

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 17 2018

APPEAL FROM ANDERSON COUNTY S.C. SUPREME COURT
Court of General Sessions
R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2018-000095

Jerome J. Noone, Jr,..... Petitioner,

v.

State of South Carolina, Respondent.

Appendix

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The Grose Law Firm, LLC
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Greenwood, SC 29646

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Jr.*

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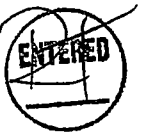
COUNTY OF ANDERSON

STATE VS.

JEROME JOSEPH NOONE, JR

AKA:
Race: White Sex: M Age: 51
DOB:
SS#:
Address:
City, State, Zip: Easley, SC 29642-7813
DL#
SID# SC01927133

INDICTMENT/CASE#: 2016GS0400899
A/W: H419948
Date of Offense: 09/24/2015
S.C. Code §: 56-05-2930(A)
CDR Code #: 3353



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 [X] PLEADS TO: Driving A Vehicle While Under The Influence Of Alcohol And/Or Drugs, 4.10, 1st 4 B HAS JAIL OR \$400 fine etc
In violation of § 56-05-2930(A) of the S.C. Code of Laws, bearing CDR Code # 3353

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

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

ATTEST:
Stephanie B. Looper, Assistant Solicitor 100960 SC Bar #
Defendant
Attorney for Defendant 77943 SC Bar #

WHEREFORE, the Defendant is committed to the [] State Department of Corrections [] County Detention Center, for a determinate term of 400 days/months/years or [] under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ 400; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 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:
[] 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 days/hours Public Service Employment
Total: \$ plus 20% fee: \$ Obtain GED []

[] Set by SCDPPPS Attend Voc. Rehab. Or Job Corp.
May serve W/E beginning

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211 (A)(1)(Conv. Surcharge) \$100, §14-1-211 (A)(2)(DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, §14-1-212 (Law Enforce. Funding) \$25, §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, 3% to County (if paid in installments) \$, TOTAL \$1092.00

Substance Abuse Counseling []
Random Drug/Alcohol Testing []
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ Beginning
Paid to Public Defender Fund
A TRUE COPY
MAY 17 2017
Richard S. Kinley
ANDERSON CLERK OF COURT

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

Clerk of Court/Deputy Clerk: Richard S. Kinley
Court Reporter: N/A
SCCA/217 (03/2011)
Presiding Judge:
Judge Bar ID:
Sentence Date: 2/2/17

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS)
TENTH JUDICIAL CIRCUIT)

Jerome J. Noone, Jr.,)

C. A. No. 2017-CP-04-1012)

Applicant,)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)

Respondent.)

FILED-CLERK'S OFFICE
ANDERSON SC
2017 NOV 27 PM 2:18
COMMON PLEAS AND
GENERAL SESSIONS

This matter comes before the Court by way of an application for post-conviction relief filed by Jerome J. Noone, Jr., (Applicant) on May 17, 2017. Respondent made its return and motion to dismiss on July 21, 2017.

An evidentiary hearing was convened on October 6, 2017, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by E. Charles Grose, Jr., Esquire. Respondent was represented by Assistant Attorney General Lindsey A. McCallister of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Joseph R. Opperman, Esquire (Counsel), testified for the State. After reviewing all the evidence and testimony presented, this Court finds Applicant has failed to establish any constitutional deprivations or other grounds for relief and denies this application for post-conviction relief.

I. PROCEDURAL HISTORY

In May 2016, the Anderson County Grand Jury indicted Applicant for DUI – second offense. Scott Thomason, Esquire, and Joseph Oppermann, Esquire, represented Applicant. Assistant Solicitor Stephanie Looper, Esquire, prosecuted the case. On February 2, 2017, Applicant pleaded guilty in Anderson Summary Court to DUI – first offense before the

RSS

Honorable Ronald W. Whitman.¹ Judge Whitman sentenced Applicant to pay a fine of \$400 plus court costs and fees in a total amount of \$1092.00. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he continues to suffer consequences from this conviction for the following reasons:

1. Applicant received ineffective assistance of counsel, in that:
 - a. Plea counsel affirmatively misadvised Applicant about the consequences to his driving privileges and Application would have elected to proceed to trial had he been properly advised.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

Ineffective Assistance of Trial Counsel

Applicant alleges Mr. Thomason gave him incorrect advice about the consequences to his driving record of accepting the plea agreement. Specifically, Applicant alleges Mr. Thomason told him he would have to pay a fine and receive a short suspension of his driver's license, when instead, the conviction resulted in a long-term suspension under South Carolina's Habitual Traffic Offender statute.

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin

¹ Because this case was heard in Summary Court, there is no transcript of the proceeding.

v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove his counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)). The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove his counsel's performance was deficient. Id. Under this prong, the Court measures defense counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Applicant testified he is a self-employed auto restorer and transporter, and he was arrested for DUI – second offense on September 24, 2015. Applicant testified he applied for

public defender, and Scott Thomason was appointed to represent him. Applicant further testified he met with Mr. Thomason on or about July 12, 2016, at which time Mr. Thomason had received discovery from the State, as well as a plea offer. Applicant testified he and Mr. Thomason reviewed the discovery, including a video tape of the traffic stop and the incident report, and they discussed the plea offer from the State. Applicant testified he was concerned about what would happen to his driving privileges because his business is dependent on his being able to drive. Applicant testified his understanding from Mr. Thomason was that he would have to pay a fine, but his license would be restored after a short suspension. Applicant further testified he refused ^{BAC Data mask} a ~~Breathalyzer~~ test at the time of the incident, so he was aware his license would be suspended because of that, as well as for additional time as part of his sentence.

Applicant also testified Mr. Thomason was deceased by the time of the plea hearing, so he was represented by Counsel on that day instead. Applicant testified he and Counsel only had one conversation wherein Counsel confirmed Applicant still wished to plead guilty and Applicant had money available to pay the fine. Applicant testified he never asked Counsel any questions concerning his driving privileges. Applicant testified he did not become aware of his status as a Habitual Traffic Offender until sometime after the hearing when he received a notice from the Department of Motor Vehicles (DMV). Applicant further testified if he had known he would lose his driving privileges as a result of this conviction, he would not have agreed to plead guilty, but would have proceeded to trial.

However, the State introduced documentation from the DMV showing Applicant was sent a letter, dated April 29, 2016, after his arrest on this charge but before his plea hearing, informing him of his status under the Habitual Traffic Offender statute. The letter reflects Applicant was informed he had accumulated two "major violations" under the statute, and if he

received another major violation, he would be classified as a habitual offender, and his driving privileges would be revoked for five years. The letter also contains a list of offenses considered to be major violations under the statute, including DUI. Applicant testified he never received this letter, although he confirmed the address was correct and was his address at the time the letter was mailed. Further, Applicant testified he received other letters from the DMV at that address, namely the February 10, 2017, letter informing him of his Habitual Traffic Offender status and license suspension. Applicant testified he did not attempt to appeal his conviction or pursue an administrative appeal with the DMV, despite being informed of this option in the February 2017 letter.

Counsel testified he represented Applicant at his plea on February 2, 2017, during his first week of work with the Public Defender's Office. Counsel testified the plea offer had been extended, and Applicant had indicated his willingness to accept it before Counsel took over the case. Counsel testified he did not have a clear memory of the day of the plea, but he did recall speaking with Applicant by phone the day before simply to confirm Applicant still wished to proceed with the plea agreement. Counsel testified his review of the file showed Applicant made a statement to the arresting officer that he "had too much drink," the arresting officer noticed an odor of alcohol coming from Applicant, and the video tape of the stop showed Applicant behaving in a way that indicated impairment or intoxication. Counsel testified he did not recall Applicant asking questions or expressing concern about the effect of the conviction on Applicant's driving privileges, until Applicant called him upon receiving the February 2017 letter from the DMV. At that time, Counsel told him it was too late to file any motions, and Applicant should consult with an attorney.

Based on this testimony and the record before the court, this Court finds neither Mr. Thomason's nor Counsel's representation was deficient in any regard. This Court finds Mr. Thomason conveyed the plea offer, and, by Applicant's own admission, they discussed the consequences to his driving record. At the time of the meeting with Mr. Thomason in July 2016, Applicant knew or should have known a DUI conviction would result in his classification as a Habitual Traffic Offender, along with suspension of his license for five years. This Court finds not credible Applicant's assertion he did not receive the April 2016 warning letter from the DMV, since Applicant testified the address on the letter was correct and reflected where he was living at the time. Applicant testified he received other letters from the DMV at the same address. Further, this Court finds Applicant has not shown he was prejudiced by accepting the plea offer, as he likely would have been convicted at trial. Counsel testified the video evidence showed Applicant behaving erratically, as if intoxicated; Applicant gave a spontaneous statement to the officer upon being stopped that he "had too much to drink;" and Applicant refused to submit to a ^{blood alcohol breath} ~~Breathalyzer~~ test, which would have ^{been used} ~~resulted in a negative inference~~ against ^{the} Applicant at trial. Therefore, this allegation is denied and dismissed.

IV. CONCLUSION

Based upon all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

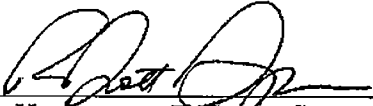
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), Applicant has

a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED this 20 day of November, 2017.



THE HONORABLE R. SCOTT SPROUSE
Presiding Judge
Tenth Judicial Circuit

Waltham, South Carolina

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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 Jerome Joseph Noone,)
)
) Applicant,)
))
) v.)
))
 State of South Carolina,)
)
) Respondent.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-04-1012

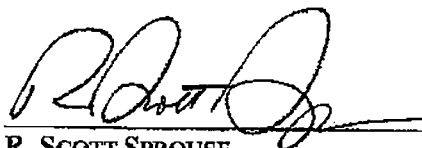
ORDER DENYING APPLICANT'S MOTION
FOR RECONSIDERATION

PRESIDING JUDGE:
 DATE OF HEARING:
 PLAINTIFF'S ATTORNEY:
 DEFENDANT'S ATTORNEY:
 COURT REPORTER:

R. SCOTT SPROUSE
 OCTOBER 6, 2017
 LINDSEY MCCALLISTER
 E. CHARLES GROSE, JR.
 APRIL HERRON

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendants' Motion pursuant to Rule 59, SCRPC,¹ is DENIED.

