights as a Defendant, knowing
19 the maximum sentence that could be imposed and knowing the
20 enhanced sentence you could get for any future drug possession
21 convictions do you wish to plead guilty or not guilty to
22 distribution of heroin?

23 MR. BOYNTON: Guilty.

24 THE COURT: Has anybody promised you anything or
25 threatened you in any way to get you to plead guilty?

1 MR. BOYNTON: No, sir.

2 THE COURT: Are you pleading guilty voluntarily?

3 MR. BOYNTON: Yes, sir

4 THE COURT: Are you satisfied with your lawyer?

5 MR. BOYNTON: Oh, yes, sir.

6 THE COURT: Are you pleading guilty to this crime because
7 you committed this crime?

8 MR. BOYNTON: Because I committed it.

9 THE COURT: All right. I need you to listen carefully
10 while the Solicitor gives me the facts of your case.

11 MR. BRATTON: Your Honor, on January the 15th, 2015, in
12 the Conway Section -- excuse me, within the Myrtle Beach
13 Section of Horry County Mr. Boynton did sell heroin to a
14 confidential informant working for the Drug Enforcement Unit.

15 THE COURT: All right. Mr. Boynton, you understand -- is
16 it Boynton?

17 MR. BOYNTON: Boynton, yeah.

18 THE COURT: All right. Mr. Boynton, you understand what
19 the allegations are against you?

20 MR. BOYNTON: Yes, sir.

21 THE COURT: Is that what happened in this case?

22 MR. BOYNTON: Yes, sir.

23 THE COURT: All right. Mr. Galmore, anything in
24 mitigation?

25 MR. GALMORE: Your Honor, Mr. Boynton is 55 years old.

State v. Boynton (9-16-15)

9

1 He is engaged and he has a two year old child. Your Honor, he
2 is from Columbia. He has his high school education. He's
3 also received a degree from Fisk University. Your Honor, he's
4 currently employed at Applebee's and he's been working there
5 for the past 12 years. He's been at the detention center now
6 for 73 days.

7 Mr. Boynton has been working and taking care of his
8 family and providing for them, but unfortunately he's had a
9 drug addiction issue that has been, that has been with him for
10 many, many years. Your Honor, he's -- unfortunately was in
11 this situation because he was, you know, just trying to sell
12 it just enough to try to get something to provide for his own
13 habit.

14 Your Honor, we appreciate the solicitor recommending drug
15 court in this case. The people at the drug court program had
16 to jump through a lot of hoops just to get him qualified for
17 the program, and we appreciate the effort that they went
18 through in making him a, a candidate for the program. Judge,
19 we'd ask you to accept the recommendation in this case.

20 THE COURT: All right. Mr. Boynton, anything you want to
21 say?

22 MR. BOYNTON: Appreciate the effort Mr. Caraker, the
23 Solicitor's Office and Mr. Galmore went through and Mr. DeBusk
24 for getting me into the program. This is something I know I
25 need because I, I only have one kid and she's two years old

1 and I wouldn't want nothing -- I want to be able to see her
2 grow up, get to that first grade.

3 THE COURT: All right. Any prior record?

4 MR. BRATTON: Your Honor, he's got a 1980 forgery, five
5 -- four forgeries in '86, '88 check fraud, '90 FTC theft, '90
6 trespassing, '90 trespassing times two, '91 auto tampering,
7 '92 grand larceny, breaking and entering, '95 ABHAN, B & E
8 auto, '97 two B and E auto, petit larceny, '98 trespass after
9 notice, '98 resisting arrest, '99 ABHAN, possession of crack,
10 resisting arrest, 2001 possession of a controlled substance,
11 November 2005 distribution of crack second, close proximity,
12 possession of crack, from 2012 fraudulent check, 2012
13 trespass, 2014 DUS.

14 I would hope Mr. Boynton takes advantage of this very
15 generous offer because if Ms. DeBusk fails him out of drug
16 court he already knows his sentence.

17 THE COURT: All right. Mr. Boynton, I will accept your
18 guilty plea. I find that it's made knowingly, voluntarily,
19 fully advised of your rights as a Defendant and the nature of
20 the charge against you and the consequences of your guilty
21 plea. I also find that there is a factual basis to support
22 the charge against you.

23 I'll follow the recommendation of the State. The
24 sentence of the Court is that you be confined to the State
25 Department of Corrections for 10 years. That sentence'll be

State v. Boynton (9-16-15)

11

1 suspended pending your enrollment and hopefully successful
2 completion of level II drug court. You'll be given credit for
3 any time served thus far. All right.

4 MR. BRATTON: Thank you, Judge.

5 MR. GALMORE: Thank you, sir.

6 MR. BRATTON: And yes, he'll be -- he'll stay here, I
7 believe, until drug court begins?

8 MR. GALMORE: Right. It begins at four p.m. today.

9 MR. BRATTON: Four p.m. today.

10 THE COURT: Do I need to put that on the sentencing sheet
11 or can they just hold him till four?

12 OFFICER: No, sir. I believe they know.

13 MR. BRATTON: You all know to hold him? Correct.

14 THE COURT: Okay. All right.

15 (Adjourned.)

16

17

18

19

20

21

22

23

24

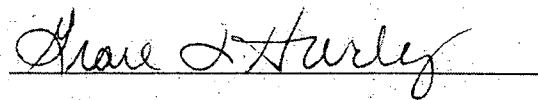
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Guilty Plea held in the case of The State versus Kenneth R. Boynton, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on September 16, 2015.

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


Grace L. Hurley, CVR-CM-M
Official Reporter

September 16, 2016.

15th Circuit Drug Court

Jimmy A. Richardson, II
Solicitor
Candy S. DeBusk, MS
Director



**FIFTEENTH CIRCUIT
SOLICITOR**

HORRY & GEORGETOWN COUNTIES

114 Laurel Street
Conway, SC 29526
843-915-8358
Fax: 843-915-6361

Kenneth Boynton
15D150119

On Wednesday, January 6, 2016, Drug Court Judge Kathy Ward ordered a termination hearing for Drug Court client, Kenneth Boynton. The hearing will be held on Wednesday, January 20, 2016 in Courtroom 2A at 2:30PM in the Horry County Judicial Center with Judge Kathy Ward. Kenneth Boynton can have an attorney present, if he chooses, but this is not required. Kenneth Boynton is being considered for termination from the Horry County Drug Court for noncompliance with the program requirements. Below are some specific examples of why Kenneth Boynton is being considered for termination from Drug Court. At the termination hearing, Kenneth Boynton will be given the opportunity to respond to each example and explain why he should not be terminated from Drug Court at this time.

1. October 16, 2015: Mr. Boynton's phone went off in treatment and he was sanctioned to 12 hours community service.
2. November 4, 2015: Mr. Boynton tested positive for cocaine (1st positive) but denied use. Specimen was confirmed positive for cocaine by Redwood Toxicology.
3. November 16, 2015: Mr. Boynton tested positive for cocaine (2nd positive)
4. November 17, 2015: During a curfew check, Mr. Boynton tested positive for alcohol and admitted to use (3rd positive). Mr. Boynton was taken into custody on November 18, 2015 and was sanctioned to 30 days in jail, an additional weekly treatment session and was warned that another positive test would result in review for termination.
5. December 25, 2015: Mr. Boynton missed a required drug screen but reports he was in the hospital. Mr. Boynton provided Discharge Summary from Grand Strand Regional stating that Mr. Boynton was discharged on December 25, 2015 at 10:57 a.m.
6. December 28, 2015: Mr. Boynton tested positive for cocaine and denied use. Specimen was confirmed positive by Redwood Toxicology.
7. December 30, 2015: Mr. Boynton did not report to a required court session.

STATE OF SOUTH CAROLINA	)	IN THE HORRY COUNTY DRUG COURT
IN THE MATTER OF:	)	CASE NO. 15D150119
	)	WARRANT NO: 2015A2610400139
)	
)	
Kenneth Boynton,	)	ORDER OF DISMISSAL FROM DRUG
Participant	)	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:

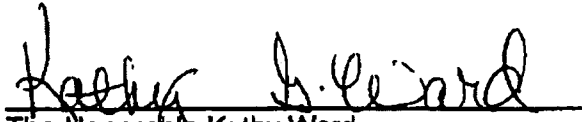
WHEREAS, the above named individual was voluntarily admitted into the Horry County Drug Court having requested admission, found appropriate for admission and sentenced to said program on September 16, 2015 and

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 3PM 2:55
 CLERK

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE HORRY COUNTY
DRUG COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

DRUG COURT CASE NO.: 15D150119
G.S. CASE NO.: 2015A2610400139

Plaintiff,

The Defendant's Motion to Alter or Amend
Judgment and Order; Motion to Vacate;
Motion to Remand

vs.

KENNETH BOYNTON,

Defendant.

