

be in danger of losing his firm and license. Mr. Floyd Mills the victim did not fulfill his legal duties, he did not pay all the medicals bills totaling \$1,144.00 from the Village Hospital from a prior case of my son Jesse Martinez VS. Sain Heavner Trucking Co. I talked to Mr. Floyd Mills the victim and his legal response, "Don't pay," a very unethical legal advice. His next response was to commit Medicaid fraud. PET. Jesus tried to reason and remind his lawyer, Mr. Floyd Mills that the distribution of medical bills was his legal duty, "but yall supposed to cover and especially that one, the first invoices where that happen the accident we bring the papers to yall." To which Mr. Mills got furious at PET. and denied the responsibility. PET. at that point I told him, "I think I don't need you no more" and released him as legal counsel for that particular case. Date, July 2014 - PET. has evidence in the recordings/transcripts. PET. has evidence proving Mr. Floyd Mills violated the terms of the contract, overcharging the written amount and giving illegal instructions to commit Medicaid fraud. Petitioner, told Mr. Floyd Mills, he was going to sue his company for legal malpractice and negligence on 1-26-2015. Mr. Mills would be in danger of losing his firm, license and livelihood. Mr. Mills had no choice but to set-up PET. and get rid of him before he could file a lawsuit.

The intentional "dignitary" tort of malicious prosecution may be brought by someone against whom a criminal or civil action has proceeded without probable cause and with malicious intent. PET. Mr. Martinez had no probable cause and no malicious intent, he was falsely prosecuted by fear of suing Mr. Mills and reporting his illegal services to the Bar Association and having his practice license revoked. Mr. Mills and Mr. Martinez had worked it all out with a reduced fee and a new contract just 9 days prior to his arrest their was no motive for malicious intent, "we had met previously before this day and had agreed to work everything out. I agreed to reduce my fee. So everything could move forward" (Transcript Page 32). It was Mr. Mills who falsely testified and lied under oath, he made Mr. Martinez appear like a guilty criminal to the court, "Mr. Martinez came into the office and wanted to fire me - He wanted his money - he wanted his money now. He didn't want to wait for the litigation to be over. He wanted - he was in need of the money then and now - I told him that's not how it works. We've lost leverage if I do that" (Transcript page 29). Mr. Mills is Libel / Slander and a Fraud and Lying under oath. Pet. Mr. Martinez recorded many of his meetings with Attorney Mr. Mills including this particular one,

Mr. Martinez never brought up any subject of his settlement money nor did he ever tell Mr. Mills that "he wanted his money." Mr. Martinez was solely there to clear up the due medical bill that the attorney failed to pay, which was his duty as per the legal binding contract.

Luckily Mr. Martinez recorded nearly all visits with Mr. Mills, everything Mr. Mills has said and testified to has been a lie and we have the tape recordings to prove it, furthermore, Mr. Fletcher Smith and the state and prosecutor Ms. Huey also have these evidences . Now we respectfully petition for Rule 60(b)(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b) and Rule 60(b)(3) fraud, misrepresentation, or misconduct by an opposing party and also Rule 60(b)(6) any other reason that justifies relief. In addition we would like to petition for Post-Conviction Relief also known as PCR, we more than qualify for this opportunity, our direct appeals have just recently been concluded and PET. Jesus Martinez rights were violated in both the original trial and the appeal. Mr. Martinez received incompetence of the original defense attorney resulting in a prejudice against the defendant, and prosecutorial misconduct, withholding evidence that would have surely proven the defendant's innocence. Mr. Fletcher Smith the original attorney had possession of the tape recorders that would have proven Mr. Mills testimony's to be false and fraudulent, and openly admitted during trial to never once hearing them (tape recorder), he also had possession of vital documents both emails and insurance documentation that would have proved for a successful trial. Further incompetence being that the attorney Fletcher Smith could not even remember the clients name during trial, repeatedly calling him "Jose" (Transcript page 22). These tape recordings prove that Mr. Mills testimony's have been lies and should be impeached and he sentenced to prison.

Alongside Mr. Mills false testimony's were also very inconsistent statements about the alleged altercation, none of it makes sense, he often forgets his own story and shuffles the scene with different hand choices or different body locations at a table and its consistently a different order of events which take place first, I petition for an Impeachment of a Witness Through Prior Inconsistent Statements. Mr. Mills testimony is completely fictional, inconsistent and physically impossible.