AND, IT IS SO ORDERED.



R. SCOTT SPROUSE
 Judge, Tenth Judicial Circuit

Walhalla, South Carolina

December 18, 2017

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 ANDERSON SC
 2017 DEC 21 AM 10:49
 COMMON PLEAS AND
 GENERAL SESSIONS

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRPC.

A. 10

UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME: JEROME MIDDLE NAME: JOSEPH LAST NAME: NDDNE JR

STREET AND NO: 5021 SUNSET DR CITY: EASLEY STATE: SC ZIP CODE: 29642

STATE LICENSED: SC DRIVER'S LICENSE NO: 101932704 CDL: YES [] NO [] DRI LIC CLASS: D

VEH LIC NO: KDF979 STATE: SC MAKE OF VEH: MERZ YEAR: 19 COMM VEH: [] AUTO [] 16 PSGR VEH: [] COMB: [] HAZ MT: [] MOPED: [] MTRCYCL: [] OTHER: []

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT: ~~Summitry Court~~ STREET AND NO: ~~2400 TV MAIN ST~~

DATE OF TRIAL: 11-5-2015 TIME OF TRIAL: 4:00 CITY: Anderson STATE: SC ZIP CODE: 29621

VIOLATION - COURT APPEARANCE REQUIRED: YES [] NO [] VIOLATION SECTION NO: 56-5-2930

DUI 2ND

OWNER OF VEHICLE: NDDNE J J DATE OF ARREST: 9-24-2015

ADDRESS OF OWNER: EASLEY SC DATE OF VIOLATION: 9-24-2015

BAIL DEPOSITED: JAIL NAME OF ARRESTING OFFICER: WIC FORP RANK: 1P

DESCRIPTION OF ACCUSED: RACE: W SEX: M BIRTH DATE: 10-16-1963 HT: 600 WT: 131 HAIR: BL EYES: BL

COUNTY: ANDERSON NUMBER: 611

BADGE: 729 TROOP: 3

CASE BEFORE: MAGISTRATE [] MUN COURT []

CIRCUIT COURT [] FAMILY COURT [] FEDERAL COURT []

NAME OF TRIAL COURT: IF DIFFERENT FROM ABOVE:

TIME OF VIOLATION: 0310 WEATHER: CLR

DEFENDANT: DID NOT APPEAR [] APPEARED []

NOLLE PROSSED [] DISPOSITION: GUILTY []

FORFEITED BOND [] PLED NOLO CONTENDERE []

MILES: 12.1 HWY NO: 8

TRIAL BY: TRIAL JUDGE [] JURY []

VERDICT OF TRIAL IF ANY: GUILTY [] NOT GUILTY [] DATE OF TRIAL IF ANY: 20

JAIL [] SUSPEND [] FINE [] AMT COLLECTED [] AMT SUSPENDED []

Lat: 34 41 03.47

Long: 82 33 01.54

COMMITTED TO: Vehicle Searched [] Affected Result of Collision: N

OFFENSE CODE: 99 B.A. LEVEL: REFUSED

CERTIFIED CORRECT: DATE: 20

H 419948

General Sessions October 30, 2015 9:00am

BOOKET NO

TRIAL COURT COPY

A TRUE COPY

MAY 17 2017

Richard S. Kiefer
ANDERSON CLERK OF COURT

DOCKET NO. 2016-GS-04-00899

WITNESSES

Sc Highway Patrol - Watson C Ford

11
A.

ARREST WARRANT NUMBER

H419948

ACTION OF GRAND JURY

TRUE BILL

MAY 24 2016

Foreperson of Grand Jury
Date:

[Signature]
Foreperson

VERDICT

Foreperson of Grand Jury
Date:

**The State of South Carolina
County of Anderson**

COURT OF GENERAL SESSIONS

MAY 24 2016

TERM

THE STATE

VS.

JEROME JOSEPH NOONE, JR

INDICTMENT FOR

**DRIVING A VEHICLE WHILE UNDER THE
INFLUENCE OF ALCOHOL AND/OR
DRUGS**

SC Code: § 56-05-2930(A)
CDR Code: 3356

A TRUE COPY
MAY 17 2017
[Signature]
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT


MAY 24 2016

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

DRIVING A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS

The defendant, Jerome Joseph Noone Jr, did on or about September 24, 2015 in Anderson County, drive a vehicle while under the influence of alcohol and/or any other drug or a combination of drugs and/or substances which cause impairment and while having a blood alcohol level of less than .10 to the extent that his faculties to drive are materially and appreciably impaired, such not being the first offense within a period of ten years including and immediately preceding the foregoing date. All in violation of 56-05-2930(A), 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.


STEPHANIE B. LOOPER
ASSISTANT SOLICITOR

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 Jerome Joseph Noone, Jr. SCDC# (N/A))
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2017-CP-04-01012

APPLICATION FOR
 POST-CONVICTION RELIEF

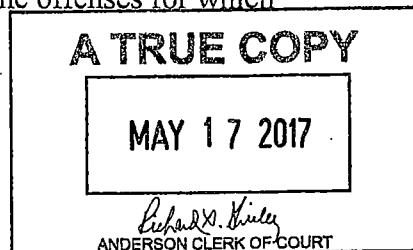
INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Not Applicable ("N/A").
2. Name and location of Court which imposed sentence The Honorable Ronald Warren Whitman, Presiding Judge, Court of General Sessions for Anderson County imposed sentence. Mr Noone is informed and believes the sentence was imposed in Transfer Court.
3. Name(s) of co-defendant(s) (if any) None.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-04-00899
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:



(a) Mr. Noone was sentenced to pay a fine in the amount of \$1,092.00 (including court costs) on February 2, 2017 for Driving Under the Influence, first offense, plead down from Driving Under the Influence, second offense.

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Mr. Noone was not aware of counsel's affirmative mis-advice at time of the guilty plea.

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Mr. Noone was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, priot to and during his guilty plea. Although not incarcerated, Mr. Noone continues to suffer the consequences of this conviction.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Plea counsel affirmatively misadvised Mr. Noone about the consequences to Mr. Noone's driving privileges. But for plea counsel's affirmative mis-advice, Mr. Noone would have proceeded to trial.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A

- ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Mr. Noone was not aware of counsel's affirmative mis-advice at time of the guilty plea.
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
 - (b) your trial, if any? Yes.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No, except by undesigned counsel in preparation of this application.
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. For the guilty plea and sentencing, Scott Thomason and Joseph R. Oppermann, Anderson County Public Defender's Office, 301 Camson Road, Anderson, SC 29625.
 - ii. For this application, Charles Grose, 404 Main Street, Greenwood, SC 29646. 864-538-4466. charles@groselawfirm.com
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

New trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

Submitted by



SC BAR# 66062
404 Main Street
Greenwood SC 29646
864 - 538 - 4466
Charles@groselawfirm.com

STATE OF SOUTH CAROLINA)
)
County of Greenwood)

VERIFICATION
2017-CP-04-01012

I, Jerome Joseph Noone, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

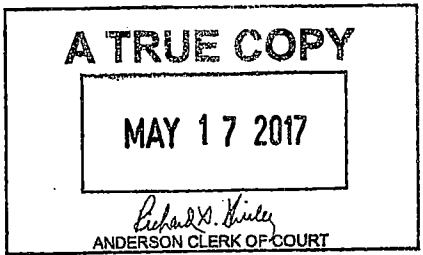
[Handwritten Signature]

SWORN to and subscribed before me this 9th
day of MAY, 2017.

[Handwritten Signature]

Notary Public (L.S.)

My Commission Expires: 5/31/2023



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
Jerome J. Noone,	)	Case No.: 2017-CP-04-1012
)	
Applicant,)	
	)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

Respondent, making its Return to the Application for Post-Conviction Relief (“PCR”) filed on May 17, 2017, would respectfully show this Court:

I.

In May 2016, the Anderson County Grand Jury indicted Applicant for DUI – second offense. Robert Oppermann, Esquire, represented Applicant. Assistant Solicitor Stephanie Looper, Esquire, prosecuted the case. On February 2, 2017, Applicant pleaded guilty in Anderson Summary Court to DUI – first offense before the Honorable Ronald W. Whitman. Judge Whitman sentenced Applicant to pay a fine of \$400 plus court costs and fees in a total amount of \$1092.00. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Anderson County Clerk of Court regarding the subject convictions and the application.¹ Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges he continues to suffer

¹ Respondent is still in the process of ascertaining whether a recording of Applicant’s hearing is

consequences from this conviction for the following reasons:

1. Applicant received ineffective assistance of counsel, in that:
 - a. Plea counsel affirmatively misadvised Applicant about the consequences to his driving privileges and Application would have elected to proceed to trial had he been properly advised.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, and not Applicant, is the only person authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

available.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 688. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent therefore requests this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

4/21, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
)
 JEROME J. NOONE)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS

2017-CP-04-01012

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esquire
Grose Law Firm
404 Main Street
Greenwood, SC 29646

DATED this the 21st day of July, 2017.

 Deonna Rogers, Legal Assistant
 For Respondent

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
	)	Case No. 2017-CP-04-01012
Jerome Joseph Noone,)	
	)	Rule 59(e), SCRPC Motion
	)	and Proffer of Proposed Order Granting
vs.	)	Post-Conviction Relief
)	
State of South Carolina,)	
)	
)	
_____)	
)	

To: The Honorable R. Scott Sprouse, Presiding Judge, Tenth Judicial Circuit

Pursuant to Rule 50(e), SCRPC, Jerome “Jerry” Joseph Noone moves this Court to reconsider its order dated November 20, 2017 and filed November 27, 2017, withdraw that order, and enter an order granting post-conviction relief (“PCR”).¹ The following grounds support this motion.