FILED
HORRY COUNTY
2016 MAR - 7 PM 2: 32
MELANIE HUBBARD, CLERK OF COURT

TO: PLAINTIFF STATE OF SOUTH CAROLINA, THROUGH ITS COUNSEL JOSHUA
HOLFORD:

YOU WILL PLEASE TAKE NOTICE that Defendant files this Motion to Alter or Amend Order and Judgment pursuant to 59(e), SCRFC, 59(e) through his attorney Kenneth B. Massey, Esq., of Law Group South, LLC, asks the Court to alter or amend its Order and Judgment and dismiss as moot the claims against Defendant and the sentence imposed by the court in the Probate Action before the Honorable Court, to vacate the Order and Judgment. Alternatively, Defendant asks the Court to remand the case to the Court of General Sessions of the County of Horry for sentencing under the original charges, and to alter, amend or re-open the case, or vacate the judgment for the purpose of said motion. In support of this Motion, Plaintiff states the following:

Facts

On March 2, 2016, in its Order, subsequent to a hearing of even date, the Honorable Probate Court terminated Defendant's participation in the Horry County Drug Court Program. Defendant 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 imposing the original

COPY

sentence of the Defendant established in the Court of General Sessions, which was reached in exchange for Defendant's cooperation in the program. The Assistant Solicitor indicated in the hearing that based on the facts of this case, he would not be opposed with Defendant's continued involvement in the Drug Court program. Without any further hearing, argument or discussion in the Court of General Sessions about the extent of imposition of said charges, Defendant's Drug Court participation was terminated. Plaintiff now seeks an Order from the Court to alter or amend its Order and Judgment or remand the case back to the Court of General Sessions for a determination of the sentence based on the findings of the Probate Court.

Argument

I. Standard of Review:

Under SCRCP Section 59(e), a party may file a motion to alter or amend a judgment no later than 10 days after entry of the judgment. Motions to amend or alter the judgment should be granted when there exists for the Court to reconsider or rule on an argument that was not fully considered. A court has discretionary authority to alter or amend its prior decision. Procedurally, the Probate Court may further remand the case back to the Court of General Sessions for a hearing on the merits of the sentence to be imposed based on the results of the aforementioned hearing.

III. The Court respectfully did not address the overall purpose of the Drug Court Program.

1. The Drug Court Program was established as a collaborative link among the courts, prosecutors, public defenders, law enforcement, treatment providers, social service agencies and community-based non-profit organizations. A standardized assessment process used to identify eligible non-violent offenders.
2. Staff members involved in the Program are trained in substance abuse and recovery issues operating in a non-adversarial atmosphere.
3. A system of graduated sanctions and incentives to encourage recovery goals and hold offenders accountable for non-compliant behaviors.

4. Continuing training and education on a state and county level for drug court professionals;
5. On-going program evaluation and implementation of improvements as warranted

Defendant entered the Drug Court program in good faith to try to overcome his addictions and was unable to accomplish this massive task in a short time despite cooperating in the spirit of the program and working diligently with the above-referenced parties. By imposing a harsh sentence and result for Defendant's addiction failures, the Court respectfully has not allowed a system of graduated sanctions to be implemented against Defendant.

IV. The Court's Order and Judgment respectfully did not address the chilling effect of terminating the Defendant's participation in the Drug Court Program.

The Defendant respectfully submits that should the Court rigidly implement the tenets of the law in its Drug Court rulings, without any leeway to facilitate addiction treatment over time and utilize the resources authorized under the Drug Court Program as provided above, other Defendants will not pursue Drug Court as a means of mutually resolving the extensive criminal files pending in Horry County due to the harsh results.

Defendant urges that the State of South Carolina did not oppose Defendant's continuation in the Drug Court Program at the hearing under the current circumstances.

Defendant also raises that the Court did not grant credit to Defendant for time served in connection with the said charges

V. The Court's Order and Judgment respectfully did not consider the goals of justice as applied to Defendant.

The Defendant respectfully submits that the goals of justice, as applied to Defendant, are to rehabilitate rather than exacerbate addiction problems with exposure to an incarceration environment for a protracted period of time. The goals of justice would be better achieved by Defendant's continuing to be involved in the Drug Court stable environment, work efforts, and family support in the present circumstances as contemplated with the implementation of the program and Defendant's acceptance therein.

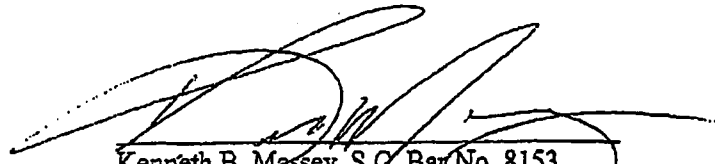
The Defendant admits that he has made a number of mistakes in the past, but a harsh and extensive sentence for said infractions outweigh the magnitude of Defendant's actions in this case.

Defendant again urges that the State of South Carolina did not oppose Defendant's continuation in the Drug Court Program at the hearing under the current circumstances.

WHEREFORE, Plaintiff requests that this Motion be granted and the Court alter or amend its Order and Judgment, vacate its judgment, or alternatively remand the case back to the Court of Commons Pleas, in accordance with the above-requested relief including reinstatement in the Drug Court program based on Defendant's unique circumstances and intellect and promise.

1. The Defendant requests a Hearing on the aforementioned issues;
2. The Defendant requests any other relief that the Court deems fit.

Respectfully Submitted,



Kenneth B. Massey, S.C. Bar No. 8153

Keith A. Dame, S.C. Bar No. 70601

Law Group South, LLC

Attorney for the Defendant

200 Elm Street

Conway, South Carolina 29526

Cell: (843) 458-2507

Office: (843) 488-3777

Fax: (843) 488-3779

Blaine@lawgroupsouth.com

Keith@lawgroupsouth.com

March 7, 2016
Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE HORRY COUNTY
) DRUG COURT OF THE
) FIFTEENTH JUDICIAL CIRCUIT
)

STATE OF SOUTH CAROLINA,

) DRUG COURT CASE NO.: 15D150119
) G.S. CASE NO.: 2015A2610400139
)

Plaintiff,

vs.

KENNETH BOYNTON,

Defendant.

FILED
HORRY COUNTY
2016 MAR -8 AM 10:07
MELANIE HUBBARD
CLERK OF COURT

CERTIFICATE OF SERVICE

I, Kenneth B. Massey, counsel for Defendant in the above captioned action, certify that I have served the below mentioned on March 8, 2016 a copy of the **MOTION TO ALTER OR AMEND JUDGMENT AND ORDER; MOTION TO VACATE; MOTION TO REMAND**, to him/ her at the following address:

**Horry County Solicitor's Office
Fifteenth Judicial Circuit
Attn: Jimmy Richardson, Esq.
Post Office Box 1276
Conway, South Carolina 29528**

**Horry County Solicitor's Office
Fifteenth Judicial Circuit
Attn: Joshua Holford, Esq.
Post Office Box 1276
Conway, South Carolina 29528**

**Horry County Solicitor's Office
Fifteenth Judicial Circuit
Attn: David Pierce Caraker, Jr.
Post Office Box 1276
Conway, South Carolina 29528**

COPY

Horry County Probate Court
 Honorable Kathy G. Ward
 P.O. Box 288
 Conway, South Carolina 29528

Horry County Probate Court
 Attn: Clerk of Court
 P.O. Box 288
 Conway, South Carolina 29528

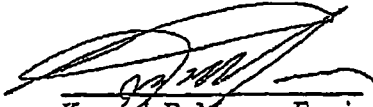
Horry County General Sessions Court
 Attn: Clerk of Court
 Post Office Box 677
 Conway, South Carolina 29528

Horry County Common Pleas Court
 Attn: Clerk of court
 Post Office Box 677
 Conway, South Carolina 29528

Honorable Larry B. Hyman
 1301 Second Ave., Ste 3B76
 Conway, South Carolina 29526

Honorable Benjamin H. Culbertson
 Post Office Box 479
 Georgetown, South Carolina 29442

FILED
 HORRY COUNTY
 2016 MAR -8 AM 10:07
 METRAH HUGGINS-WARD
 CLERK OF COURT


 Kenneth B. Massey, Esquire
 Law Group South, LLC
Blaine@lawgroupsouth.com
 200 Elm St.
 Conway, SC 29526
 Cell: (843) 458-2507
 Office: (843) 488-3777
 Fax: (843) 488-3779

STATE OF SOUTH CAROLINA	)	IN THE HORRY COUNTY
COUNTY OF HORRY	)	DRUG COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
)	
	)	DRUG COURT CASE NO.: 15D150119
STATE OF SOUTH CAROLINA,	)	G.S. CASE NO.: 2015A2610400139
)	
Plaintiff,)	
)	
vs.)	
)	
KENNETH BOYNTON,)	
)	
Defendant.)	
_____)

AMENDED CERTIFICATE OF SERVICE

I, Kenneth B. Massey, counsel for Defendant in the above captioned action, certify that I have served the below mentioned on March 24, 2016 a copy of the **MOTION TO ALTER OR AMEND JUDGMENT AND ORDER; MOTION TO VACATE; MOTION TO REMAND**, to him/ her at the following address:

**Horry County Drug Court
Attn: Candy Debusk
114 Laurel St.
Conway, SC 29526**

**Horry County Solicitor's Office
Fifteenth Judicial Circuit
Attn: Jimmy Richardson, Esq.
Post Office Box 1276
Conway, South Carolina 29528**