Mr. Mills stated that both himself and Mr. Martinez had already taken a seat, "we sat down at the head

of the table, him to my right" (transcripts page 33) But later claims Mr. Martinez "hit him as he was sitting down at the conference table" (Transcript Page 34). Later Mr. Mills stated he "was still seated" when Mr. Martinez "eventually took his left hand and just punched me in the back of the head" (Transcript Page 35). Let alone the two inconsistent scenarios, the laws of physics would still prohibit such actions. In one scenario Mr. Mills stated they had "sat down at the head of the table, him to my right" (Transcript page 33) when Mr. Martinez "took his left hand and just punched me in the back of the head." Now if Mr. Mills was at the head of the table and Mr. Martinez was sitting at his right how could Mr. Martinez take his left hand and punch the back of Mr. Mills head? Sitting on his right side, it would be physically impossible for Mr. Martinez to take his left fist and strike the back of Mr. Mills head. Mr. Mills can't keep his story straight, with multiple scenarios none of them are consistent, claiming he was struck while being seated upon entering and then changing his story that they had both already sat down and discussed the paperwork when then being struck. On page 35 Mr. Mills also claims to have "just got punched in the back of the head with a gun" and then he "stood up" where he received 2 more blows "with the butt of the gun" one to the "back of the head and the back of my right shoulder." Miraculously that would make 3 very lethal blows to the back of Mr. Mills head, 1 strike with a fist and 2 strikes with the butt of a gun, plus the forth blow to Mr. Mills right shoulder. Being pistol whipped not once but twice and struck with a fist to the back of the head and yet miraculously Mr. Mills suffered no injuries or trauma, he didn't require a doctor or physician or any treatment at all, in fact even the on scene police officers noted no physical damage or bruising. While on page 34 Mr. Mills portrays a completely different scenario, claiming he was struck and stood up "right to right" shoulder and "pushed" Mr. Martinez "that way and stood up" not only is this inconsistent to the testimony he gave on page 35 but Mr. Mills standing at a whopping 6'-2" healthy and weighing over 200lbs allegedly "pushed" Mr. Martinez a 5'-4" disabled diabetic 51 year old man suffering from peripheral vascular disease, bilateral hip degenerative joint disease, neuropathy, and lumbar spine disorders (20 CFR 404.1520(c)) and yet somehow this small man still managed to reach the top of his head, false. (Jesus Martinez 250-73-5743 based on the application for a period of disability and disability insurance benefits protectively filed on September 25, 2014, claimant has been disabled under sections 216(i) and 223(d) of the Social

Security Act beginning on April 1, 2013.) This is impossible, Mr. Martinez could never reach such an altitude, not to mention his medical conditions and body movement in-capabilities and even more so while being pushed away from a man nearly two times his body weight. This evidence further proves Mr. Floyd Mills is lying under oath and testifying fraudulent evidence, leaving an innocent man behind bars for a crime not possible. Mr. Floyd Mills has committed many offenses both criminal, state and federal. Mr. Mills should be prosecuted to the fullest extent of the law.

Lastly the two so claimed "witnesses" Lisa Hunt and Ashley Reese's testimony's cannot morally or ethically be allowed as evidence in the court of law due to their severe bias and personal interest. Ms. Ashley has worked fourteen years for Trammel and Mills Law Firm, She's worked for Trey Mills over ten years, and this so called "witness" was in her office throughout the entire visit of PET. Mr. Martinez. In Fact BOTH witnesses Ashley Reese and Lisa were in their private offices throughout Mr. Martinez visit. Ms. Ashley Reese's testimony is not only extremely biased and of personal interest but it also has inconsistent statements that are very contrary to Mr. Mills statement. Ms. Reese claims to have seen "the tables pushed – a paper and pen on the conference room table. It just – it looked scattered" (Transcript page 70). This is very odd because there is only one table and nowhere in Mr. Mills statement does he state any movement of the table. Furthermore Mr. Mills vividly recalls "he grabbed everything off the table, all the paperwork – yes including the checks, including the index card grabbed everything" (Transcript page 36). Ms. Reese's testimony is inconsistent and should be impeached. Both "witnesses" are extremely biased and will say or believe anything they're over decade old employer tells them. These employees have bills, debt, a mortgage, a livelihood and children to support of course they're going to believe their employer and of course they will testify in court because doing so otherwise would put their careers in jeopardy.

B) IMPORTANCE OF THE QUESTION PRESENTED

The victim made false claims that are not supported by any evidence, see FRCP 11(b)(4).

Malicious prosecution from the opposing party with grounds for relief from a Final judgement, order and proceeding, Rule 60(b)(2)(3)(6) newly discovered evidence that with reasonable diligence could have been discovered in time to move for a new trial under Rule 59(b); Fraud. Misrepresentation and misconduct by an opposing party; any other reason that justifies relief. It is the duty of the court to conduct the proceeding in a manner which allows the parties to put on their case. To put facts and evidence forth while they prove their allegations.

A defendant in a criminal case has a constitutional right to represent himself *Faretta v. California*, 412 U.S 806(1975). In *Indiana v. Edwards*, U.S. , 128 s.c.t 2379 (2008), this court summarized the basis for the implied right found in *Faretta* as arisen from: (1) an early universal conviction, made manifest in State Law, that forcing a lawyer upon an unwilling defendant is contrary to his basis right to defend himself if he truly wants to do so, (2) sixth Amendment language granting rights to the accused. State must prove all elements of crime charged, *Thomas vs. Leeks* 725F. 2d. 246.(1984)

It is standard reactions for defendants to object to providing documents which clearly shows that they are guilty.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 08, 2018

The Honorable Richard A. Shirley
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: The State v. Jesus Martinez
Lower Court Case No. 2015GS0400781, 2015GS0400782
Appellate Case No. 2016-000527

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. A. Welch".