1) The order of dismissal, at pp. 2-3, recites legal authority for the standard of review in PCR cases. The order, however, does not cite any of the relevant authority for reviewing guilty plea cases. Specifically, the order does not cite *Lee v. United States*, ___ U.S. ___, 137 S. Ct. 1958 (2017), *Missouri v. Frye*, 566 U.S. 134 (2012), *Lafler v. Cooper*, 566 U.S. 156 (2012), *Hill v. Lockhart*, 474 U.S. 52 (1985), *Jordan v. State*, 297 S.C. 52, 374 S.E.2d 683 (1988), and *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000). These cases discuss counsel’s duty to advise a client during the guilty plea process. The relevant test is whether “there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” *Jordan*, 297 S.C. at 54, 374 S.E.2d at 684 (quoting *Hill*, 106 S.Ct. at 370). As *Lee* makes clear, “The decision whether to plead guilty also involves assessing the respective consequences

¹ A copy of Mr. Noone’s proposed order granting post-conviction relief is attached.

of a conviction after trial and by plea.” 137 S. Ct. at 1961. This Court erred as a matter of law by focusing exclusively on its view of the weight of the evidence rather than whether Mr. Noone would have proceeded to trial but for the deficient advice from his trial counsel.

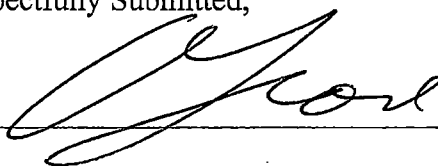
2) The order of dismissal, at p. 6, states, “[B]y applicant’s own admission, [he and Mr. Thomason] discussed the consequences to [Mr. Noone’s] driving record.” The only evidence in the record is that Mr. Thomason advised Mr. Noone that his driver’s license would be suspended based on a first offense for driving under the influence. The factual finding that Mr. Noone was aware his drivers’ license would be suspended is not supported by any evidence in the record. Mr. Noone had the right to rely on the advice of counsel. Mr. Thomason’s advice to Mr. Noone was deficient.

3) This Court’s order did not consider *Hinson v. State*, 297 S.C. 456, 458, 377 S.E.2d 338, 339 (1989) (counsel incorrect advice about parole eligibility warranted granting post-conviction relief); *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991) (held that petitioner’s testimony that he would not have pled guilty if trial counsel had not misinformed him that he would face a potential life sentence if he proceeded to trial satisfied “prejudice” requirement of ineffective assistance of counsel claim); and *Ray v. State*, 303 S.C. 374, 375, 401 S.E.2d 151, 152 (1991) (held defense counsel ineffective for erroneously advising client “he would be subject to a sentence of life without parole . . . if he went to trial and was convicted of the two armed robbery charges”). Once these cases are considered, the need to grant post-conviction relief is apparent.

This Court, accordingly, should reconsider its order dated November 20, 2017 and filed November 27, 2017, withdraw that order, and enter an order granting Mr. Noone post-conviction relief.

IT IS SO MOVED.

Respectfully Submitted,

By  _____

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

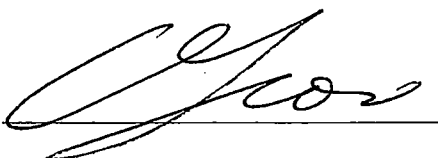
Attorney for the Applicant

November 30, 2017
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
	)	Case No. 2017-CP-04-01012
Jerome Joseph Noone,)	
	)	Applicant,
)	
vs.)	
)	
State of South Carolina,)	
	)	Respondent.
_____)	

I certify that I have served a copy of this pleading on the State of South Carolina by placing a copy in the US Mail, postage prepaid, on the date reflected below, addressed to

Lindsey McCallister, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

By 

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

November 30, 2017
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
	)	Case No. 2017-CP-04-01012
Jerome Joseph Noone,)	
	)	<i>Proposed</i>
Applicant,	)	Order Granting Post-Conviction Relief
)	
vs.)	
)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

This matter is before the Court on Jerome (“Jerry”) Joseph Noone’s application for post-conviction relief. For the reasons set forth below, the Court grants Mr. Noone post-conviction relief.

PROCEDURAL HISTORY

On September 24, 2015, the South Carolina Highway Patrol arrested Mr. Noone for driving under the influence, second offense. (Ticket No. H 419948). On May 26, 2016, the Anderson County Grand Jury returned a true bill indictment charging Mr. Noone with driving under the influence, second offense. (Indictment No. 2016-GS-04-00899). On February 2, 2017, Mr. Noone pleaded guilty in transfer court¹ to driving under the influence, first offense. Stephanie Looper represented the State, and Joseph R. Oppermann represented Mr. Noone. The Magistrate Court Judge imposed a fine of \$400.00, which increased to \$1,092.00 after adding court costs. There is not a transcript of this proceeding.

On May 17, 2017, Mr. Noone filed an application for post-conviction relief

¹ Under certain circumstance, S.C. Code Ann. § 22-3-545 grants the Solicitor discretion to transfer General Sessions Court cases to Magistrate Court. Driving under the influence, second offense, qualifies for transfer under the statute.

alleging:

(10) [He] was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, prior to and during his guilty plea. Although not incarcerated, Mr. Noone continues to suffer the consequences of this conviction.²

(11) Plea counsel affirmatively misadvised Mr. Noone about the consequences to Mr. Noone's driving privileges. But for plea counsel's affirmative mis-advice, Mr. Noone would have proceeded to trial.

The State served its return on July 21, 2017. This Court convened an evidentiary hearing on October 6, 2017. Charles Grose represented Mr. Noone. Lindsey A. McCallister represented the State. Mr. Noone and Mr. Oppermann testified during the hearing.

FINDINGS FOR FACT

Mr. Noone testified he applied for the public defender. He received a letter from the Tenth Circuit Public Defender Office instructing him to call and schedule an appointment. Mr. Noone called and scheduled an appointment. The Public Defender Office initially assigned Scott Thomason to represent Mr. Noone. During the meeting, Mr. Thomason reviewed with Mr. Noone the discovery provided by the Solicitor's Office, including incident reports and the videotape of the traffic stop. Mr. Thomason also informed Mr. Noone that the Solicitor's Office would agree to reduce the driving under the influence charge, second offense, to driving under the influence, first offense, and recommend a fine. Mr. Noone testified he asked Mr. Thomason what affect the

² The Uniform Post-Conviction Relief Act confers "standing to bring the action where the challenged conviction did not result in incarceration and where petitioner alleges he is suffering continuing effects from his conviction." *Jackson v. State*, 331 S.C. 486, 488, 489 S.E.2d 915, 916 (1997).

guilty plea would have on his driving privileges. Knowing this information was important to Mr. Noone because he is the owner and operator of a business where he restores classic automobiles. Mr. Noone needs a driver's license not only to get to and from work, but also to test drive the automobiles and transport automobiles to car shows. Mr. Thomason informed Mr. Noone that his driver's license would be suspended for a first offense driving under the influence charge.

Mr. Thomason passed away after the meeting with Mr. Noone but before Mr. Noone's guilty plea. The Public Defender Office assigned Mr. Oppermann to represent Mr. Noone. The Public Defender Office notified Mr. Noone of his court date. Mr. Noone testified that, prior to entering his guilty plea, he confirmed with Mr. Oppermann that the Solicitor's Office offer had not changed, but he and Mr. Oppermann did not review the evidence or have an in-depth conversation about the consequences of the guilty plea.

After the guilty plea, Mr. Noone testified he received notification form the South Carolina Department of Motor Vehicles that he had been declared a habitual offender and his driver's license would be suspended for five years. Mr. Noone testified he called Mr. Oppermann. Mr. Oppermann informed Mr. Noone that there was not anything he could to help because the time to file a new trial motion had expired. Mr. Oppermann provided Mr. Noone with the names of lawyers that might be able to help him.

Mr. Noone testified that he would not have pleaded guilty to driving under the influence, first offense, if he had known that he would be declared a habitual offender and that his driver's license would be suspended for five years. Instead, he would have proceed to a jury trial.

Mr. Oppermann testified the Public Defender Office assigned him to represent Mr. Noone. Mr. Oppermann confirmed that Mr. Thomason was the first attorney assigned by the Public Defender Office to represent Mr. Noone. Mr. Oppermann also confirmed that Mr. Thomason had passed away. Mr. Noone's guilty plea occurred during Mr. Oppermann's first week of employment with the Public Defender Office. Mr. Oppermann did not have much of an independent recollection of meeting with Mr. Noone, although he testified he would have meet with Mr. Noone prior to the guilty plea and that it very likely was a brief meeting. Mr. Oppermann confirmed Mr. Noone called him after his guilty plea about his driver's license being suspended. Mr. Oppermann provided Mr. Noone with the names of some layers that might be able to help him.

CONCLUSIONS OF LAW

In determining whether trial defense counsel provided ineffective assistance of counsel, pursuant to the Sixth and Fourteenth Amendments, this Court must apply the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, the defendant "must show that counsel's representation fell below an objective standard of reasonableness," which must be judged under "prevailing professional norms." *Id.* at 688.

Once the defendant asserting ineffective assistance of counsel has established counsel's failure to comply with the prevailing professional norms, he must affirmatively prove that this deficiency has prejudiced him. Specifically:

The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Strickland, 466 U.S. at 694. The totality of the evidence must be considered in deciding whether the defendant was prejudiced by counsel's errors.

"It is well settled that the [Sixth Amendment] right to the effective assistance of counsel applies to certain steps before trial," *Missouri v. Frye*, 566 U.S. 134, 140 (2012), including "to the plea-bargaining process." *Lafler v. Cooper*, 566 U.S. 156 (2012). "[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel." *Id.* at 162-63 (internal quotations omitted). Our Supreme Court has observed:

In *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), the Supreme Court applied the two part standard adopted in *Strickland* to guilty plea challenges bottomed on ineffective assistance of counsel. The Court reiterated that the defendant must show first that counsel's representation fell below the standard of reasonableness; and, that there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. 106 S.Ct. at 370. Specifically, the Court stated that the defendant must show that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 106 S.Ct. at 370.

Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). *See also Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000) ("A defendant who pleads guilty on advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases and there is a reasonable probability that, but for counsel's errors, defendant would not have pled guilty and would have insisted on going to trial.").