**Horry County Solicitor's Office
Fifteenth Judicial Circuit
Attn: Joshua Holford, Esq.
Post Office Box 1276
Conway, South Carolina 29528**

**Horry County Solicitor's Office
Fifteenth Judicial Circuit
Attn: David Pierce Caraker, Jr.
Post Office Box 1276
Conway, South Carolina 29528**

**Horry County Probate Court
Honorable Kathy G. Ward
Post Office Box 288
Conway, South Carolina 29528**

**Horry County Probate Court
Attn: Clerk of Court
Post Office 288
Conway, South Carolina 29528**

**Horry County General Sessions Court
Attn: Clerk of Court
Post Office Box 677
Conway, South Carolina 29528**

**Horry County Common Pleas Court
Attn: Clerk of Court
Post Office Box 677
Conway, South Carolina 29528**

**Honorable Larry B. Hyman
1301 Second Ave., Ste 3B76
Conway, South Carolina 29526**

**Honorable Benjamin H. Culbertson
Post Office Box 479
Georgetown, South Carolina 29442**



**Kenneth B. Massey, Esquire
Law Group South, LLC
Blaine@lawgroupsouth.com
200 Elm St.
Conway, SC 29526
Cell: (843) 458-2507
Office: (843) 488-3777
Fax: (843) 488-3779**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE HORRY COUNTY DRUG COURT
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)

Drug court Case No.: 15D1500119
GS Indictment No.: 2015GS2602379

vs.)

KENNETH BOYNTON,)
Defendant.)

State's Reply to Defendant's Motions and
State's Motion to Summarily Dismiss Defendant's
Motion or Deny Defendant's Motions

FILED
HORRY COUNTY
2016 MAR 14 PM 4:22

TO: THE HONORABLE KATHY WARD, JUDGE OF THE HORRY COUNTY DRUG COURT, AND THE DEFENDANT, BY AND THROUGH HIS ATTORNEYS, KENNETH MASSEY AND ROBERT MILLS

PLEASE TAKE NOTICE that the State files this Reply to Defendant's Motion to Alter or Amend Judgment and Order, Motion to Vacate, and Motion to Remand. Additionally, the State moves this Honorable Court to summarily dismiss the Defendant's motions as improper without a hearing on the merits. Alternatively, the State moves this Honorable Court to consider Defendant's improper motions as a proper motion to reconsider the Court's ruling, and then deny said motion to reconsider without a further hearing.

PROCEDURAL HISTORY

The Defendant pled guilty in General Sessions Court to Manufacture/Distribution/PWID Narcotic Drugs in Schedule 1(b) &(c), and Schedule II (Heroin), 1st offense, on September 16, 2015. The Honorable Benjamin Culbertson sentenced the Defendant to ten (10) years in prison suspended upon the successful completion of Level II Drug Court. The Defendant entered Level II Drug Court on September 16, 2015. At all times after September 16, 2015, the Defendant was under the jurisdiction of the Horry County Drug Court. On December 30, 2015, the Defendant was taken into custody for violations of the rules and regulations of the Horry County Drug Court. On January 6, 2016, the Honorable Kathy Ward ordered a termination hearing for the Defendant to be heard on January 20, 2016. The Defendant, by and through his counsel, requested multiple continuances, and the termination hearing was finally set for March 2, 2016. On March 2, 2016, the Honorable

Kathy Ward, after hearing from the State, Defendant, and Defendant's counsel, ordered that the Defendant be terminated from the Horry County Drug Court Program. On March 2, 2016, the Honorable Kathy Ward signed an Order terminating Kenneth Boynton from the Horry County Drug Court and remanding him to the custody of the South Carolina Department of Corrections to serve his ten (10) year sentence imposed by the Honorable Benjamin Culbertson. On March 7, 2016, the Defendant filed a Notice of Motion and Motion to Alter or Amend Judgment and Order, Motion to Vacate, and Motion to Remand.

FACTS

The Defendant participated in the Horry County Drug Court Program beginning on September 16, 2015. The Honorable Kathy Ward held a termination hearing for the Defendant on March 2, 2016, after giving sufficient notice of the hearing and the right to be represented by counsel. The State was represented by Joshua D. Holford, Assistant Solicitor for the Fifteenth Judicial Circuit, and the Defendant was present and represented by his attorneys, Kenneth Massey and Robert Mills. The State categorically recommended termination of the Defendant from the Horry County Drug Court Program due to the Defendant's repeated violations of the rules and regulations of the Drug Court Program. The Defendant argued that he should be allowed to remain in the program and be given another chance. After an extensive hearing on the record, the Honorable Kathy Ward agreed with the State and terminated the Defendant from the Horry County Drug Court Program.

STATE'S ARGUMENT

I. Defendant's Motion Is Improper as a Motion to Amend or Alter Judgment Pursuant to the South Carolina Rules of Civil Procedure

The Horry County Drug Court (HCDC), like many drug courts in South Carolina, was established as a diversion program for Defendants with criminal charges in Magistrate and General Sessions courts. As such, the HCDC and the Honorable Judge of the HCDC operate under special rules designed for drug courts, and are more akin to criminal courts, rather than civil courts or family courts. The South Carolina Rules of Civil Procedure (SCRCP) do not apply, and therefore, motions

FILED
 Horry County
 2016 MAR 14 PM 5:55
 CLERK OF COURT

to amend or alter a judgment pursuant to the SCRCPC is improper. The Defendant was never under the jurisdiction of the Court of Common Pleas and is not under such jurisdiction now.

II. South Carolina Rules of Probate Court Do Not Apply

The Honorable Judge of the HCDC is also the Probate Judge for Horry County; however, her role as Drug Court Judge is separate and distinct from that as Probate Judge. The jurisdiction she has over HCDC is specifically granted by the Supreme Court of South Carolina to rule and preside over all matters and all participants in the HCDC. Therefore, the South Carolina Probate Code and Rules of Probate Court are not applicable to HCDC.

FILED
HORRY COUNTY
2016 APR 14 PM 4:52
CLERK OF COURT

III. Proper Jurisdiction Is in the Horry County Drug Court

After the Defendant pled guilty to the offense, he was sentenced in General Sessions Court and that sentence was suspended upon the successful completion of HCDC. After that time, the Defendant was no longer under the jurisdiction of the General Sessions Court. The Defendant had two options: (1) either he successfully complete the HCDC Program and the State would move to reopen his case and dismiss his guilty plea, or (2) he be terminated for violations and be remanded to the custody of the South Carolina Department of Corrections to serve the sentence imposed. The Defendant cannot now go back in time and request the General Sessions Court to change its initial sentence. Further, an appeal to the General Sessions Court would be improper, as the General Sessions Court does not have direct review of an order and ruling of the Honorable Judge of the HCDC in connection with her duties as said Judge.

IV. The Proper Motion Might Be a Motion to Reconsider and Alternative Argument to Deny Said Motion

The State argues that the Defendant has not made a proper motion, and that such motions should be summarily dismissed. However, the State concedes that a proper motion may be a motion for this Honorable Court to reconsider its ruling and order. Such a motion may be made within ten (10) days of a ruling or order. Therefore, in the alternative, should this Honorable Court construe

Defendant's motions as a motion to reconsider its ruling, then the State would urge this Honorable Court to deny the Defendant's motion to reconsider.

If this Honorable Court construes the Defendant's motions as a motion to reconsider its ruling and order to terminate the Defendant from the HCDC, the State argues that this Honorable Court may deny the Defendant's motions without a hearing. A motion to reconsider a ruling made after a hearing on the merits may be denied without an additional hearing. The Defendant and his counsel were heard fully on the record about the reasons why he should be allowed to stay in HCDC. The State also presented its argument in full on the record, and even responded to the Defendant's arguments. The State recommended multiple times on the record that the Defendant be terminated from the HCDC for his violations of the rules and regulations. The Defendant has not alleged any new information or new arguments as to why he should be allowed to remain in the HCDC Program. This Honorable Court heard all parties involved and made a decision based on all the facts and arguments presented. Therefore, no further hearing is warranted or needed. The State would urge this Honorable Court to deny Defendant's motions.

V. The Honorable Judge of the Horry County Drug Court Made a Proper Ruling

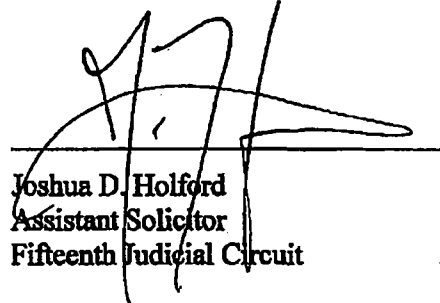
This Honorable Court did address the purpose of the HCDC Program. This Honorable Court knows and understands the vital importance that the HCDC plays in the judicial system, with Defendants, and for the community. The State argues that this Honorable Court knows and considered all relevant arguments as they relate individually to the Defendant and to the HCDC Program as a whole. This Honorable Court took into account its duties and obligations to the Defendant, the HCDC staff, the State, the other HCDC participants, and the community. This Honorable Court considered the goals of the HCDC Program and the goals of justice. This Honorable Court weighed all the arguments for and against termination, along with both individual and collective interests in making its decision to terminate the Defendant. The State argues that this Honorable Court's ruling and order were not only proper, but more than justified by all the facts and arguments presented when weighed in light of the totality of the circumstances.