CLERK

Enclosure

cc: Jesus Vargas Martinez, 367256
Fletcher N. Smith, Jr., Esquire
Catherine Townsend Huey, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
David Rhys Wagner, Jr., Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

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www.sccourts.org

December 13, 2017

Mr. Fletcher N. Smith, Jr., Esquire
112 Wakefield Street
Greenville SC 29601

Ms. Jennifer Ellis Roberts, Esquire
1410 Boston Avenue
West Columbia SC 29170

Mr. John Benjamin Aplin, Esquire
PO Box 11549
Columbia SC 29211

Re: The State v. Jesus Martinez
Appellate Case No. 2016-000527

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
David Rhys Wagner, Jr., Esquire
The Honorable R. Scott Sprouse

①

13-2

a high and aggravated nature is void for vagueness. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Martinez's first argument: *State v. Moore*, 374 S.C. 468, 474, 649 S.E.2d 84, 86 (Ct. App. 2007) ("On appeal, [this court is] limited to determining whether the trial [court] abused [its] discretion."); *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) ("On appeal from the denial of a directed verdict, this [c]ourt must view the evidence in the light most favorable to the State."); *State v. Zeigler*, 364 S.C. 94, 103, 610 S.E.2d 859, 863 (Ct. App. 2005) ("The appellate court may reverse the trial [court's] denial of a motion for a directed verdict only if there is no evidence to support the [court's] ruling."); *State v. McKnight*, 352 S.C. 635, 642, 576 S.E.2d 168, 171 (2003) ("A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged."); *Sellers v. State*, 362 S.C. 182, 188, 607 S.E.2d 82, 85 (2005) ("When ruling on a criminal defendant[']s motion for directed verdict, a trial court is concerned with the existence of evidence, not its weight.").

2. As to Martinez's second argument: *State v. Nichols*, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) ("An issue may not be raised for the first time on appeal, but must have been raised to the trial [court] to be preserved for appellate review."); *State v. Varvil*, 338 S.C. 335, 339, 526 S.E.2d 248, 250 (Ct. App. 2000) ("Constitutional arguments are no exception to the [error preservation] rule, and if not raised to the trial court are deemed waived on appeal."); *State v. McWee*, 322 S.C. 387, 391-92, 472 S.E.2d 235, 238 (1996) (holding that a constitutional argument is not preserved where appellant failed to raise the argument at trial).

AFFIRMED.

LOCKEMY, C.J., and HUFF and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

~~13-2~~

13-2

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jesus Martinez, Appellant.

Appellate Case No. 2016-000527

Appeal From Anderson County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2017-UP-462
Submitted November 1, 2017 – Filed December 13, 2017

AFFIRMED

Fletcher N. Smith, Jr., of Law Firm of Fletcher N. Smith,
Jr., LLC, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia; and Solicitor David Rhys Wagner, Jr., of
Anderson, all for Respondent.

PER CURIAM: Jesus Martinez appeals his conviction of assault and battery of a high and aggravated nature, arguing (1) the trial court erred by not directing a verdict of acquittal or granting a new trial and (2) the law of assault and battery of



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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www.sccourts.org

January 04, 2018

Jesus Vargas Martinez, 367256
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland SC 29936

Re: The State v. Jesus Martinez
Appellate Case No. 2016-000527

Dear Mr. Martinez:

This responds to your recent correspondence titled, "Petition for Rehearing". Since you are represented by counsel in this matter, no action will be taken on this *pro se* filing. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

We are returning your correspondence along with this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Fletcher N. Smith, Jr., Esquire
Catherine Townsend Huey, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
David Rhys Wagner, Jr., Esquire

WITNESSES

Anderson Police Dept.
Blake Vaughn

ARREST WARRANT NUMBER

2015A0420700129

TRUE BILL
 ACTION OF GRAND JURY
 MAY 12 2015
[Signature]
 Foreperson of Grand Jury
 Date:

VERDICT

Guilty-

Kimberly A. Edwards
 Foreperson of Grand Jury
 Date: *2/24/14*

DOCKET NO. 2015-GS-04- 00781

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

MAY 12 2015, TERM

THE STATE

VS.

JESUS V MARTINEZ

INDICTMENT FOR

ASSAULT & BATTERY OF A HIGH AND
AGGRAVATED NATURE

SC Code: § 16-03-0600(B)(1)
CDR Code: 3411

ATRUE COPY
 FEB 26 2016
Blake Vaughn
 ANDERSON CLERK OF COURT

15-1

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on MAY 12 2015, the
Grand Jurors of Anderson County present upon their oath:

ASSAULT & BATTERY OF A HIGH AND AGGRAVATED NATURE

The defendant, Jesus V. Martinez, did on or about February 12, 2015 in Anderson County, injure Floyd Mills and did accomplish that injury by means likely to produce death or great bodily injury. All in violation of 16-03-0600(B)(1), Code of Laws of South Carolina, (1976), as amended).