As the Supreme Court of the United States recently reminded, "The decision whether to plead guilty also involves assessing the respective consequences of a

conviction after trial and by plea.” *Lee v. United States*, ___ U.S. ___, 137 S. Ct. 1958, 1961 (2017). The High Court cautioned, “Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Rather, they should look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Id.*

Here, Mr. Noone testified credibly that he would not have pleaded guilty if he had known that he would be declared a habitual offender and that his driver’s license would be suspended for five years. His longtime profession of restoring classic automobiles requires him to drive when going to and from work, test driving automobiles, and transporting automobiles to car shows. Mr. Noone explained these concerns were why he asked Mr. Thomason about consequences to his driver’s license. Mr. Thomason’s advice to Mr. Noone misstated the law. Counsel’s advice that affirmatively misstates the law “falls below the level of competence reasonably expected of attorneys in criminal cases.” *Hinson v. State*, 297 S.C. 456, 458, 377 S.E.2d 338, 339 (1989) (counsel incorrect advice about parole eligibility warranted granting post-conviction relief). *And see Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991) (held that petitioner’s testimony that he would not have pled guilty if trial counsel had not misinformed him that he would face a potential life sentence if he proceeded to trial satisfied “prejudice” requirement of ineffective assistance of counsel claim) and *Ray v. State*, 303 S.C. 374, 375, 401 S.E.2d 151, 152 (1991) (held defense counsel ineffective for erroneously advising client “he would be subject to a sentence of life without parole . . . if he went to trial and was convicted of the two armed robbery charges”).

Mr. Noone was prejudiced by this deficient performance. But for the incorrect

legal advice, Mr. Noone would not have pleaded guilty to driving under the influence and would have proceeded to a jury trial. *See Lee, Hill, Jordan, and Thompson, supra.*

This Court, therefore, grants Mr. Noone's application for post-conviction relief and remands this case to the Court of General Sessions for a new trial.

IT IS SO ORDERED.

_____, 2017
Walhalla, South Carolina

R. Scott Sprouse
Presiding Judge, Tenth Judicial Circuit

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STATE EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Affidavit	28	28
2	Letter Dated 4-29-16	28	28
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(WHEREUPON, Applicant's Exhibits Nos. 1 & 2 was marked for identification only.)

THE COURT: All right, we're ready to go back on the record?

MS. MCCALLISTER: Yes, sir, Your Honor, may I have just one second?

1 THE COURT: I appreciate your patience. I just
2 thought that would be a easy way. Y'all needed some
3 time to get ready and I needed to get to that
4 hearing.

5 MR. GROSE: I'm glad you didn't make us step in
6 because I'm just glad I'm not involved in that.

7 MS. MCCALLISTER: All right, Your Honor, this is
8 Jerome Noone vs. The State of South Carolina,
9 2017-CP-04-01012. Your Honor, in May of 2016, the
10 Anderson County Grand Jury indicted Mr. Noone for
11 DUI, second offense. He was represented on that
12 charge by Robert Oppermann. On February 2, 2017, he
13 pled guilty in Anderson Summary Court to DUI first
14 before the Honorable Ronald Whitman. Judge Whitman
15 sentenced him to pay a fine of \$400 plus court costs
16 and fees, a total amount of \$1,092. He did not
17 appeal that conviction or sentence, Your Honor. He
18 did file this Application for Post-Conviction Relief
19 on May 17th, 2017. He is represented by Charles
20 Grose and they are both in the courtroom today.

21 THE COURT: All right, Mr. Grose.

22 MR. GROSE: I would call Mr. Noone.

23 THE CLERK: If you would raise your right hand.

24 JEROME NOONE, after being duly sworn,
25 testified as follows:

JEROME NOONE-DIRECT BY MR. GROSE

1 THE CLERK: If you would take the witness stand,
2 please, sir. And state your name and spell your last
3 name for the record, please.

4 THE WITNESS: Jerome Joseph Noone, Jr.,
5 N-O-O-N-E.

6 DIRECT EXAMINATION

7 BY MR. GROSE:

8 Q And do you have a nickname?

9 A Jerry.

10 Q Is that what people normally call you?

11 A Yes.

12 Q Okay. Jerry, you just heard the attorney
13 general kind of give a brief history of the case. We're
14 here because of the DUI charge that you had; is that
15 right?

16 A Yes.

17 Q Okay. Before we get into that I want to ask
18 just very briefly a little bit about your background.

19 Where do you currently live?

20 A I live in Easley, South Carolina.

21 Q Have you always lived there?

22 A No, I'm originally from California. I've been
23 here for 10 years in December.

24 Q Okay. And do you work?

25 A Yes, I'm self-employed.

JEROME NOONE-DIRECT BY MR. GROSE

1 Q All right. What is your self employment?

2 A I own Noone Customs, LLC. I do auto
3 restorations.

4 Q And is this classic cars?

5 A Yes.

6 Q And how long have you been in that business?

7 A Since 1983.

8 Q Okay. And so, when this charge arose, I believe
9 in 2015, you were working in that business?

10 A Yes.

11 Q And at that time -- I mean, on that day, not
12 only were you owning that business but had you been
13 working, engaged in some activities related to that
14 business?

15 A Yeah, we were doing a Corvette transmission and
16 had to go to a car show still, so we had been working a
17 lot of late hours.

18 Q Okay. And when you say you'd been working a lot
19 of late hours -- well the incident we're here to talk
20 about happened on September 24th, 2015. Within a few days
21 prior to that, had you gotten a lot of sleep?

22 A No, we were -- actually I think I didn't even
23 sleep the night before.

24 Q Okay. And, of course, you were stopped and do
25 you agree that you were initially charged with the driving

JEROME NOONE-DIRECT BY MR. GROSE

1 under the influence second offense?

2 A Yes.

3 Q Okay. Did you make any efforts to obtain a
4 lawyer?

5 A Yes.

6 Q All right. What do you recall doing on that?

7 A Well, I ended up having to get a public defender
8 because at the time I couldn't afford to hire an attorney.

9 Q Okay. I'm going to show you what's been
10 premarked as Applicant's Exhibit No. 1 for this hearing.
11 And do you recognize that?

12 A Yes.

13 Q And what is that?

14 A That was a notice that -- that Scott Thomason
15 would be representing me. And they were waiting for the
16 discovery. Then we're going to setup a meeting.

17 Q All right. Is it fair to say it's a letter?

18 A Yes.

19 Q All right. And is it on the letterhead of the
20 Public Defender's office?

21 A Yes.

22 Q Could you tell the Court what the date of that
23 letter is?

24 A June 10th, 2016.

25 Q Okay. And at that time, who did it notify would

JEROME NOONE-DIRECT BY MR. GROSE

1 be your lawyer?

2 A Scott Thomason.

3 Q And there's a -- well, what was -- what was that
4 letter basically explaining that the process would be?

5 A Basically that they're waiting for discovery and
6 they would contact me with an appointment with the
7 attorney.

8 Q Okay. And there's some handwriting on, I
9 believe, it's the top right portion of that letter?

10 A Yes.

11 Q And what is -- is that your handwriting?

12 A Yes.

13 Q And what is notated there?

14 A July 12th at 3:00.

15 Q All right. And do you recall what July 12th at
16 3:00 meant?

17 A Yes, that was the date that I was going to meet
18 with Mr. Thomason.

19 Q Was that in 2016?

20 A Yes.

21 Q Okay. And to your recollection was that after
22 Mr. Thomason had received the discovery?

23 A Yes.

24 Q All right. And did you go over that with
25 Mr. Thomason?

JEROME NOONE-DIRECT BY MR. GROSE

1 A Yes.

2 Q Was there a video tape?

3 A Yes.

4 Q And did you and Mr. Thomason review that video
5 tape?

6 A Yes.

7 Q Okay. And at some point an offer was extended
8 to you; is that correct?

9 A Yes.

10 Q Do you remember if that offer had been made in
11 July of 2016 or came later?

12 A I think they had already talked to the
13 solicitor, I think it was the solicitor that they were
14 talking with. Yeah, they had mentioned an offer.

15 Q Okay. And you didn't get to court until
16 February of this year though?

17 A Yeah, I went quite a while before I went to
18 court.

19 Q All right. Did you and Mr. Thomason have a
20 conversation about the implications of the State's offer
21 with regards to your driver's license status?

22 A Yeah. He -- then he told me what the offer was.
23 I asked him if that -- how that would effect my driver's
24 license because that's was my main concern.

25 Q Okay. And why was that your main concern?

JEROME NOONE-DIRECT BY MR. GROSE

1 A Because of transportation but also with my
2 business, the cars that I restore I had to test drive..
3 And there's a lot of driving involved. We have fairly
4 expensive cars so I have to transport cars to car shows
5 for clients and so yeah.

6 Q So, I'm hearing several things in that. One,
7 would be your personal transportation?

8 A Yeah.

9 Q And I got to remind you to just say yes or no
10 when I testify I say abbreviate yeah or uh-huh but that
11 doesn't translate very well for the court reporter.

12 A Okay.

13 Q So, it's fair to say that your driving
14 privileges, your concerns, included your personal
15 transportation?

16 A Yes.

17 Q And you use your automobile, not just to get to
18 your business but drive as part of your business?

19 A Yes.

20 Q And that includes test driving the cars that you
21 work on?

22 A Yes.

23 Q And that includes driving to and from automobile
24 shows?

25 A Yes.

JEROME NOONE-DIRECT BY MR. GROSE

1 Q And I think you testified earlier that you were
2 working on a car for an automobile show right at about the
3 time that you got stopped for this offense?

4 A Yes.

5 Q Okay. And so, what did you understand from
6 Mr. Thomason that the implications to your driving
7 privileges would be?

8 MS. MCCALLISTER: Your Honor, I have an
9 objection to that. I think what Mr. Thomason told
10 him is hearsay. Mr. Thomason is not able to -- he's
11 not here.