THEREFORE, the State requests that the following relief be granted in accordance with all the arguments previously stated:

1. The State moves this Honorable Court to dismiss all Defendants motions as improper;
2. Alternatively, the State moves this Honorable Court to deny all motions without a further hearing;
3. Alternatively, the State moves this Honorable Court to deny without a further hearing any motion that may be construed to be a motion to reconsider;
4. The State requests that this Honorable Court's ruling and order terminating the Defendant from the Horry County Drug Court be upheld and remain as originally stated.

FEDERAL
 HORRY COUNTY
 CLERK OF COURT
 2016 MAR 14 PM 4:52
 CLERK OF COURT
 JAMES WARD

Respectfully Submitted,



Joshua D. Holford
 Assistant Solicitor
 Fifteenth Judicial Circuit

14
 March 10, 2016 *JH*
 Conway, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2015-GS-26-02379

The State,)	
)	
Plaintiff,	)	Transcript of Record
)	
vs.	)	May 23, 2016
)	
Kenneth R. Boynton,)	
)	
Defendant.)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Joshua David Holford, Esquire
Attorney for Plaintiff

Kenneth Massey, Esquire
Robert Mills, Esquire
Keith A. Dame, Esquire
Attorneys for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

State v. Boynton (5-23-16)

2

1 (There were no exhibits marked during the hearing.)
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (On the record, May 23, 2016.)

2 THE COURT: All right, sir, what have we got?

3 MR. HOLFORD: Yes, Your Honor. This is the State of
4 South Carolina, County of Horry versus Kenneth Ray Boynton.
5 It's indictment 2015-GS-26-02379 for PWID or distribution of
6 cocaine, first offense. He pled guilty before Your Honor on
7 September 16th, 2015. At that time you sentenced him to 10
8 years suspended to successful completion of level II drug
9 court. Mr. Boynton entered the drug court program. After a
10 number of issues, he was served notice of a termination
11 hearing. That notice was given to him by the Honorable Kathy
12 Ward, the judge of the drug court, also probate judge here in
13 Horry County. She gave him notice on January 6th, 2016. He
14 was represented by counsel. The hearing was continued a
15 couple of times. We eventually had that hearing on March 2nd,
16 2016, where he was represented by Attorney Ken Massey and
17 Robert Mills. He was, in fact, terminated after that hearing
18 from the Horry County Drug Court. Subsequent to that
19 termination, Mr. Massey filed motions for alter or amend
20 judgment and order and motion to vacate and a motion to
21 remand, and Attorney Mills filed a motion to reconsider the
22 sentence and a motion to reconsider termination from the Horry
23 County Drug Court. We're here on Defense's motions, Your
24 Honor.

25 THE COURT: All right. Now, the sentence, was that based

State v. Boynton (5-23-16)

4

1 upon a recommendation, negotiation or --

2 MR. HOLFORD: That was a recommendation by the State ten
3 years suspended to drug court level II.

4 THE COURT: All right. And so -- and I was the
5 sentencing judge?

6 MR. HOLFORD: You were the sentencing judge.

7 THE COURT: Okay. And so I'm assuming I just followed
8 the recommendation of the State?

9 MR. HOLFORD: Yes, Your Honor.

10 THE COURT: All right.

11 MR. HOLFORD: Yes.

12 THE COURT: And what was the charge?

13 MR. HOLFORD: It was PWID or distribution of cocaine. He
14 pled to a first offense.

15 THE COURT: All right. And were there any charges
16 dismissed, nolle prossed? Was this what he was indicted for
17 or was this a lesser included offense?

18 MR. HOLFORD: This was a lesser included offense. He's
19 got at least, at least one -- well, I can look at the
20 indictment. He was arrested for a third offense.

21 THE COURT: All right. So --

22 MR. HOLFORD: And I believe I said cocaine. It, it says
23 cocaine or a schedule I B or C or Schedule II. The indictment
24 is for heroin. So it was, it was a distribution of heroin.

25 THE COURT: All right. So it was distribution of heroin

1 third?

2 MR. HOLFORD: Third offense.

3 THE COURT: Pled guilty to a lesser included of
4 distribution of heroin first?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: Recommendation ten years suspended upon drug
7 court, the Court followed the recommendation?

8 MR. HOLFORD: Yes, Your Honor.

9 THE COURT: And were there any other charges that were
10 dismissed or do you know?

11 MR. HOLFORD: Your Honor, this is the only one with this
12 file.

13 THE COURT: Okay.

14 MR. HOLFORD: I think that might have been the only one.

15 THE COURT: All right. And what kind of prior record did
16 he have?

17 MR. HOLFORD: '80 forgery, '86 forgery, '88 fraudulent
18 check, '90 FTC theft, '90 trespass, '90 trespass; '91 auto
19 tampering, '92 grand larceny and auto break, '95 ABHAN, B and
20 E auto, '97 B and E auto times two, petit larceny, '98
21 trespass, '98 resisting arrest, receiving stolen goods, '99
22 ABHAN times two, possession of crack, resisting, '01
23 possession of other schedule I to V, '05 distribution of crack
24 second, also distribution within close proximity to a school
25 or a park and possession of crack, 2012 fraudulent check and

State v. Boynton (5-23-16)

6

1 trespass, and in 2014 DUS.

2 THE COURT: All right. All right. Mr. Massey, this is
3 your motion?

4 MR. MASSEY: It is, Your Honor. And Mr. Dame from my
5 office is going to argue our motion.

6 THE COURT: All right.

7 MR. MASSEY: Mr. Mills is here from Columbia, Your Honor,
8 as well, Your Honor.

9 THE COURT: All right.

10 MR. MILLS: I also filed some motions, but they're the
11 lead motion and I've incorporated their motions.

12 THE COURT: All right. So what are all the motions?

13 MR. DAME: There's a 59(e) motion on our behalf, Your
14 Honor.

15 THE COURT: That's a motion to reconsider?

16 MR. MASSEY: Yes, sir

17 MR. DAME: Yes, sir.

18 THE COURT: All right.

19 MR. MILLS: Also, Your Honor, there's a -- just a motion
20 under Rule 29, also, for a motion to reconsider termination of
21 drug court that I filed, as well as a motion to reconsider the
22 sentence under Rule 29, South Carolina Rules of Criminal
23 Procedure.

24 THE COURT: All right. And I'm sorry, your name, Mr.
25 Dame?

1 MR. DAME: Keith Dame.

2 THE COURT: All right. And, sir?

3 MR. MILLS: Robert Mills.

4 THE COURT: Robert Mills. All right. Are either of
5 these motions dispositive of the other? I mean, do we have to
6 hear both of them or does one satisfy the other?

7 MR. MILLS: One should satisfy the other, Your Honor, as
8 far as the motion to reconsider termination from the drug
9 court. Yes.

10 MR. MASSEY: I agree with that.

11 THE COURT: Okay. All right. Mr. Dame, let me hear from
12 you.

13 MR. DAME: Your Honor, the heart of our 59(e) motion
14 composes -- it's composed of two different arguments. The
15 first is that the purpose of a drug program is to rehabilitate
16 the Defendant. So it's more of a therapeutic program than
17 anything else, and the second part of this is that there's a,
18 you know, if that first aspect was not met, there's a chilling
19 effect to the program meaning other Defendants who are
20 considering that program aren't going to enter into it if
21 there's a quick call or a quick termination of the program and
22 not -- where it's not given a therapeutic approach. Your
23 Honor, I've got like a case here, Your Honor, I'd like to
24 bring before the Court if I may approach.

25 THE COURT: All right.

State v. Boynton (5-23-16)

8

1 MR. DAME: And I believe this is the same case that Mr.
2 Solicitor has provided.

3 THE COURT: All right, sir.

4 MR. DAME: Now, Your Honor, if I can like draw the
5 attention -- this is State versus Perkins, and it's footnote
6 one that's most applicable in this case for the first two
7 aspects of our argument. In that case the Defendant was
8 violated 18 times prior to a termination by the entity that
9 was deciding that matter, and our matter with Mr. Boynton, he
10 was only violated five times in the short period of 30 days,
11 and so the purpose of that obviously indicates that it's more
12 of a liberal or a working aspect of it to try to get this man
13 therapy to get through successful completion of the program,
14 and so that's like a crucial, to give any meaning at all to
15 the program itself we need to have like a little bit of like
16 maneuver room in that aspect, and that's supported by this
17 case.

18 Now, footnote three of the same case indicates that there
19 essentially is no authority to send it to the probate court to
20 do such a termination, and so that's exactly what this probate
21 court did. That matter is reserved to magistrates, social
22 workers and to the drug court team, and that's just sort of an
23 aside, but that's essentially what's in that case.

24 Assuming for the sake of argument that that is invalid,
25 which we'll do at this point to keep the argument alive for

1 the opposing party, it's essential that no, no parties allowed
2 under the -- under the court to terminate and impose a
3 sentence, and that's exactly what's happened in this case
4 because after termination by the probate court they
5 essentially sent this man to prison for ten years.