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

Catherine T. Huey
CATHERINE T. HUEY
SR. CAREER PROSECUTOR

15-1

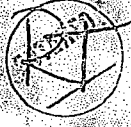
COUNTY OF ANDERSON
STATE VS.

JESUS V MARTINEZ

AKA: Jesus Martinez
Race: Unknown Sex: M Age: 48
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Anderson, SC 29621-7825
DL# _____ SID# SC01290208

INDICTMENT/CASE#: 2015-65-04-0078
A/W: 2015A0420700129
Date of Offense: 02/12/2015
S.C. Code #: 16-03-0600(B)(1)
CDR Code #: 3411

SENTENCE SHEET



*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery Of A High And Aggravated Nature (20)

CONVICTED OF or PLEADS

BSS

In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Catherine T. Huey 68416
Catherine T. Huey, Sr. Career Prosecutor 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 _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ 3 days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2015-65-04-00782
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by _____ Attend Voc. Rehab. Or Job Corp. _____
Recipient: _____ May serve W/E beginning _____

*Fine: Richard A. Hunter \$ _____
ANDERSON CLERK OF COURT
§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 Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ _____ \$ _____
Paid to Public Defender Fund \$ _____

Other: No contact with victims including all members of Trammell and Smith's Law Firm.

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

Clerk of Court/Deputy Clerk: Richard A. Hunter
Court Reporter: R. Wilson
SCCA/217 (03/2011)

Presiding Judge: _____
Judge Bar ID: _____
Sentence Date: 2/24/16
Judge Code: #2750

WITNESSES

Anderson Police Dept.
Blake Vaughn

ARREST WARRANT NUMBER

2015A0420700130

TRUE BILL
 ACTION OF GRAND JURY
 MAY 12 2015
[Signature]

Foreperson of Grand Jury
Date:

VERDICT

Guilty -
1

Kimberly Edwards
 Foreperson of Grand Jury
 Date: 2/24/14

DOCKET NO. 2015-GS-04-00782

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

MAY 12 2015, TERM

THE STATE

VS.

JESUS V MARTINEZ

INDICTMENT FOR

POINTING/PRESENTING A FIREARM

SC Code: § 16-23-0410
CDR Code: 0122

A TRUE COPY
 FEB 26 2015
[Signature]
 ANDERSON CLERK OF COURT

15-3

COUNTY OF ANDERSON
STATE VS.

JESUS V. MARTINEZ

AKA: Jesus Martinez

Race: Unknown Sex: M Age: 48

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Anderson, SC 29621-7825

DL# _____ SID# SC01290208

*CDL Yes No CMV Yes No Hazmat Yes No

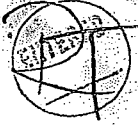
In disposition of the said indictment comes now the Defendant who was

TO: Pointing/Presenting a Firearm (5)

In violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122

INDICTMENT/CASE#: 2015-65-04-00782
A/W: 2015A0420700130
Date of Offense: 02/12/2015
S.C. Code §: 16-23-0410
CDR Code #: 0122

SENTENCE SHEET



CONVICTED OF or PLEADS

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor: 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Negotiated Sentence, Recommendation by the State.
The plea is: Without Negotiations or Recommendation, _____ (def.'s initials)

ATTEST:
Catherine T. Huey 68416
Catherine T. Huey, Sr. Carcer Prosecutor 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 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 3 days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2015 6504 781
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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.

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee \$ _____ days/hours Public Service Employment
Payment/Arrangements: _____ Obtain GED

Set by SCDC 5 FEB 26 2016
Recipient: Richard S. Hinder
*Fine: ANDERSON CLERK OF COURT

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 \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§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 Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
% to County (if paid in installments)	\$	\$ _____
TOTAL		\$ <u>130.00</u>

Other: No contact with victims
including all members
of Transwell at Mills Law Firm

Richard S. Hinder
Clerk of Court/Deputy Clerk
Presiding Judge: _____

Time Limit To File An Appeal

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

What Else You May Send Us

You may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. They may decide to review my decision within 60 days after the date of the decision. The Appeals Council will mail you a notice of review if they decide to review my decision.

When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

Your Right To Representation In An Appeal

If you appeal, you may choose to have an attorney or other person help you. Many representatives do not charge a fee unless you win your appeal. Groups are available to help you find a representative or, if you qualify, to give you free legal services. Your local Social Security office has a list of groups that can help you in this process.

If you get someone to help you with your appeal, you or that person must let the Appeals Council know. If you hire someone, we must approve the fee before he or she is allowed to collect it.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits or not qualify for benefits at all. My decision could also be used to deny a new application for benefits if the facts and issues are the same. If you disagree with my decision, you should file an appeal within 60 days.