12 THE COURT: That's the issue in the case is
13 advice of counsel. So, I'm going to overrule the
14 objection.

15 MR. GROSE: Thank you, Your Honor.

16 BY MR. GROSE:

17 Q What did you understand from Mr. Thomason?

18 A Well, he told me that they were going to try it
19 as a first offense. And that I paid a fine.

20 And I said, So when this is done, it's
21 going to be a first offense, that's what it will be listed
22 as?

23 He said, Yes.

24 So, our time had already gone through the
25 laps [verbatim], so we're already at this, like, one year

JEROME NOONE-DIRECT BY MR. GROSE

1 point where I haven't been able to drive. So, I will be
2 able to get my driver's license back and just start to
3 move on with my life?

4 He said, Yes, you should be fine.

5 Okay. So, I agreed to it because I thought
6 it was just going to be considered a first offense.

7 Q In every respect?

8 A In every respect, yes.

9 Q Okay. Now, you had refused the breathalyzer,
10 right?

11 A Yes.

12 Q Okay. And so, there was a suspension related to
13 that?

14 A Yes.

15 Q And then you understood that there would be a
16 suspension related to a DUI first offense; is that right?

17 A Yes.

18 Q Okay. Now, was Mr. Thomason the one that
19 represented you at your guilty plea?

20 A No.

21 Q And why was that?

22 A Unfortunately, he had a heart attack and passed
23 away the week before.

24 Q Okay. So, did another lawyer from the Public
25 Defender's Office represent you?

JEROME NOONE-DIRECT BY MR. GROSE

1 A Yes.

2 Q And who was that?

3 A Mr. Oppermann.

4 Q And Mr. Oppermann, he's here today?

5 A Yes.

6 Q Okay. And did you and Mr. Oppermann have any
7 conversations?

8 A Yeah. At the courthouse we talked and he
9 explained to me so you agree to do this first offense; is
10 that correct? And you're ready to go pay the fine today
11 and everything?

12 I said, Yes.

13 So.

14 Q And when you're having that conversation with
15 Mr. Oppermann, obviously, since Mr. Thomason had passed
16 away, you had spoken with him previously, possibly on more
17 than one occasion?

18 A Who?

19 Q Mr. Thomason?

20 A Yes.

21 Q And you still -- did you still have in your mind
22 Mr. Thomason's explanation to you about the driver's
23 license consequences?

24 A Yes.

25 Q Okay. Now, after your plea, what happened with

JEROME NOONE-DIRECT BY MR. GROSE

1 regard to your driving privileges?

2 A I received a notice from DMV that I was a
3 habitual driver and I wouldn't get my driver's license
4 back for five years.

5 Q All right. I want to show you what's been
6 marked as Applicant's Exhibit No. 2, do you recognize
7 that?

8 A Yes.

9 Q And what is that?

10 A That's my 10 year driving record.

11 Q And is that the record that you obtained and
12 brought to me?

13 A Yes.

14 Q Okay. And does that reflect on it what you just
15 testified about the five years suspension as an habitual
16 traffic offender?

17 A Yes.

18 Q Okay. If you had known that your driver's
19 license -- that you were going to be an habitual traffic
20 offender and that your driver's license would be suspended
21 for five years, would you have pled guilty?

22 A No, I would have went to trial.

23 MR. GROSE: Thank you, that's all the questions
24 I have. I'm sure the Attorney General has some.

25 THE COURT: All right, Ms. McCallister.

JEROME NOONE-CROSS BY MS. MCCALLISTER

1 MS. MCCALLISTER: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. MCCALLISTER:

4 Q Mr. Noone, you testified just a minute ago that
5 you received a notice after your plea saying that you had
6 been deemed an habitual traffic offender; is that correct?

7 A Yes.

8 Q And that was shortly after your plea?

9 A Yeah, within a month, I'm sure.

10 Q Okay. And you received -- how did that notice
11 come?

12 A I got it in the mail.

13 Q You got it in the mail? Was it from the DMV?

14 A Yes.

15 Q Okay. Did you also receive a letter sometime
16 before that in 2016 warning you that you had two of the
17 previous offenses, do you recall receiving that?

18 A I don't recall.

19 MS. MCCALLISTER: May I approach Your Honor?

20 THE COURT: Yes, ma'am.

21 BY MS. MCCALLISTER:

22 Q If I show you this, does that. . .

23 A I don't remember if I got this before.

24 Q So, you don't recall receiving that notice?

25 A No.

JEROME NOONE-CROSS BY MS. MCCALLISTER

1 Q Is that your correct address on that letter?

2 A Yes, it is.

3 Q Okay. And is that the same address where you
4 received the notice from the DMV saying you had been
5 suspended?

6 A Yes.

7 Q Okay. But your testimony is you don't recall
8 receiving that?

9 A No.

10 Q So, you never asked Mr. Thomason or
11 Mr. Oppermann, hey I got this notice and here's what I
12 need to now about this.

13 A No, I asked him specifically what my driver's
14 license -- how it would effect my driver's license because
15 I wanted to get my license back.

16 Q Okay.

17 A That's all.

18 Q Okay. I'm sorry, you said you talked with
19 Mr. Oppermann at the courthouse that day before you did
20 your guilty plea; is that right?

21 A Yes.

22 Q Okay. Is that the only conversation you had
23 with him?

24 A Yes.

25 Q He didn't call you before that or anything like

JEROME NOONE-REDIRECT BY MR. GROSE

1 that?

2 A I don't recall if we had a conversation on the
3 phone or not.

4 Q So, when you showed up at the courthouse, were
5 you expecting Mr. Thomason or did you know that it was
6 going to be Mr. Oppermann?

7 A No, I did get a phone call from the Public
8 Defender's Office about Mr. Thomason and that
9 Mr. Oppermann would be representing me.

10 Q Okay. Did you raise your concerns about the
11 driver's license to Mr. Oppermann?

12 A No.

13 Q Okay.

14 That's all the questions I have, Your
15 Honor.

16 THE COURT: Any redirect?

17 MR. GROSE: Just a brief follow up.

18 REDIRECT EXAMINATION

19 BY MR. GROSE:

20 Q Did you -- she asked about the conversations
21 with Mr. Oppermann. Did you have a conversation with him
22 after your plea?

23 A No.

24 Q Did you have a conversation after you got the
25 habitual offender notice?

JEROME NOONE-REDIRECT BY MR. GROSE

1 A Yes.

2 Q And what was that conversation?

3 A I talked to him on the phone and explained to
4 him what I was under -- what I thought was going to happen
5 and I got this in the mail. And I asked him what we could
6 do. And he said that because the case was already closed,
7 I have to probably hire an attorney to try to do something
8 about this. Since the case was already -- I already pled
9 guilty and stuff. So, he actually recommended a few
10 attorneys by email for me. And recommended you.

11 Q Okay. And real quick, you still have the
12 exhibits in front of you?

13 A Yes.

14 Q Okay. Looking at Applicant's Exhibit No. 1,
15 when was the date of your meeting with Mr. Thomason?

16 A July 12th.

17 Q And State's [verbatim] Exhibit No. 2, do you
18 recall seeing that letter before today?

19 A No, I don't recall this one.

20 Q And what's the date on that letter?

21 A 4/29.

22 Q Of what year?

23 A Of 2016.

24 Q So, that was before your meeting with
25 Mr. Thomason in July of 2016?

JEROME NOONE-REDIRECT BY MR. GROSE

1 A Yes.

2 MR. GROSE: Your Honor, I maybe a little
3 sloppily but I don't think I moved to introduce
4 Applicant's 1 and 2. And I would do that at this
5 time.

6 THE COURT: Any objection?

7 MS. MCCALLISTER: No, Your Honor.

8 THE COURT: All right, without objection,
9 Applicant's 1 and 2 would be admitted without
10 objection.

11 (WHEREUPON, Applicant's Exhibits Nos. 1 & 2 were
12 admitted into evidence.)

13 MR. GROSE: And that's all the questions I have.

14 THE COURT: Anything further from this witness?

15 MS. MCCALLISTER: I have nothing further for
16 this witness.

17 THE COURT: Thank you, sir, you can step down.

18 MR. GROSE: I would call Joey Oppermann.

19 THE COURT: Mr. Oppermann, come around, please,
20 sir.

21 THE CLERK: Raise your right hand.

22 JOEY OPPERMAN, after being duly
23 sworn, testified as follows:

24 THE CLERK: If you would take the stand, please,
25 sir, and state your name and spell your last name for

JOSEPH OPPERMANN-DIRECT BY MR. GROSE

1 the reporter, please.

2 THE WITNESS: My name is Robert Joseph
3 Oppermann. My last name is spelled
4 O-P-P-E-R-M-A-N-N. I frequently go by Joseph or
5 Joey.

6 DIRECT EXAMINATION

7 BY MR. GROSE:

8 Q And you're an attorney, is that correct?

9 A Yes, sir.

10 Q All right. And where are you currently
11 employed?

12 A At the Public Defender's Office here in Anderson
13 County, The Tenth Circuit Public Defender.

14 Q And how long have you been employed there?

15 A Since I believe January 31st of this year.

16 Q Okay. And what was -- how close was your date
17 of employment in relation to Mr. Noone's guilty plea?

18 A Very close. His guilty plea would have been the
19 transfer court date of my first week. My file actually
20 reflects that I talked to him on the phone on the 31st,
21 which would have been my first day. It's possible that
22 that refers to my paralegal rather than me. I don't have
23 a clear memory of it but that's what the note says.

24 Q And would that phone call have been to let him
25 know the court date was coming up?

JOSEPH OPPERMANN-DIRECT BY MR. GROSE

1 A I believe so.

2 Q Okay. Now, we had some -- are the exhibits
3 still up there?

4 A Yes, sir.

5 Q Okay. And just as a frame of reference,
6 Applicant's Exhibit No. 1, that that went out in June of
7 2015. I'm sorry, 2016. June 10th, I believe?

8 A Yes, sir.

9 Q Okay. And your file, I know you took this file
10 over for Mr. Thomason; is that right.

11 A Yes, sir.

12 Q And does your file reflect when the solicitor
13 transmitted the discovery?

14 A I hate to say, I left my file down, I can go
15 grab that.

16 Q I tell you what we'll --

17 A Thank you, I appreciate that. Just give me a
18 moment. It appears that that was June 20th, 2016.

19 Q All right. So, about 10 days after the letter
20 from the Public Defender's Office to Mr. Noone is when the
21 solicitor sent the discovery?