6 THE COURT: But that was what I sentenced him to; isn't
7 that correct? I mean, they didn't impose the ten year
8 sentence. They simply followed the sentence imposed by the
9 circuit court.

10 MR. DAME: Well, the way I read this case, Your Honor, is
11 it was essential that the termination was done and it was
12 brought back out to the Circuit Court for further handling or
13 consideration of that sentence.

14 THE COURT: So why do you even sentence them when they
15 plead guilty? I mean, why do you impose a sentence suspended
16 upon drug court if they don't serve the suspended sentence if
17 they violate drug court?

18 MR. DAME: Well, it's possible based on the
19 considerations, the factors of that particular case that the
20 Court may reconsider like the extent and the gravity of the --

21 THE COURT: Okay.

22 MR. DAME: -- you know, the central, yeah, and the
23 cooperation and the efforts made, the extent that's required
24 or, you know, mandated under the sentence.

25 THE COURT: All right. Anything else?

State v. Boynton (5-23-16)

10

1 MR. DAME: Counsel to the left would like to make an
2 argument.

3 MR. MILLS: Yeah. I'll just add that --

4 THE COURT: Mr. Mills.

5 MR. MILLS: -- analogous to a probation violation where a
6 judge may have sentenced someone to 10 years suspended on five
7 years probation, they come back for a violation of probation,
8 then it has to go back before Your Honor, and then Your Honor
9 has the discretion to either give the 10 years or give them a
10 five year sentence or whatever sentence Your Honor would so
11 see fit at the time considering what was done on the
12 probation, such as paying back the restitution or other
13 efforts that have been made by the Defendant so that Your
14 Honor could, could use your discretion to alter the sentence
15 depending upon the situation at the time the, that the actual
16 imposition of the sentence would go into effect, and so that's
17 our -- one of our arguments as well is that if Your Honor does
18 not rule to allow him back into drug court then and it wants
19 to impose sentence that Your Honor would have discretion, and
20 I believe this case would support that, that you would have
21 the discretion as in a probation violation to, to alter the
22 sentence potentially based on the efforts made and the things
23 that were done in between the time of the original sentence
24 and the, and the violation as in a violation of probation.

25 THE COURT: All right. All right. So what's the State's

1 position?

2 MR. HOLFORD: Your Honor, the State's position is
3 respectfully that this Court doesn't have jurisdiction to, to
4 reconsider a termination held by the drug court. In South
5 Carolina v. Perkins, this is the appellate court that held --
6 now, let me start by saying that the 13th Circuit does their
7 program a little bit different. The drug court recommends
8 either a termination or not termination, then that person
9 comes back before the Circuit Court. However, in Horry County
10 that's not how the drug court works. In Horry County our
11 program is set up so that someone pleads to a set amount of
12 time over their head suspended to the successful completion.
13 It's then within the authority of the drug court judge, which
14 is granted by an order of the Supreme Court giving Judge Kathy
15 Ward the powers of drug court judge to do all those things
16 necessary for the drug court judge, which includes in Horry
17 County holding and imposing termination from the program. She
18 doesn't sentence. She doesn't impose any sentences. She
19 simply determines whether someone stays or is terminated from
20 the program. Based on the way that it's set up after someone
21 -- since it's a post-plea model after they plea, if they're
22 terminated they have not successfully completed drug court.
23 Therefore, their sentence is imposed as was sentenced by any
24 Circuit Court Judge. The court in this case says specifically
25 the specific manner in which each drug court program operates

State v. Boynton (5-23-16)

12

1 varies, and that they declined to review whether the
2 appellant's positive sweat patch that was the reason why they
3 were terminated or violations occurring after the meeting with
4 the chief administrator were properly considered in the
5 decision to terminate the appellant. It would be improper for
6 the judiciary to interject itself in such matters which are
7 wholly internal and specific to each problem and to each
8 participant. Your Honor, this case says that the decision of
9 whether a Defendant has violated a condition of suspended
10 sentence rests within the discretion of the trial court. In
11 that -- in the, in the 13th Circuit the trial court is the one
12 who decides termination or not. In, in Horry County it's the
13 drug court and the drug court judge that decides termination.
14 Your Honor, for those reasons I believe that it'd be improper
15 to reconsider whether a person was terminated or not from the
16 drug court program.

17 As to whether a sentence should be reconsidered, that
18 would be within Your Honor's discretion. I would argue,
19 first, though that the motion to appeal the guilty plea was,
20 was not done within 10 days. He was in the program some
21 number of months. That plea was entered into voluntarily,
22 freely, willingly. It was accepted. It's not until after he
23 failed to complete the drug court program that now they've
24 made a motion reconsider the sentence. However, if Your Honor
25 is willing to, to consider reconsidering that sentence I would

1 strongly urge this Court as the solicitor over the drug court
2 that that would be detrimental to the program. It is for the
3 reason that a participant knows they have a set amount of time
4 over their head, they either complete the program and can have
5 those charges expunged from their record or they fail out of
6 the program and they go do their time in prison. If this
7 Court allows a Defendant to come back after they've been
8 transferred to drug court, been unsuccessful, been terminated
9 and then come back to the court and argue that they should get
10 less time, every single Defendant that gets terminated from
11 here on out will do that exact same thing, and we'll be before
12 Your Honor arguing one set plea, what kind of sentence they
13 should get, the court would determine the plea, then they go
14 to drug court, unsuccessful, get terminated and then they come
15 back before Your Honor again and argue for a new sentence that
16 the trial court has already considered in full during that
17 plea hearing. Your Honor, that would be -- it would be a
18 detriment to the drug court program in Horry County which
19 works effectively, has worked effectively for over ten years.
20 In my experience in the last couple of years it's always been
21 a post plea model. There was a point in time where we held
22 sentence in abeyance. However, now with the determined
23 sentence range hanging over someone's head that's found to be
24 more effective. It works. It continues to work, and I
25 respectfully ask this Court not to change that practice.

State v. Boynton (5-23-16)

14

1 THE COURT: All right. Mr. Dame or Mr. Mills, anything
2 in reply?

3 MR. MILLS: Your Honor, back to the analogy to probation
4 violation, I think that it's important to first note, note
5 that none of the three attorneys here were at his original
6 plea. He had another attorney, and my understanding there was
7 a recommendation by the State for the sentence of ten years
8 suspended to drug court participation. Therefore, since
9 everyone was in agreement, there was no mitigation, according
10 to what my client says, there was very little mitigation
11 brought up at that time. So this opportunity to, to now
12 allow, if Your Honor would so see fit, us to produce
13 mitigation, show the -- his situation, his age, his education,
14 his health issues, which were not brought up at the original
15 sentence, and again, analogous to a probation violation, I
16 think it would be more just for Mr. Boynton to have that -- to
17 allow Your Honor that discretion to, to alter the sentence
18 considering the mitigation that we've produced and, and that,
19 that he is going through, the health issues that he has and
20 things of that nature.

21 THE COURT: Well, I mean, the difference from probation,
22 I can't order, I mean, probation I can continue probation,
23 terminate probation or revoke a portion of it.

24 MR. MILLS: Yes, sir.

25 THE COURT: Here I can't continue drug court treatment.

1 It's just --

2 MR. MILLS: Well, we've asked that, but --

3 THE COURT: Huh?

4 MR. MILLS: -- but we, we have. That's why we're --

5 THE COURT: But how can I, how can I force the drug court
6 to accept somebody that they've already kicked out of the
7 program?

8 MR. MILLS: Yes, sir.

9 THE COURT: I can't compel the drug court to continue
10 here when they -- when he's -- when they've already kicked him
11 out and said he hasn't successfully completed it. So that's
12 not an option.

13 MR. MILLS: Yes, sir.

14 THE COURT: The only option is do we impose the ten year
15 sentence or something less. Let me hear from you on your
16 mitigating, mitigation arguments.

17 MR. MILLS: And Mr. Boynton may want to speak -- address
18 Your Honor as well.

19 Your Honor, Mr. Boynton is 55 years of age. He's had a
20 drug problem for a lot of his life, as you can hear from his,
21 his, his criminal history. He's a graduate, college graduate
22 of Fisk College up in Nashville. He was last working at
23 Shoney's. So he has been able to work. It's, it's a drug
24 issue. He's, he's an addict, and that's why I think there,
25 there was an agreement to go to drug court. He's, he's sat in

State v. Boynton (5-23-16)

16

1 jail for quite a bit of time between the time of the violation
2 of drug court until the actual termination, which my
3 understanding the order was he does not get credit for that.
4 We'd ask that he, he does get credit for that time, Your
5 Honor, because he was incarcerated under the -- if the
6 original sentence is still viable, which it is obviously, I
7 mean, drug court, then he should get credit for any time that
8 he did during the drug court violation period.

9 Your Honor, he's got some medical issues. He's got --
10 he's been diagnosed, my understanding, with lymph node cancer.
11 He also has severe intestinal issues that were definitely he
12 was suffering from last time we were in drug court during the
13 termination hearing.