If You Have Any Questions

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (866)526-9854. Its address is:

Social Security
292 Professional Park
Clinton, SC 29325-7624

Ann G. Paschall
Administrative Law Judge

Enclosures:
Decision Rationale
Form HA-L39 (Exhibit List)

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF

CLAIM FOR

Jesus V. Martinez
(Claimant)

Period of Disability and Disability Insurance
Benefits

(Wage Earner)

250-73-5743
(Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

On September 25, 2014, claimant protectively filed a Title II application for a period of disability and disability insurance benefits, alleging disability beginning May 15, 2012. The claim was denied initially on January 23, 2015 and upon reconsideration on May 1, 2015. Thereafter, claimant filed a written request for hearing on June 19, 2015 (20 CFR 404.929 *et seq.*). Claimant appeared and testified via telephone at a hearing held on July 27, 2017, in Greenville, SC. Karl S. Weldon, an impartial vocational expert, also appeared at the hearing. Martin Pollock appeared as an interpreter at the hearing. Although informed of the right to representation, claimant chose to appear and testify without the assistance of an attorney or other representative.

Claimant submitted or informed the Administrative Law Judge about all written evidence at least five business days before the date of claimant's scheduled hearing (20 CFR 404.935(a)).

ISSUES

The issue is whether claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. Claimant's earnings record shows that claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2013. Thus, claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful consideration of all the evidence, I conclude that claimant was not disabled prior to April 1, 2013, but became disabled on that date and has continued to be disabled through the date of this decision. I also find that the insured status requirements of the Social Security Act were met as of the date disability is established.

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APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, I must determine whether claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574 and 404.1575). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, I must determine whether claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1522; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, I must determine whether claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509), claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, I must first determine claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, I must consider all of claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, I must determine at step four whether claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f)). The term past relevant work means work performed (either as claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for claimant to learn to do the job and have been SGA (20 CFR 404.1560(b) and 404.1565). If claimant has the residual functional capacity to do his past relevant work, claimant is not disabled. If claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), I must determine whether claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If claimant is able to do other work, he is not disabled. If claimant is not able to do other work and meets the duration requirement, he is disabled. Although claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, I make the following findings:

1. Claimant meets the insured status requirements of the Social Security Act through December 31, 2013.
2. Claimant has not engaged in substantial gainful activity since May 15, 2012, the alleged onset date (20 CFR 404.1571 *et seq.*).
3. Since the alleged onset date of disability, May 15, 2012, claimant has had the following severe impairments: bilateral hip degenerative joint disease, type 2 diabetes with neuropathy, and lumbar spine disorders (20 CFR 404.1520(c)).

The impairments listed in the above finding have caused significant limitations in claimant's ability to perform basic work activities, as described under Findings 6 and 7, and have therefore been severe.

Medical treatment records also report diabetic macular edema, diabetic retinopathy, nuclear sclerosis, and peripheral pterygium (Exhibit 16F). However, treatment notes indicate claimant's visual acuity was normal with correction and claimant's visual fields were full (Exhibit 16F/3, 12, 29, 32, 40, and 44; Exhibit 48F/2). In addition, Ted Roper, M.D., and Joseph Geer, M.D., reviewed claimant's records and concluded claimant's visual disorders were nonsevere (Exhibit 1A/8; Exhibit 4A/8). Therefore, I conclude claimant's visual disorders are nonsevere.



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Claimant also described recurrent headaches in his testimony. However, the record reveals no specialized neurological treatment for headaches nor does it show any related abnormalities demonstrated by diagnostic imaging of the head or brain. Further, claimant did not report taking any particular medications for headaches in his medications forms (Exhibits 15E and 21E). Therefore, I conclude that, while claimant may experience some periodic headaches related to his severe impairments, such do not warrant any work-related restrictions.

While records indicate some depression (Exhibit 19F/4), the record reveals no specialized mental health treatment as would be expected if claimant's depression was significantly limiting. Also, treatment notes do not document persistent depressive or psychiatric complaints. Therefore, I conclude the depression causes no more than mild limitations in understanding, remembering, or applying information, interacting with others, concentrating, persisting, and maintaining pace, or adaptation and managing oneself. Thus, claimant's depression is nonsevere.

Claimant additionally testified he experiences hand, shoulder, and neck pain. However, the record reveals no objective evidence from an acceptable medical source demonstrating the presence of hand, shoulder, or neck abnormalities. Thus, I conclude claimant has no medically determinable head, shoulder, or neck impairment. I further note that treatment notes do not document any consistent neck, shoulder, or hand complaints.

4. Beginning on April 1, 2013, claimant has had the following severe impairment: peripheral vascular disease.

As described under Finding 7, claimant underwent stenting in April 2013 due to iliac stenosis and I conclude such has caused significant work-related limitations since April 2013.