22 A Yes, sir.

23 Q And so, that would kind of make sense that a
24 meeting would happen in July with Mr. Thomason to review
25 the discovery?

JOSEPH OPPERMANN-DIRECT BY MR. GROSE

1 A That does make sense.

2 Q Okay. Now, you testified you might have talked
3 to Mr. Noone on the phone on January 31st. When was the
4 other times that you saw him?

5 A I saw him in court. That was either Wednesday
6 or Thursday of that week.

7 Q Okay. And did you sit down and review the
8 discovery again?

9 A I have no clear memory of our conversation that
10 day besides that it was fast. So, unfortunately, I'm not
11 able to answer your question.

12 Q Okay.

13 A I don't know.

14 Q All right. And that would have been your first
15 full week on the job?

16 A Yes, sir.

17 Q Okay. And when had Mr. Thomason passed away in
18 relation to you starting work and Mr. Noone's hearing?

19 A I believe Mr. Thomason passed away around new
20 years.

21 Q Okay. So, it was still relatively, even though
22 it hadn't been--

23 A It was very recent.

24 Q Yeah. And did you have any conversations with
25 Mr. Noone after the guilty plea?

JOSEPH OPPERMANN-DIRECT BY MR. GROSE

1 A Sometime afterwards, I believe it was over a
2 month, I don't remember the exact date or timeframe, he
3 called to express his concern about receiving the habitual
4 offender status. I'll note that when I first became aware
5 of -- first received paperwork for this hearing, I didn't
6 remember it at all. But when I went back and looked at
7 the file, I remembered him calling me. He said he didn't
8 realize when he entered the plea, that this would be the
9 consequence for his driver's license. Wanted to know if
10 there was anything we can do about it. And so, what I
11 did, I told him, Well, for our purposes the case is closed
12 and it's too late for me to file a motion to reconsider.
13 So, you probably need to go ahead and retain private
14 counsel. I may have suggested to him, I could be
15 confusing him with someone else, I may have suggested to
16 him that if he was indigent, he could contact the bar and
17 they might make some recommendations. Mr. Noone testified
18 that I sent him the names of several local attorneys. I
19 didn't remember doing that but I certainly can't dispute
20 that.

21 Q All right. But generally, whether it was
22 indigent counsel or retained counsel, you suggested that
23 he talk with another attorney?

24 A Yes.

25 Q Okay.

JOEY OPPERMANN-CROSS BY MS. MACCALLISTER

1 Thank you, that's all the questions I have.

2 THE WITNESS: Yes, sir.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MS. MCCALLISTER:

6 Q Mr. Oppermann, I think you testified that you,
7 since receiving the paperwork in this case, you've had a
8 chance to kind of go back and review the file; is that
9 correct?

10 A Yes, ma'am.

11 Q Okay. Can you tell me, in terms of your
12 assessment of the evidence against Mr. Noone, what
13 evidence was there in the file as to this?

14 MR. GROSE: And I'm going to object on the basis
15 of relevance. The standard for voluntariness of the
16 guilty plea is whether or not the decision would have
17 been different, not the weight of the evidence.

18 THE COURT: Well, I'm going to overrule the
19 objection, you still have to show prejudice as part
20 of it.

21 MR. GROSE: Well, the prejudice is is that he
22 wouldn't have entered the guilty plea but for the
23 advice. And you never get into weighing the
24 evidence. That's the reason.

25 THE COURT: I overrule the objection.

JOEY OPPERMAN-CROSS BY MS. MACCALLISTER

1 MS. MCCALLISTER: Thank you, Your Honor.

2 BY MS. MCCALLISTER:

3 Q Can you tell me, after your review of the file,
4 can you kind of summarize what the evidence would have
5 been against Mr. Noone at trial?

6 A According to the incident report, the officer
7 stated that when he first made contact that, as you
8 typically see in this kind of incident reports, he
9 detected an odor of an alcoholic beverage. But that the
10 most concerning thing would have been, according to the
11 officer, Mr. Noone stated, I had too much to drink, I
12 shouldn't have left my friend's house. And that he stated
13 that before the officer asked him any questions.

14 And the officer stated in the incident
15 report that he went on to Mirandize Mr. Noone after that.
16 But given that without receiving any -- without being
17 interrogated, he made that statement. I felt that that
18 would have probably been fairly difficult. I can't say
19 that I recall making this analysis prior to entering the
20 plea, I just don't remember. It was my first week and we
21 get a lot of cases. So, I don't remember making that
22 analysis.

23 Q Okay. But you have reviewed the file now and
24 that was your analysis?

25 A Yes.

JOEY OPPERMANN-CROSS BY MS. MACCALLISTER

1 Q And as far as you know, that incident report was
2 received in discovery?

3 A Yes.

4 Q Okay. So, that incident report was in the file
5 for when this case was Mr. Thomason's case, correct? To
6 the best of your knowledge?

7 A Yes.

8 Q Okay. And your assessment is that had
9 Mr. Noone proceeded to trial, that statement would be
10 difficult to overcome?

11 A That would have been difficult.

12 Q Okay. And he did not agree to submit to any
13 kind of tests, blood alcohol test, is that correct?

14 A That's my understanding.

15 Q Okay. And Mr. Noone, did he ever tell you that
16 he had receive a notification or anything from the
17 Department of Motor Vehicles?

18 A I don't remember.

19 Q Okay. And did he ever express to you his
20 concerns about maintaining his driver's license?

21 A He did in the conversation that we had after the
22 plea. If he did before that, I don't remember.

23 Q Okay.

24 A I wish I could be more helpful but it's kind of
25 a blur that week.

JOEY OPPERMANN-REDIRECT BY MR. GROSE

1 MS. MCCALLISTER: Okay, that's all the questions
2 I have.

3 THE COURT: Any redirect?

4 MR. GROSE: Just real briefly.

5 REDIRECT EXAMINATION

6 BY MR. GROSE:

7 Q I think I understand from your answer but just
8 so we're clear, did you ever review the video tape?

9 A I don't remember but I think that's very
10 unlikely given the timeframe.

11 Q Okay. And when I say the video tape, I'm
12 referring to the video tape of the traffic stop and the
13 arrest.

14 A I have no memory of doing that but I think given
15 the timeframe, that's that unlikely that I did that.

16 MR. GROSE: That's all I have for this witness.

17 THE COURT: All right, anything further from
18 this witness?

19 MS. MCCALLISTER: Not from the witness, Your
20 Honor. I would move to admit State's 1, 2 and 3 into
21 evidence. It's the documentation from the DMV and
22 there's a Certificate of Authenticity. I think they
23 can just come in.

24 MR. GROSE: The statute allows Your Honor to
25 accept affidavits. There may be some arguments about

JEROME NOONE-FURTHER REDIRECT BY MR. GROSE

1 what weight those are to be given but I don't think
2 that goes to admissibility.

3 THE COURT: They will be so admitted.

4 MS. MCCALLISTER: Thank you.

5 (WHEREUPON, State's Exhibits Nos. 1-3 were
6 marked for identification and received into
7 evidence.)

8 THE COURT: All right, thank you, Mr. Oppermann,
9 you can step down.

10 MR. OPPERMANN: Thank you.

11 MR. GROSE: I want to recall Mr. Noone very
12 briefly.

13 THE CLERK: You want me to swear him again?

14 THE COURT: He's already under oath.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. GROSE:

17 Q Jerry, have you seen the video of the stop and
18 the arrest?

19 A Yes.

20 Q And when was the last time you watched that
21 video?

22 A In your office.

23 Q When was that?

24 A Last week or earlier this week, Monday.

25 Q Okay. And the Attorney General asked

JEROME NOONE-FURTHER REDIRECT BY MR. GROSE

1 Mr. Oppermann about the statement that you shouldn't have
2 left your friend's house. And the fact that you didn't
3 take any tests. Did you do the field sobriety test?

4 A No.

5 Q All right. At some point on the video, did you
6 offer to the officer that you would be willing to take
7 them after all?

8 A Yes.

9 Q And did he allow you to do that?

10 A No.

11 Q All right. Also on the video, did you make
12 other statements about how much you had had to drink?

13 A Yeah.

14 MS. MCCALLISTER: Your Honor, I just --

15 MR. GROSE: This is in reply to her--

16 THE COURT: You opened the door for this,
17 overruled.

18 MR. GROSE: Thank you, Your Honor.

19 BY MR. GROSE:

20 Q Did you make other statements on the video?

21 A Yes.

22 Q And what were those statements?

23 A That I had hardly anything.

24 Q All right. So, you acknowledge that you had had
25 something to drink --

JEROME NOONE--FURTHER RECROSS BY MS. MCCALLISTER

1 A Yes --

2 Q -- but you didn't feel like you would be
3 impaired to drive?

4 A Correct.

5 Q Okay.

6 That's all I have, thank you.

7 THE COURT: Counsel, any questions in response
8 to the redirect?

9 MS. MCCALLISTER: Not in response to the
10 redirect, Your Honor.

11 THE COURT: Okay.

12 MS. MCCALLISTER: But I was planning to recall
13 Mr. Noone myself. So, I can do that now or I can
14 have him come back up in just a second.

15 THE COURT: Just for time, let's go ahead. Go
16 ahead and ask him.

17 MS. MCCALLISTER: Okay.

18 FURTHER RECROSS-EXAMINATION

19 BY MS. MCCALLISTER:

20 Q Mr. Noone, you testified to me earlier that you
21 received a notice of suspicion but you did not receive the
22 warning letter, correct?

23 A Yeah, I don't recall a warning letter.

24 Q Okay. But you do recall receiving the notice of
25 suspicion?

JEROME NOONE-FURTHER RECROSS BY MS. MCCALLISTER

1 A The one that I got after -- I'm not sure of the
2 terms of what the letters are called. But the one I got
3 after court.

4 Q Okay. That said you had been deemed a habitual
5 traffic offender, you recall getting a letter to that
6 effect?

7 A Yes.

8 Q Okay. Did you challenge that determination with
9 the Department of Motor Vehicles?

10 A They said that I could not, that it was too
11 late.

12 Q They said it was too late?

13 A Yeah. I called -- I actually called to Columbia
14 and talked to the DMV to see if I could get a hearing and
15 they said I could not because it went past the 30 days.