14 He, he's, he's 55 now, Your Honor. He knows that he
15 can't be doing this, and he's, you know, he needs to get a, a
16 treatment for his drugs, drug addiction. We would ask you to
17 consider a lesser sentence with a treatment program at the
18 Department of Corrections. I think that would be reasonable
19 in this case considering his age, his health problems, and the
20 fact that he is an addict and he is, is -- as you heard, he
21 had some older criminal cases that were involving victims.
22 His more recent ones have not involved any victims. Yeah,
23 also he did -- I think he self reported use of cocaine in this
24 case at one point, Your Honor. Anything you want to add?

25 MR. MASSEY: Your Honor, very rarely do I see anybody in

1 criminal pleas or criminal trials, in drug court that has the
2 education he has. He is somebody, and I know he can't go back
3 to drug court, but he's somebody that has an addiction and,
4 and knows how he, he treats it and can be a mentor to somebody
5 younger, and when we did drug court you could look around the
6 courtroom and everybody's probably not even over the age of
7 25. He's twice their age. Yes. He's got a criminal history,
8 but he's got a drug issue. He's got a drug addiction, and
9 that's why it was perfect for him to be in drug court because
10 that way he could deal with it.

11 In this case that we've -- the solicitor actually handed
12 to me this morning, this is someone that had 18 violations.
13 Yes. He had five violations in the scope of 30 days, but one
14 of them he, he, he called and let them know that he had an
15 issue with it and he was taking it.

16 He's a very educated man, and he knows he's got this
17 addiction, but he wants to deal with it. He wants to treat
18 it, and that's what he's not getting and what he wasn't
19 getting prior to drug court was treatment for it, and that's
20 what he needs and that's what he's asking.

21 THE COURT: But I mean, drug court is a treatment.

22 MR. MASSEY: I understand that.

23 THE COURT: So what -- if that doesn't work what's going
24 to work?

25 MR. MILLS: Well, Your Honor, we also ask for -- drug

State v. Boynton (5-23-16)

18

1 court allows for some inpatient. If, if it's -- if they're --
2 if a person going through drug court is not doing well and
3 they are violating, still using drugs, then they allow for
4 inpatient. Well, we've -- that was not allowed for him, to go
5 into an inpatient, then continue on drug court, but sometimes
6 that's necessary, to go into an inpatient treatment program
7 and not be out, you know, in the community so that they can
8 get more skills to and better skills to, to avoid the
9 addiction that they have, and that was not allowed for him,
10 Your Honor. So that was one of the problems with the -- with
11 our --, we'd argue that to allow him that, that was denied, but
12 we would ask you to consider a reduction in sentence with a,
13 with a order of a drug treatment for Mr. Boynton.

14 THE COURT: All right.

15 MR. MILLS: And I believe Mr. Boynton would like to --

16 THE COURT: All right. Sir, what would you like to say?

17 MR. BOYNTON: Good afternoon, Your Honor. I want to
18 first thank you and God first of all and, and, and for giving
19 me and my attorneys the opportunity and Mr. Holford as well to
20 hear us out.

21 Your Honor, my past history does not at all reflect the
22 person that I am and raised -- that I was raised to be, Your
23 Honor. I'm from a very well-educated family. My mother
24 practiced law in the State of Florida for 30 years. My father
25 did 35 years in the Marine Corps, volunteered to go to Vietnam

1 twice, both my siblings have degrees and one's a retired
2 doctor. The other one owns their own business in Columbia. I
3 graduated 16th in my class summa cum laude. I was vice
4 president of my fraternity chapter. I majored in psychology
5 from Fisk University. I worked for the Baptist Convention for
6 14 and a half years as their counselor for ministers in youth,
7 youth groups.

8 I started using cocaine in college and didn't think it
9 was a problem at the time because -- but on -- as time came on
10 it became one. So that's why I resigned from my job as a
11 counselor for -- from the Baptist Convention because I didn't
12 want that to reflect on any other, about any -- anybody else,
13 but I've always had -- kept a job and known as a functioning
14 addict, Your Honor.

15 I'm seeking help from the Court today for my addiction.
16 Your Honor, there's a huge difference between psychological
17 and practicality of the world of addiction. An addiction is a
18 disease of relapse, and I did that in, in drug court. The
19 medical world has deemed a drug addiction as a very curable
20 sickness that can only be treated and treated properly one can
21 overcome it, some others can control it, but if handled
22 correctly with treatment only. My mind is set on what the
23 psychologists called a Zeigarnik effect, which is your brain
24 is set to -- set for completion. My brain is set to complete
25 some kind of drug treatment for myself.

State v. Boynton (5-23-16)

20

1 THE COURT: Why didn't you do it during drug court?

2 MR. BOYNTON: Sir, I, I, I had a -- I have a lot of
3 health issues going on right now, and that's really no excuse
4 for that, no excuse, but I admitted to my drug use and Mr.
5 Holford knows that. I admitted to it prior to testing, and I
6 only failed actually two tests, actually it was two tests that
7 I failed because I failed one on a Monday and it takes 72
8 hours for cocaine to get out of your system, and I failed
9 again on Wednesday, and it happened 30 days later. Now, one
10 drug test, they said the 5th was because I didn't go up to
11 testing because I was in the hospital and my attorney should
12 have the documents to prove where I was in the hospital
13 because of my chronic diarrhea and my spinal arthritis. I
14 have the paperwork to prove that.

15 Your Honor, one of the -- one of the world's greatest
16 minds, Albert Einstein, had an addiction. He had an addiction
17 to socks. When he died he had 14,000 single socks found in
18 his home, but everyday he would walk out the house with one
19 sock and put it in the trashcan. He never overcame that
20 addiction. He died with that addiction, and he -- Mr. Bryant
21 -- Mr. Einstein he only used five percent of his brain power.
22 We as normal humans only use two percent. That makes it just
23 a little more difficult for us to overcome any, anything such
24 as addictions.

25 Some of us have addictions and never realize it. I

1 myself see -- never see any kind of addiction for my cocaine
2 habit until last year when I realized and decided to ask for
3 drug court. I asked for drug court because I know I needed
4 it. I did, I did this knowing that that's what my heart had
5 needed very badly. I was in jail for selling heroine that
6 wasn't even mine just to get high. So I was given a chance
7 but not an opportunity to finish because I relapsed, now that
8 I failed tests on Monday, which I just explained that to you.
9 Well, I wish -- like I said, happened within a 30 day time
10 period. So technically, Your Honor, I only, like I say, I
11 only failed two tests, but I had paperwork from the doctors
12 that showed I went to court, I mean, went to the hospital for
13 my failed test on that Friday, which was Christmas Day. I
14 gave Mr. DeBusk a copy of it, anything I ever done when it
15 comes to drug court and I always let them knew ahead of time.
16 I never, ever tried to run or hide anything from them. I
17 always was a -- made them aware, "Okay, well, I can't do this,
18 I can't do that," and Mr. Holford, I feel sure he can agree to
19 that. I've always did that.

20 I have chronic diarrhea, spinal arthritis. Since being
21 incarcerated, they, they tell me I have lymph nodes cancer.
22 They admitted, in fact, that I do, and I also am HIV positive,
23 which came through a blood transfusion. I'm 55 years old,
24 Your Honor. I have one daughter that's three years old, and
25 with my health condition the way it is, in 2014 I had a heart

State v. Boynton (5-23-16)

22

1 attack, 2015 I died on the operating table for 26 seconds, so
2 with a blood transfusion and three days medical and just for a
3 simple hernia procedure. My health issues is really bad, and
4 I don't have a long period of time I don't think the way it's
5 -- the way it's -- at the rate it's going, but I would really,
6 really, really do anything in my power, sir, to try to
7 overcome this addiction. It's, it's very, it's a very hard
8 thing to do. It's not nothing that's simple, but I've been
9 doing everything in my power lately. I've been put in the
10 Department of Corrections, which is a drug infested place.
11 There's 1500 inmates where I'm at, only 200 of them work,
12 1500, 1300 of them sit around and try to figure out how to get
13 high, get cell phones in and whatever. Just recently, two
14 weeks ago, they shot a drone down over Broad River
15 Correctional Institution to where they brought in 50 bags of
16 K2 and two ounces of crystal meth. That stuff is infested in
17 the Department of Corrections, everywhere you go. I don't
18 care where you go it's there, but I am lucky enough to have a
19 roommate just like me who's trying to overcome an addiction.
20 We stay to our room. We stay in church. We try to have bible
21 studies and do things to be positive each and every day. I've
22 learned my lesson from this time. I've been in prison before,
23 but never nothing like this. This place is -- the Department
24 of Corrections now, oh, my God, you won't even believe. It's
25 absolutely treacherous.

1 THE COURT: All right. I understand your argument, Mr.
2 Boynton, but I'm going to deny your motion for reconsideration
3 or to alter the sentence. I'll recommend ATU if it's in
4 there, but I mean, this -- with your prior criminal history,
5 this was a third offense of distribution, carried up to, what
6 was it, it carried a mandatory minimum sentence if it'd been
7 -- I mean, they let you plead down to a lesser offense, and so
8 I think the 10-year sentence was appropriate. Yes, sir.