Records from prior to April 2013 document lower extremity symptoms, but reveal no diagnosis of iliac stenosis or peripheral vascular disease, nor do they reveal testing showing iliac stenosis or peripheral vascular disease. Therefore, I conclude the iliac stenosis or peripheral vascular disease were not medically determinable prior to April 2013. I note, however, that, regardless of whether this impairment was medically determinable prior to April 2013, I conclude claimant had the residual functional capacities described in Findings 6 and 7 based largely on the medical signs and symptoms documented during the corresponding time periods.

5. Since the alleged onset date of disability, May 15, 2012, claimant has not had an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).

I note initially that Drs. Geer and Roper reviewed claimant's records and concluded claimant's physical impairments did not meet or equal any listing (Exhibits 1A and 4A).

As to the spinal disorders, spinal imaging described under Findings 6 and 7 did not show nerve root or spinal cord compromise as required by listing 1.04.

As to the hip impairments, records do not demonstrate an inability to ambulate effectively as required by listing 1.02A. While exams cited under Findings 6 and 7 showed some antalgic gait, claimant did not require an assistive device for ambulation. Also, Carol Burnette, M.D., indicated claimant could stand or walk between 2 and 3 hours a day (Exhibit 38F/9).

As to the peripheral vascular disease, testing did not yield the values required to meet listing 4.12 (See, for example, Exhibit 30F/6).

As to the neuropathy, records do not show such caused an inability to stand from a seated position or balance while standing, nor do records indicate the neuropathy had a substantial effect on claimant's ability to understand, remember, or apply information, interact with others, concentrate, persist, or maintain pace, or adapt and manage himself. I note that electromyography only showed a "moderate" right lower extremity neuropathy (Exhibit 11F/7).

6. After careful consideration of the entire record, I find that prior to April 1, 2013, the date claimant became disabled, claimant had the residual functional capacity to perform the full range of sedentary work as defined in 20 CFR 404.1567(a).

In making this finding, I have considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSR 96-4p. I have also considered opinion evidence in accordance with the requirements of 20 CFR 404.1529.

In considering claimant's symptoms, I must follow a two-step process in which it must first be determined whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by shown by medically acceptable clinical or laboratory diagnostic techniques--that could reasonably be expected to produce claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce claimant's pain or other symptoms has been shown, I must evaluate the intensity, persistence, and limiting effects of claimant's symptoms to determine the extent to which they limit claimant's work-related activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, I considered other evidence in the record to determine if claimant's symptoms limited the ability to do work-related activities.

At the hearing on July 27, 2017, claimant testified he experiences back, leg, foot, hand, shoulder, and neck pain, as well as headaches. Claimant also testified he lies down much of the time. Claimant additionally stated he can stand for about 3 minutes before experiencing foot pain, cannot lift or carry much due to back problems, had a right leg surgery in 2013, and has diabetes.

Medical evidence from prior to April 2013 partially supports claimant's allegations. Treatment notes from 2012 document some back and right hip complaints (Exhibits 1F and 2F), exam in October 2012 showed right hip tenderness (Exhibit 4F/1), and MRI in November 2012 revealed bilateral hip osteoarthritis (Exhibit 4F/4). Records from 2012 also document diabetes (Exhibit

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2F/2), and treatment notes from November 2012 report peripheral neuropathy in the feet (Exhibit 8F/72). In addition, notes from January 2013 report ongoing right hip complaints (Exhibit 4F/15), and records from March 2013 report sciatica (Exhibit 8F/47).

Records described above demonstrate the presence of significant back, hip, and neuropathic symptoms, which would reasonably be expected to cause substantial problems lifting, carrying, standing, and walking. Therefore, I conclude claimant was only capable of performing sedentary work prior to April 1, 2013.

Nonetheless, I conclude no additional limitations were warranted prior to April 1, 2013. While claimant testified he can only stand for 3 minutes before experiencing foot pain and has to lie down most of the time, such allegations are inconsistent with medical evidence from prior to April 2013. First, right hip and lumbar spine x-rays in April 2012 were unremarkable (Exhibit 1F/13 and 15), and Christopher Clemow, M.D., reported a lumbar spine MRI in November 2012 was normal other than Schmorl's nodes (Exhibit 4F/14). Second, exams showed largely intact functional ability. Specifically, exam in April 2012 showed no back tenderness and normal hip, knee, and foot motion (Exhibit 1F/2), exam in October 2012 demonstrated normal gait, strength, muscle tone, back motion, and reflexes (Exhibit 2F/2), exam in January 2013 showed only "minimal" hip tenderness with "no rotational deficits" (Exhibit 4F/15), and exam in March 2013 revealed no back tenderness, normal straight leg raising, and normal back motion (Exhibit 8F/47). Third, treatment notes from prior to April 2013 also do not document persistent neuropathic signs or symptoms, indicating these neuropathic issues were periodic or modest.

As to the diabetes specifically, treatment notes from February 2013 report claimant's sugars were "better controlled" (Exhibit 25F/29), and treatment notes from March 2013 indicate claimant's hemoglobin A1c had improved to 8.5 from greater than 14% in November 2012 even without total compliance with medical directives (Exhibit 8F/50).

After careful consideration of the evidence, I find that, other than the alleged neck and shoulder problems, claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, claimant's statements concerning the intensity, persistence, and limiting effects of these symptoms are not fully supported prior to April 1, 2013, for the reasons explained in this decision.

As for the opinion evidence, Dr. Clemow completed a statement concerning claimant in January 2013. Therein, Dr. Clemow reported claimant's back and hip pain was due to weakness and hip tendinopathy. Dr. Clemow also indicated claimant's back and hip problems probably would not "result in permanent impairment" (Exhibit 3F).

I accord Dr. Clemow's opinions significant weight for the period prior to April 2013 because Dr. Clemow is a treating physician and the unremarkable exam findings and diagnostic imaging described above lends some support to Dr. Clemow's opinions. However, I conclude claimant's back and hip issues, in combination with the neuropathic problems, warrant significant exertional limitations as described above.

Roper and Geer assessed some significant postural and environmental limitations, exams cited above showed generally intact musculoskeletal ranges of motion, and it is unclear why Drs. Roper and Geer concluded claimant should avoid concentrated exposure to hazards.

In sum, records from prior to April 2013 document persistent back and hip pain, diabetes with some control issues, and some neuropathy. However, diagnostic imaging of the hips and lumbar spine showed only modest abnormalities at most, physical examinations were mostly unremarkable, the diabetes came under better control with better compliance, Dr. Clemow's statements indicate the back and hip impairments were modest, and treatment notes do not document consistent neuropathic complaints.

7. After careful consideration of the entire record, I find that beginning on April 1, 2013, claimant has had the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a), except that claimant would miss work 4 days per month and be off-task 20% of the workday.

In reaching this conclusion, I find that beginning on April 1, 2013, claimant's allegations concerning his need to lie down during the day are more consistent with the evidence, in particular, the opinions of Carol Burnette, M.D., described below. Medical evidence described below otherwise shows claimant's condition worsened beginning in April 2013.

Exam on April 4, 2013, revealed no palpable right foot pedal pulses (Exhibit 14F/31). Doppler ultrasound on April 5, 2013, showed greater than 75% right iliac stenosis (Exhibit 17F/87), and treatment notes from several days later indicate claimant could only walk short distances (Exhibit 17F/80). Claimant then underwent angioplasty and stenting of iliac artery stenosis on April 16, 2013 (Exhibit 17F/76).

In addition, lumbar spine x-rays in April 2013 showed degenerative changes (Exhibit 8F/33), treatment notes from April 2013 report "worsening [back] pain and exam findings" (Exhibit 8F/28), and treatment notes from June 2013 report ongoing back pain (Exhibit 17F/56). Also, exams in May and July 2013 showed decreased foot sensation (Exhibit 8F/3; Exhibit 24F/5), exam in July 2013 revealed antalgic gait (Exhibit 7F/3), records from August 2013 report ongoing right leg pain with difficulty walking (Exhibit 11F/3), and electromyography in August 2013 revealed moderate right peroneal and tibial neuropathy (Exhibit 11F/7). In addition, exam in January 2014 showed right leg weakness, positive straight leg raising on the right, and decreased right reflexes (Exhibit 14F/106), notes from June 2014 report ongoing peripheral neuropathy (Exhibit 17F/24), exam in August 2014 showed decreased right leg sensation (Exhibit 19F/9), and labs in August 2014 revealed elevated sedimentation rate (Exhibit 19F/15). Records from August 2014 further report peripheral arterial disease and recurrent right iliac stent stenosis (Exhibit 20F/71), and claimant underwent angioplasty of right common iliac artery in-stent stenosis at that time (Exhibit 19F/23-24).

Going forward, claimant was hospitalized overnight in October 2014 due primarily to hyperglycemia (Exhibit 21F/1), and exam in December 2014 revealed antalgic gait and decreased lumbar spine motion (Exhibit 33F/2). Also, Dr. Burnette reported worsening back, hip, and leg pain in May 2015 (Exhibit 39F/35). In addition, treatment notes from December

In January 2014, Jared Richardson, M.D., reported claimant's hip issues "normally w[ould not] constitute a permanent impairment" (Exhibit 23F/22). I give Dr. Richardson's opinion little weight because it addresses generalities and not claimant's particular conditions, and, contrary to Dr. Richardson's opinion, other medical evidence described above convincingly demonstrates ongoing, significant hip problems warranting functional limitations.

As to Dr. Clemow's January 2013 opinions that claimant's back and hip problems probably would not "result in permanent impairment" (Exhibit 3F), I give such little weight for the period beginning in April 2013 for the same reasons I accord Dr. Richardson's opinions little weight.

As to the opinions of Drs. Geer and Roper for the period beginning April 2013, I conclude that medical evidence indicates claimant's impairments are substantially more limiting than Drs. Geer and Roper assessed. In particular, I note that Dr. Burnette's opinions indicate claimant's impairments are substantially more limiting than Drs. Geer and Roper assessed, and Dr. Burnette's opinions are mostly supported by other evidence as described above.