9 MR. DAME: Your Honor, may I argue in the alternative in
10 light of the Court's position that we remand this file back to
11 the probate court for further handling pursuant to the State
12 versus Perkins file or case, in which it took 18 violations,
13 essentially to terminate the Defendant from the program and
14 that there's only five violations in this file on this case
15 where there's only -- over a 30-day period. In light of that,
16 there may be a reconsideration of the severity of that
17 finding.

18 THE COURT: I mean, you can talk to the -- you can talk
19 to the drug court and see if they'll take him back into the
20 program, and if they take him back into the program, but I
21 don't know that that's an option now or not. I mean,
22 unfortunately, once you impose sentence and you set conditions
23 and those conditions are violated, the State has just as much
24 right to know the finality of a, of an issue as the Defendant
25 does, and so all I can do is say, you know, and I, I don't

State v. Boynton (5-23-16)

24

1 know, I'm not saying I don't have jurisdiction to do it, but
2 their argument that, "Look, I imposed the sentence, the -- he
3 pled guilty. He didn't appeal that. He didn't appeal the
4 sentence. It was only after the violation occurred and the
5 sentence was being imposed that he said it couldn't, you know,
6 that it was unjust." So when was he sentenced?

7 MR. HOLFORD: September 16th, 2015.

8 THE COURT: Okay. So you're looking at over six months
9 ago since the sentence was imposed, and there's been no
10 appeal, there's been no motion to reconsider, there's been no
11 motion to set aside the, the guilty plea or anything of that
12 nature. It's only now after the violation has occurred, he's
13 been dismissed from drug court that they're imposing the
14 sentence that he's coming before the Court. So I'm going to
15 deny the motion. I don't know what other avenues are
16 available. I don't know if drug court'll take him back, and
17 if they do take him back, whether or not he's entitled to go
18 back given the finality of the sentence because back in
19 September is when he was told, "You've got to serve 10 years
20 if you don't complete your drug court successfully." So I'm
21 going to deny the motion.

22 MR. HOLFORD: Thank you, Your Honor.

23 MR. MILLS: Thank you for hearing us, Your Honor.

24 MR. MASSEY: Thank you, Solicitor.

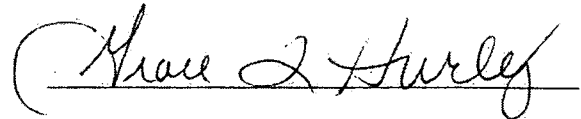
25 (Adjourned.)

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of State v. Kenneth R. Boynton held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on May 23, 2016.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

September 22, 2016.

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

RECEIVED
 MAY 31 2016
 SC Court of Appeals

General Sessions Case No.: 2015A2610400139
 Drug Court Case No.: 15D150119

Kenneth Boynton,

Appellant,

v.

State of South Carolina,

Respondents

NOTICE OF APPEAL

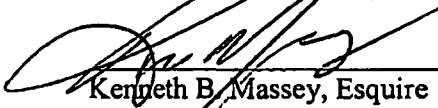
Kenneth Boynton was sentenced to Drug Court by the Honorable Benjamin Culbertson on September 16, 2015. Kenneth Boynton was thereafter terminated from the Horry County Drug Court program by the Honorable Kathy Ward by Order dated March 2, 2016. The Drug Court Order of March 2, 2016 imposed the original 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. Appellant has not received a written notice of entry of this Judgment as of May 27, 2016.

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

Other Counsel of Record:

LAW GROUP SOUTH, LLC

Horry County Solicitor's Office
 Joshua Holford, Assistant Solicitor
 Post Office Box 1276
 Conway, SC 29528


 Kenneth B. Massey, Esquire
 Keith A. Dame, Esquire
 Robert Mills, Esquire
 Attorneys for Appellant
 200 Elm Street
 Conway, SC 29526
 (843) 488-3777
 (843) 488-3779

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

RECEIVED
MAY 31 2016
SC Court of Appeals

General Sessions Case No.: 2015A2610400139

Drug Court Case No.: 15D150119

Kenneth Boynton,

Appellant,

v.

State of South Carolina,

Respondents

CERTIFICATE OF SERVICE

I, Linda V. Willis, Paralegal for counsel for Appellant in the above captioned action, certify that I have served the below mentioned on May 27, 2016 a copy of the **NOTICE OF APPEAL**, to him/her at the following address:

**South Carolina Court of Appeals
Attn: Clerk of Court
1220 Senate St.
Columbia, South Carolina 29201**

**South Carolina Attorney General
The Honorable Alan Wilson
Post Office Box 11549
Columbia, South Carolina 29211**

**Horry County Drug Court
Attn: Candy Debusk
114 Laurel St.
Conway, South Carolina 29526**

Kenneth Boynton v. State of South Carolina
General Sessions Case No.: 2015A2610400139
Drug Court Case No.: 15D150119

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

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.

Rule 203 (d) Guilty Plea Explanation

Pursuant to Rule 203(d)(1)(B)(iv), SCACR Guilty Plea Explanation the issue on preserve is whether the Probate Court Judge Kathy Ward had jurisdiction over the subject matter and the authority to terminate the appellant from Drug Court, subsequently implementing a criminal sentence.

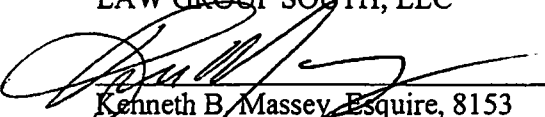
FACTS

After Appellant's guilty plea on September 16, 2015 (See Exhibit 1 attached), the Honorable Benjamin H. Culbertson sentenced Appellant to ten years imprisonment, but suspended the imposition of that sentence conditioned upon the successful completion of the Drug Court Program. On March 2, 2016 (See Exhibit 2 attached), a termination hearing was

held before the Honorable Judge Kathy G. Ward to determine if the Appellant's participation in the Horry County Drug Court Program should continue. 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. 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. On May 23, 2016 (Order not currently available), this action was challenged at a Rule 59(e) hearing due to the lack of authority of the Probate Judge to implement a criminal sentence. The Honorable Judge Benjamin H. 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. 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. The Honorable Judge Culbertson denied Appellant's motion to alter or amend the Drug Court's termination from the program.

Dated this 11th day of July, 2016 in Conway, South Carolina.

Respectfully Submitted,
LAW GROUP SOUTH, LLC



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

Other Counsel of Record:

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

Office of the Attorney General
J. Benjamin Aplin, Senior Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211-1549

STATE OF SOUTH CAROLINA
COUNTY OF: HORRY
IN THE COURT OF GENERAL SESSIONS

ORDER IN A CRIMINAL CASE
WARRANTS: 2015A2610400139
INDICTMENTS: 2015GS2602379

STATE OF SOUTH CAROLINA
STATE

KENNETH RAY BOYNTON
DEFENDANT

Submitted by: JOSHUA D. HOLFORD <i>15th Circuit Solicitor's Office</i>	Attorney for: <input checked="" type="checkbox"/> State <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Defendant
---	---

DISPOSITION TYPE (CHECK ONE)

- DECISION BY THE COURT.** This action came to a hearing before the court. The issues have been heard and a decision rendered. See below for additional information.
- MOTION GRANTED MOTION DENIED MOTION CONTINUED MOTION WITHDRAWN OTHER

IT IS ORDERED AND ADJUDGED: See Order below Formal Order to follow to be prepared by
 State Defense Attorney Pro Se Defendant

ORDER INFORMATION

This order ends does not end the case.

- BOND SET / REDUCE / GPS BENCH WARRANT LIFT SPEEDY TRIAL
- COMPEL DISCOVERY EVALUATION(DMH/PRIVATE) OTHER Motion to Reconsider Termination from Drug Court; Motion to Reconsider Sentence; & Motion to Remand Back to Drug Court

Additional Information for the Clerk : These motions were heard and denied by the Honorable Benjamin Culbertson on May 23, 2016.

FILED
CLERK OF COURT
JULY 20 2016
2:24 PM

This action came before this court for a hearing. The issues have been heard and a decision rendered.

After hearing arguments from both the defense and the State, this Court denied all of the defense's motions. This Court
found that the original sentence was appropriate and should not be changed. This Court found that it could not or would
not overrule or reconsider the Drug Court Judge's determination to terminate the defendant from Drug Court. Finally,
this Court found that it could not or would not send this case back to Drug Court, and in essence force the Drug Court
to accept a defendant back that had already been terminated in the Drug Court Judge's discretion after a full hearing
on the merits of said termination in Drug Court. The original sentence of ten (10) years was imposed after the defendant's
unsuccessful completion and subsequent termination from Horry County Drug Court.