As to Dr. Thomas' April 2013 opinion that claimant had "disabling right hip pain" and May 2013 opinion that claimant likely could not work (Exhibit 17F/71; Exhibit 6F), I accord such greater weight for the period beginning in April 2013. While these opinions are vague, treatment records described above show claimant's condition worsened beginning in April 2013 and these opinions are generally consistent with those of Dr. Burnette.

In addition, in June 2015, Benson Hecker, Ph.D., reviewed claimant's medical records and opined that claimant was "unable to perform any substantial gainful activity" (Exhibit 9E/14). While these opinions are generally consistent with the opinions of Drs. Burnette and Thomas described above, Dr. Hecker has no medical expertise and did not indicate particular functional limitations. Therefore, I give such little weight.

In sum, records from April 2013 show claimant had to undergo iliac artery stenting due to stenosis and records from this time also show some worsening in claimant's back condition. In addition, electromyography in August 2013 demonstrated moderate neuropathy, claimant had to undergo restenting in August 2014, claimant was hospitalized due primarily to diabetic issues in October 2014, and evidence from April 2013 and thereafter otherwise documents ongoing, significant back and lower extremity symptoms. Further, Dr. Burnette indicated claimant's conditions would cause excessive breaks and work absences.

8. Since May 15, 2012, claimant has been unable to perform any past relevant work (20 CFR 404.1565).

Claimant reported performing past relevant work as a mason or the owner of a masonry company, and as a construction site supervisor (Exhibit 3E/3; Exhibit 1A/5; Exhibit 9E/13). These reports are generally consistent with claimant's Detailed Earnings Query, which shows claimant received substantially gainful earnings within the past 15 years from Construction Hardware Company and JMZ Masonry Inc. (Exhibit 6D). However, while claimant reported these past jobs required working 40 hours or more per week (Exhibit 3E/3), since April 2013, claimant has been unable to remain on task for more than 80% of an 8 hour workday day and

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would also miss work 4 days per month. Therefore, claimant has been unable to sustain full-time work activity. As generally performed, claimant's past jobs would also require the ability to sustain work 8 hours a day and 5 days a week. Therefore, the demands of claimant's past relevant work exceed claimant's residual functional capacity from April 1, 2013, through the present.

As to claimant's ability to perform past relevant work from May 15, 2012, through March 31, 2013, while claimant was limited to performing sedentary work during this period of time, claimant's past relevant work likely had medium or greater exertional requirements (Exhibit 9E/11). I also note that the grid rules direct a finding of "not disabled" during this time period as described below, thus rendering the issue of claimant's ability to perform past relevant immaterial.

9. Prior to the established disability onset date, claimant was a younger individual age 45-49. Claimant became an individual closely approaching advanced age on October 14, 2016 (20 CFR 404.1563).

10. Claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564).

Claimant testified he attended college for two months.

11. Prior to April 1, 2013, transferability of job skills is not material to the determination of disability because applying the Medical-Vocational Rules directly supports a finding of "not disabled" whether or not claimant has transferable job skills. Beginning on April 1, 2013, claimant has not been able to transfer job skills to other occupations (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

Beginning April 1, 2013, claimant has not been able to sustain full-time, competitive work activity.

12. Prior to April 1, 2013, considering claimant's age, education, work experience, and residual functional capacity, there were jobs that existed in significant numbers in the national economy that claimant could have performed (20 CFR 404.1569 and 404.1569a).

In determining whether a successful adjustment to other work can be made, I must consider claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon claimant's specific vocational profile (SSR 83-11). When claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If claimant

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has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

Prior to April 1, 2013, based on a residual functional capacity for the full range of sedentary work, I conclude that, considering claimant's age, education, and work experience, a finding of "not disabled" is directed by Medical-Vocational Rule 201.21.

13. Beginning on April 1, 2013, considering claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that claimant can perform (20 CFR 404.1560(c) and 404.1566).

Beginning on April 1, 2013, if claimant had the residual functional capacity to perform the full range of sedentary work, considering claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.21. However, the additional limitations preclude the performance of full-time, competitive work activity. Therefore, a finding of "disabled" is appropriate. Further, as of October 14, 2016, when claimant attained age 50, Rule 201.14 directs a finding of "disabled."

14. Claimant was not disabled prior to April 1, 2013, but became disabled on that date and has continued to be disabled through the date of this decision (20 CFR 404.1520(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits protectively filed on September 25, 2014, claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on April 1, 2013.

Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 36 months.

Claimant is presently incarcerated. Appropriate consideration should be given to the impact on his past due and present benefits.

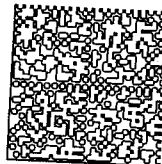
/s/ Ann G. Paschall

Ann G. Paschall
Administrative Law Judge

September 25, 2017

Date

Jesse Martinez
3736 Todd Quarter rd
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