Benjamin Culbertson
Circuit Court Judge

2148
Judge Code

July 20, 2016
Date

15th Circuit Drug Court
Program Rules and Guidelines
Horry County Level II



FIFTEENTH CIRCUIT
SOLICITOR

HORRY & GEORGETOWN COUNTIES

Name KENNETH RAY BOYNTON
First Middle Last

Address [REDACTED] NORTH OCEAN MYRTLE BEACH S.C. 29577
Street Apt# City State Zip

Telephone [REDACTED] DOB [REDACTED]-60 SSN [REDACTED]

- (1) (1) I understand that upon completion of the Drug Court Program that my current charges may be dismissed and may be expunged (*at discretion of Solicitor*). I understand that my participation in the Program requires me to give up important rights, including my right to a speedy trial. I have fully discussed this with my attorney and understand to what I am committing. (K.B.)
- (2) I expressly agree to accept and obey all laws while in the program. I understand that I must report any violations, arrests, or charges within 24 hours, including any driving violations or minor offenses. I understand that any criminal action can affect my participation in the program. (K.B.)
- (3) I accept, understand, and will abide by all terms and conditions of the Drug Court Program as established and agree to any program changes made after my admission to the program. (K.B.)
- (4) I understand the following basic rules of the program:
- I must not have any type of weapon in my possession while in the program.
 - I must not use any alcohol or drugs while in the program; if I do use, I will tell my counselor right away.
 - I understand that no psychoactive prescription drugs are allowed. I understand that all prescribed medication use must be cleared by program staff and it is my responsibility to inform the staff of any prescription I am given. I give my permission for the Drug Court Team to contact my physician and discuss any relevant information pertaining to my participation in the Drug Court Program.
 - I must attend ALL Drug Court sessions and ALL treatment sessions, pass repeated drug screens and maintain satisfactory progress.
 - I understand and agree to submit to continual drug testing during my participation in the program. Drug tests can be at the request of Drug Court Team, the Judge, or the treatment provider. Failure to report for the test, tampering with a test, or the alteration or the removal of any test may result in sanctions. I give my permission for the Drug Court Program to exchange information with the drug screening facility concerning my participation in the program.
 - I consent to the disclosure and release of information concerning my admission and treatment in the Drug Court Program to the court. I consent to the disclosure of

health information concerning my medical history, mental, or physical condition and treatment received to the Drug Court.

- I may be required to pay restitution. Failure to pay will result in sanctions.
- I must retain employment while in the program. If unemployed upon entering, I agree to obtain employment within 14 days of entry to Drug Court. If I become unemployed during participation, I understand that I will be given 14 days to find new employment. Failure to find employment/new employment within 14 days will result in sanctions.
- I understand that I must maintain to the best of my ability, a safe and sober home environment.
- I understand that any change in residence must be approved by the Drug Court Director, prior to move.
- I understand that I may be required to obtain a G.E.D. prior to completion of Drug Court, if I am not a high school graduate.
- I understand that I am responsible for all transportation required to participate in Drug Court. (K.B.)

(5) I understand that I must pay for my participation in the Drug Court Program. The cost is \$40.00 per week until graduation from the program. I understand that failure to pay will result in sanctions. (K.B.)

(6) I understand that I can be jailed for protective custody upon the order of the Drug Court Judge, if the Judge determines that I may be a danger to society or to myself. (K.B.)

(7) I understand that the Judge has the authority to impose sanctions for any violation of the rules. Further, the Judge can terminate my participation in the program at any time and if so, that I will begin serving my sentence immediately. I understand that all decisions of the Judge are final and may not be appealed. (K.B.)

(8) I understand that should I fail to comply with any Drug Court Program requirements the Drug Court Judge can issue sanctions. Sanctions may include community service work, jail time or other penalties as prescribed by the Drug Court Judge. (K.B.)

(9) I understand that should I fail to appear for any Drug Court Session the Drug Court Judge can issue a bench warrant. (K.B.)

(10) I understand that the Drug Court Team may at any time, request my termination from the Drug Court Program for failure to follow the rules of the program. (K.B.)

(11) I understand that all information shared with counseling staff is confidential in terms of prosecution. I understand that any information shared with Drug Court Program Director can be admitted in court. (K.B.)

(12) I understand that if I am rearrested on new charges after my plea, I can be terminated from Drug Court. (K.B.)

(13) I am entering the program voluntarily and understand that Drug Court is not liable for any loss and/or injury to person or property suffered by me while I am in or about the premises (to include the Courthouse, parking lot, surrounding grounds, treatment facilities, and the office of the Court Director). (K.B.)

(14) I am aware that during my first 30 days in the 15th Circuit Drug Court, I will be in a Stabilization Phase. If I fail to attend any treatment sessions, meetings with the Director, or court sessions I will automatically be in review for termination from the Drug Court program. If I test positive for alcohol or drugs or if I am rearrested, I may be in review for termination from the program. (K.B.)

(15 if applicable) I understand that I am required to pay restitution to my victim(s) in the amount of \$ _____. I understand that I will make this payment to the Drug Court office and Drug Court can impose sanctions, if I do not pay my restitution. ()

I CERTIFY THAT I HAVE READ THE ABOVE AGREEMENT AND THAT IT HAS BEEN FULLY EXPLAINED TO ME. I UNDERSTAND I AM GIVING UP CERTAIN RIGHTS AND I DO SO WILLINGLY. AT THE TIME I SIGN THIS DOCUMENT I AM THINKING CLEARLY AND I AM NOT UNDER THE INFLUENCE OF ANY SUBSTANCE. I AGREE, OF MY OWN FREE WILL, TO WAIVE CERTAIN RIGHTS AND ENTER THE PROGRAM.

[Handwritten Signature]
Signature of Defendant

DATE: 9/16/2015

I have reviewed this with my client. He/She understands and voluntarily agrees to enter the program.

[Handwritten Signature]
Attorney Signature

DATE: 9/14/15

Accepted by:

Drug Court Program Director

DATE: _____

Law Group South, LLC

200 Elm Street
Conway, SC 29526
Office: (843) 488-3777
Fax: (843) 488-3779

Attorney Kenneth B. Massey

Blaine@lawgroupsouth.com
Cell: 843-458-2507

Attorney Keith Dame

Keith@lawgroupsouth.com
Cell: 843-333-4845

December 21, 2016

Via USPS:

Jenny Abbott Kitchings
Clerk of Appelant Court
P. O. Box 11629
Columbia, SC 29211

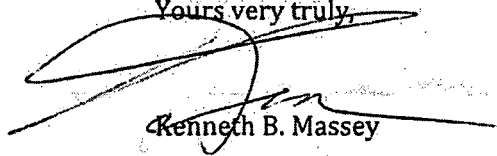
Re: Kenneth Ray Boynton
Case No.: 2016-001153

Dear Clerk of Court:

I filed a Motion to Alter or Amend Judgment on behalf of the above-mentioned Defendant on March 7, 2016 in the Horry County Court of General Sessions. The hearing on this motion was held on May 23, 2016 before the Honorable Benjamin H. Culbertson.

After my repeated attempts and the request from his new attorney, Robert M. Dudek, I am still unable to obtain the Order. Please somebody let me know how we can get this Order that has been due for 7 months.

Yours very truly,



Kenneth B. Massey

KBM/vif

cc: Joshua Holford
David Caraker
Robert M. Dudek

RP

RECEIVED
DEC 22 2016

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

INDICTMENT

At a Court of General Sessions, convened on June 25, 2015, the Grand Jurors of Horry County present upon their oath:


DISTRIBUTION OF HEROIN

CDR: 0185 44-53-0370(b)(1)

That Kenneth Ray Boynton did in Horry County on or about January 15, 2015, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Heroin, a Schedule I controlled substance under the provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such distribution not having been authorized by law, in violation of Section 44-53-0370(b)(1), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

FILED
Horry County
2015 SEP 16 PM 6:03
MELOAN MURPHY
CLERK OF COURT
COURT DATE
PLED GUILTY/TRIAL


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

DOCKET NO. 2015-GS-28-*2379*

FILED
HORRY COUNTY

2015 JUL -6 AM 8:09

MELANIE WIGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM:

GRAND JURY

WITNESSES

Mark McIntyre 15th Circuit Drug Enforcement Unit

The State of South Carolina

County of Horry

David P. Carsker, Jr.
15HD1552

COURT OF GENERAL SESSIONS

June, 2015 TERM

THE STATE

vs.

Kenneth Ray Boynton
B/ M
Old Buckville Rd
Conway, SC 29528
DOB: 1960-
SSN:

ATTORNEY:

Indictment for
Distribution of Heroin

Jimmy A. Richardson, II, Solicitor

ORIGINAL

ACTION OF GRAND JURY

TRUE BILL

Boyd Harris

Foreperson of Grand Jury
Date:

JUN 25 2015

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

Kenneth Ray Boynton

AKA: _____
Race: BLACK Sex: M Age: 55
DOB: 1960 SS#: _____
Address: 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. 10 yrs to 35. Drug Court Level 2
ATTEST: DC 100039 Kenneth Boynton James J. ... 9386
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

month/year and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. mk

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 _____
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 Enforc. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 50.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 4.50
TOTAL		\$ 288.40 + 40.00 = \$ 328.40

_____ days/hours Public Service Employment
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 10/15/15
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

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

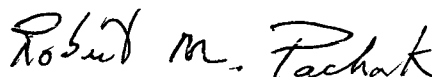
Presiding Judge Margaret Culbertson
Judge Code: 2148
Sentence Date: Sept. 16, 2015

FILED
Horry County
2015 SEP 16 5PM 6:55
MELANIE HUGGINS WARD
CLERK OF COURT

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 23rd day of June, 2017.

RECEIVED

JUN 23 2017

SC Court of Appeals