16 Q Do you recall when you received the letter that
17 we're discussing after court?

18 A Yeah, it was within two weeks to a month or so.
19 I don't remember the exact timeframe.

20 MS. MCCALLISTER: May I approach, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. MCCALLISTER:

23 Q If I show you this, does that refresh your
24 memory at all as to the timeframe?

25 A I don't recall my court date but yeah if this

JEROME NOONE-FURTHER RECROSS BY MS. MCCALLISTER

1 was following the court date, yeah I remember this one.

2 Q Okay. So, you pled guilty on February 2nd and
3 that letter's dated February 10th, correct?

4 A Yes.

5 Q So, you agree that some time around
6 February 10th you received that letter?

7 A Yeah.

8 Q You didn't just receive it last week or
9 something? It was back around the time of the--

10 A Yes, it was.

11 Q Okay. And that -- do you agree with me that
12 that letter details how you can appeal the determination
13 of a habitual traffic offender?

14 A I'm not sure if I read all of it to that point.
15 Actually the DMV is the one that told me. That's when I
16 found out I had 30 days to get one.

17 Q When did you make the phone call to the DMV?

18 A I don't recall the exact date. But they said it
19 was -- it was over the 30 days. I think I just missed it
20 or something.

21 Q Okay. So, it would have been sometime in March
22 or later?

23 A Probably. I was trying to get records from the
24 DMV. I went in there and got the 10 year thing. And I
25 wanted to get anything else they had. And the only thing

JEROME NOONE-FURTHER RECROSS BY MS. MCCALLISTER

1 that they had on file when I went to the DMV was a -- they
2 print out something from back in, like, a year or two
3 before that or something. But that was the only other
4 letter that I got. But it wasn't like the one you're
5 talking about and it wasn't anything like that. It was
6 from the first -- I had got a DUI back in the past. It
7 was regarding that.

8 Q Okay. So, are you saying that that letter that
9 I handed up to you, you don't recall receiving that letter
10 either?

11 A No, this one I do recall.

12 Q You do recall receiving that letter?

13 A Yes.

14 Q Okay, thank you.

15 Your Honor, I would ask to mark that as
16 State's 4.

17 THE COURT: Okay.

18 And I have a question for the attorneys. The
19 testimony in the record that Mr. Noone, and I'll
20 allow each attorney to ask Mr. Noone this, but The
21 Court's question is regarding the refusal. In the
22 materials, the ticket's been put in and each
23 attorney's asked him about that. Was he under
24 suspension for the data master implied -- under
25 implied consent at the time of the plea and had he

JEROME NOONE-FURTHER RECROSS BY MS. MCCALLISTER

1 done anything to request a hearing or had a
2 suspension for refusing the test removed?

3 And, Mr. Grose, you may know the answer to this.

4 MR. GROSE: I think the answer is is that the,
5 you know, you surrender your license when you don't
6 take the breathalyzer under the implied consent
7 statute. And that's when the suspension starts. So,
8 that that suspension period would have been up when
9 he entered the guilty plea.

10 THE COURT: Now, it's been a number, obviously,
11 a number of years since I have practiced law, when I
12 use to do these suspensions of 90 days but apparently
13 that has been changed. Implied consent issues don't
14 come before this court. So, the attorneys can answer
15 this question, what is the suspension period on an
16 implied consent now?

17 MR. GROSE: Six months.

18 THE COURT: Six months, okay.

19 Ms. McCallister, you agree with that?

20 MS. MCCALLISTER: I do, Your Honor. To my
21 knowledge.

22 THE COURT: Okay. All right. Okay. And either
23 one of you can question Mr. Noone in response to the
24 Court's questions if you would like to.

25 MR. GROSE: Not necessarily in response to The

JEROME NOONE-FURTHER RE-CROSS BY MS. MCCALLISTER

1 Court's question but did you move that last exhibit
2 in?

3 MS. MCCALLISTER: I asked to mark it and move it
4 in, yes, sir.

5 MR. GROSE: Okay. All right. You still have --
6 it's not been marked yet but the letter dated
7 February 10th, 2017 is going to be, I believe,
8 State's Exhibit No. 4?

9 MS. MCCALLISTER: State's 4, yes.

10 MR. GROSE: Okay.

11 BY MR. GROSE:

12 Q It lists the three convictions on there, do you
13 see that?

14 A Yes.

15 Q All right. Was there any way that you could
16 have challenged, that you know of, an administrative
17 hearing whether or not those convictions were your
18 convictions?

19 A Not -- no, it had more to do with just the
20 last -- the last conviction.

21 Q Right. And sitting here today, do you know if
22 there's any mechanism, legal mechanism, which is a
23 question of law, to be able to challenge the validity of
24 the conviction at an administrative hearing with the
25 highway department?

JEROME NOONE-FURTHER RECROSS BY MS. MCCALLISTER

1 MS. MCCALLISTER: Well, Your Honor, I'm not sure
2 that he can answer a question of law.

3 MR. GROSE: All right.

4 THE COURT: That would call for a legal
5 conclusion, I'll sustain the objection.

6 THE WITNESS: When I did call--

7 MR. GROSE: He sustained the objection.

8 THE WITNESS: Oh, okay.

9 MR. GROSE: That's all I have. And I'll just
10 ask to pause to mark this so we don't let it get lost
11 in the shuffle.

12 THE COURT: Okay.

13 (WHEREUPON, State's Exhibit No. 4 was marked for
14 identification and received into evidence.)

15 THE COURT: Okay. Anything further?

16 MR. GROSE: Not from me.

17 MS. MCCALLISTER: No, Your Honor.

18 THE COURT: Thank you, Mr. Noone, you can step
19 down.

20 All right, anything further from either side?

21 MR. GROSE: I can make a summation or we can
22 both submit proposed orders.

23 THE COURT: That's what I was going to suggest.
24 Why don't each of you submit me a proposed order. I
25 want to look up the statutes and look at the material

1 submitted and consider them under advisement.

2 MR. GROSE: Thank you, Your Honor.

3 MS. MCCALLISTER: Thank you, Your Honor.

4 THE COURT: Make sure all the exhibits are
5 accounted for.

6 (WHEREUPON, the proceedings were concluded.)

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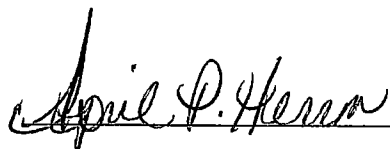
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

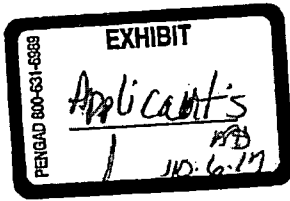
I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the Sixth day of October, 2017.

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

April 13, 2018



APRIL P. HERRON, Court Reporter



A. 73

July 12 @ 3:00

TENTH CIRCUIT PUBLIC DEFENDER OFFICE

ANDERSON AND OCONEE COUNTIES

Anderson County Office
301 Camson Road
Anderson, SC 29625
Tel. 864.260.4048
Fax 864.260.4134

HERVERY B. O. YOUNG
Circuit Public Defender

Oconee County Office
415 S. Pine Street
Walhalla, SC 29691
Tel. 864.638.9133
Fax 864.638.0228

June 10, 2016

Jerome Joseph Noone
5021 Sunset Drive
Easley, SC 29642

Re: State v. Jerome Joseph Noone
Case No(s): H419948; 5102P0368325, 326, 327

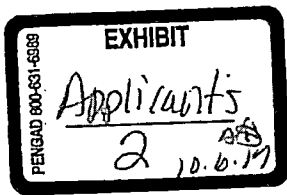
Dear Mr. Noone:

Please be advised that Scott Thomason has been appointed to represent you in connection with the above referenced case. Our office has requested a copy of your motion of discovery from the Solicitor's Office. Once we receive your discovery we will contact you to schedule an appointment to meet with your Attorney.

Sincerely,


Kate Mangan, CP
Paralegal

FILED-CLERK'S OFFICE
ANDERSON SC
2017 OCT -9 AM 9:09
COMMON PLEAS AND
GENERAL SESSIONS



...to be a true and correct copy of the original document on file with the South Carolina Department of Transportation

A. L. Blanton
Procedures & Compliance, Director

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 31784581 Driver License No: [REDACTED]
 Name: NOONE, JEROME JOSEPH JR
 Address: [REDACTED]
 City: EASLEY State: SC Zip: 296427813
 County: ANDERSON
 DOB: [REDACTED] Sex: M Driver Training: N

Status - DL: SUSPENDED CDL: DISQUALIFIED

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.	ACN
Current								
Prior								
DL	D	Returned	07/27/2015	01/27/2016	06/22/2012	Y	N	1011504000068143
DL	D	Re-exam	07/27/2015	01/27/2016	06/22/2012	Y	N	1011504000068143
ProvDL	D	Returned	04/29/2014	10/29/2014	06/22/2012	N	N	1011316500058076
ProvDL	D	Original	04/29/2014	10/29/2014	06/22/2012	N	N	1011316500058076
TA DL	D	Returned	06/18/2013	06/18/2014	06/22/2012	N	N	1011228500006756
TA DL	D	Original	06/18/2013	06/18/2014	06/22/2012	N	N	1011228500006756
DL	D	Original	06/22/2012	10/16/2022	06/22/2012	N	N	1011210000058638
DL	D	Returned	06/22/2012	10/16/2022	06/22/2012	N	N	1011210000058638

Name Change -

Name: NOONE, JERRY J JR

Date Changed: 09/08/2008

Address Change -

Address: 1911 OLD MILL RD
City: EASLEY

State: SC Zip: 296429509

Date Changed: 01/13/2011

Address Change -

Address: 2100 OLD MILL RD
City: EASLEY

State: SC Zip: 296429511

Date Changed: 10/03/2014

Point Summary

Total Current Points: 2
 Driver Credit: -0
 Adjusted Current Points: 2

SUSP: 022 - Habitual Offender
 Special Driving Privilege: NONE
 Suspension Beg: 03/12/2017
 Causal: 09/24/2015
 Reinstatement Requirements Met: INDEFINITE
 ACD: W01 Withdrawal Loc Ref:

Suspension End: 03/12/2022
 Post: 02/10/2017
 Reinstatement Fee Paid: N
 Withdrawal Reason Ref:

2017 OCT -9 AM 9:09
 COMMON PLEAS AND
 GENERAL SESSIONS
 FILED-CLERK'S OFFICE
 ANDERSON SC

OFFICIAL 10 YEAR DRIVER RECORD

No: 31784581
Name: NOONE, JEROME JOSEPH JR

Driver License No: [REDACTED]

SUSP: 001 - Driving Under the Influence
Special Driving Privilege: NONE
Suspension Beg: 02/02/2017
Causal: 09/24/2015
Reinstatement Requirements Met: INDEFINITE
ACD: A20 Withdrawal Loc Ref:

Ticket#: 2016GS0400899

Suspension End: INDEFINITE
Post: 02/10/2017
Reinstatement Fee Paid: N
Withdrawal Reason Ref:

VIOL: 499 - Driving Under the Influence
Violation: 09/24/2015 Conviction: 02/02/2017
ACD: A20 Conviction Loc Ref:
Conviction State: SC

Ticket#: 2016GS0400899

Recd: 02/08/2017 Post: 02/10/2017
Conviction Reference:
Court Type: CIRCUIT COURT

SUSP: 062 - No Insurance at time of Registration
Special Driving Privilege: NONE
Suspension Beg: 09/13/2016
Causal: 07/13/2016
Reinstatement Requirements Met: INDEFINITE
ACD: D36 Withdrawal Loc Ref:

Suspension End: INDEFINITE
Post: 08/14/2016
Reinstatement Fee Paid: N
Withdrawal Reason Ref:

SUSP: 013 - Driving Under Suspension
Special Driving Privilege: NONE
Suspension Beg: 12/25/2016
Causal: 10/12/2015
Reinstatement Requirements Met: INDEFINITE
ACD: B26 Withdrawal Loc Ref:

Ticket#: F330632

Suspension End: 03/25/2018
Post: 04/29/2016
Reinstatement Fee Paid: N
Withdrawal Reason Ref:

VIOL: 496 - Driving Under Suspension
Violation: 10/12/2015 Conviction: 02/11/2016
ACD: B26 Conviction Loc Ref:
Conviction State: SC

Ticket#: F330632

Recd: 04/21/2016 Post: 04/29/2016
Conviction Reference:
Court Type: MAGISTRATE COURT

VIOL: 421 - Speeding 10-mph or less
Violation: 10/12/2015 Conviction: 11/10/2015
ACD: S51 Conviction Loc Ref:
Conviction State: SC

Ticket#: F330631

Recd: 11/24/2015 Post: 12/10/2015
Conviction Reference:
Court Type: MAGISTRATE COURT
Violation Points: 2 Current Points: 1

VIOL: 424 - Driving too fast for conditions - 10MPH or less
Violation: 09/18/2015 Conviction: 10/15/2015
ACD: S94 Conviction Loc Ref:
Conviction State: SC

Ticket#: H414700

Recd: 10/26/2015 Post: 11/17/2015
Conviction Reference:
Court Type: MAGISTRATE COURT
Violation Points: 2 Current Points: 1

SC Driver License Surrendered

License Type: DL Class: D Function: Re-exam
Date Surrendered: 09/29/2015
Reason for Return: SUSPENDED LICENSE

Posted: 09/29/2015
Issued: 07/27/2015

Returning State: SC

certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

[Signature]

OFFICIAL 10 YEAR DRIVER RECORD

No: 31784581
 Name: NOONE, JEROME JOSEPH JR

Driver License No: [REDACTED]

VIOL: 401 - Implied Consent

Violation: 09/24/2015 Conviction: 09/24/2015

ACD: A12 Conviction Loc Ref:

Conviction State: SC

Recd: 09/29/2015

Post: 09/29/2015

Conviction Reference:

Court Type:

SUSP: 091 - Implied Consent

Special Driving Privilege: NONE

Suspension Beg: 09/24/2015

Causal: 09/24/2015

Reinstatement Requirements Met: INDEFINITE

ACD: A12 Withdrawal Loc Ref:

Suspension End: 12/24/2016

Post: 09/29/2015

Reinstatement Fee Paid: N

Withdrawal Reason Ref:

ACC: REPORTABLE

Accident: 09/18/2015

Accident Case Number: 15600351

Accident Jurisdiction: SC Acc Loc Ref: SCHDPT

Contributed: Y

Posted: 09/25/2015

FR-10 Audit Number: E-939298

History: N

ADSAP - Alcohol and Drug Safety Action Program

Enrolled: 07/31/2015

Status: UNSUCCESSFUL COMPLETION

Post Date: 08/03/2015

Enrollment No: 000311717

SR22 - Future Proof of Financial Responsibility (Insurance)

Effective: 07/27/2015 Filing: 07/28/2015

Posted: 07/28/2015

Type: NON-RESTRICTED

Policy Number: 905595095

Company Code: 38628

Company Name: PROGRESSIVE NORTHERN INSURANCE COMPANY

SR26 Cancel Date: 12/11/2015 Reason: NON-PAYMENT

Last Changed: 12/01/2015

SUSP: 062 - No Insurance at time of Registration

Special Driving Privilege: NONE

Suspension Beg: 12/10/2014

Causal: 10/07/2014

Reinstatement Requirements Met: INDEFINITE

ACD: D36 Withdrawal Loc Ref:

Suspension End: INDEFINITE

Post: 11/07/2014

Reinstatement Fee Paid: N

Withdrawal Reason Ref:

Payment Plan Enroll: 07/27/2015

Payment Plan Default: 09/29/2015

SUSP: 057 - BAC of .15 or Greater

Special Driving Privilege: NONE

Suspension Beg: 05/21/2014

Causal: 04/25/2014

Reinstatement Requirements Met: 07/27/2015

ACD: A90 Withdrawal Loc Ref:

Suspension End: 08/21/2014

Post: 05/13/2014

Reinstatement Fee Paid: Y

Withdrawal Reason Ref:

SC Driver License Surrendered

License Type: ProvDL

Class: D

Function: Original

Posted: 05/13/2014

Date Surrendered: 05/13/2014

Issued: 04/29/2014

Reason for Return: SUSPENDED LICENSE

Returning State: SC

Can be used as a true and correct
 copy of the original document on file
 with the South Carolina Department of
 Motor Vehicles.

[Signature]

Procedures & Compliance Director

OFFICIAL 10 YEAR DRIVER RECORD

No: 31784581
Name: NOONE, JEROME JOSEPH JR

Driver License No: [Redacted]
Procedures & Compliance Director

VIOL: 457 - BAC of .15 or Greater
Violation: 04/25/2014 Conviction: 04/25/2014
ACD: A90 Conviction Loc Ref:
Conviction State: SC

Recd: 05/12/2014 Post: 05/13/2014
Conviction Reference:
Court Type:

SR22 - Future Proof of Financial Responsibility (Insurance)

Effective: 01/31/2014 Filing: 02/04/2014 Posted: 02/04/2014
Type: NON-RESTRICTED Policy Number: 9 63 525002
Company Code: 36455 Company Name: NORTHBROOK INDEMNITY COMPANY

ADSAP - Alcohol and Drug Safety Action Program

Enrolled: 11/19/2013 Status: SUCCESSFUL COMPLETION Post Date: 11/20/2013
Enrollment No: 000288747

SUSP: 084 - Unlawful Alcohol Concentration
Special Driving Privilege: NONE
Suspension Beg: 11/20/2013
Causal: 06/02/2013
Reinstatement Requirements Met: 07/27/2015
ACD: A08 Withdrawal Loc Ref:

Ticket#: 31528GD

Suspension End: 05/20/2014
Post: 11/05/2013
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

VIOL: 484 - Unlawful Alcohol Concentration
Violation: 06/02/2013 Conviction: 10/03/2013
ACD: A08 Conviction Loc Ref:
Conviction State: SC

Recd: 10/31/2013 Post: 11/05/2013
Conviction Reference:
Court Type: MUNICIPAL COURT

SC Driver License Surrendered

License Type: TA DL Class: D Function: Original
Date Surrendered: 04/29/2014
Reason for Return: AFFIDAVIT / SUSPENDED LICENSE LOST

Posted: 04/29/2014
Issued: 06/18/2013

Returning State: SC

VIOL: 457 - BAC of .15 or Greater
Violation: 06/02/2013 Conviction: 06/02/2013
ACD: A90 Conviction Loc Ref:
Conviction State: SC

Recd: 06/07/2013 Post: 06/10/2013
Conviction Reference:
Court Type:

SC Driver License Surrendered

License Type: DL Class: D Function: Returned
Date Surrendered: 06/10/2013
Reason for Return: SUSPENDED LICENSE

Posted: 06/10/2013
Issued: 06/22/2012

Returning State: SC

SUSP: 057 - BAC of .15 or Greater
Special Driving Privilege: NONE
Suspension Beg: 09/10/2013
Causal: 06/02/2013
Reinstatement Requirements Met: 04/29/2014
ACD: A90 Withdrawal Loc Ref:

Suspension End: 09/24/2013
Post: 06/10/2013
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

OOS Driver License Surrendered

OOS License No: N9951796
Date Surrendered: 06/22/2012
Reason for Return: OOS LICENSE EXCHANGE FOR SC LICENSE

OOS Jurisdiction: CA Issued: 11/07/2007

OFFICIAL 10 YEAR DRIVER RECORD

Customer No: 31784581
Name: NOONE, JEROME JOSEPH JR

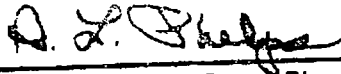
Driver License No: [REDACTED]

SUSP: 062 - No Insurance at time of Registration
Special Driving Privilege: NONE
Suspension Beg: 04/30/2012
Causal: 02/29/2012
Reinstatement Requirements Met: 06/22/2012
ACD: D36 Withdrawal Loc Ref:

Suspension End: 06/22/2012
Post: 04/01/2012
Reinstatement Fee Paid: Y
Withdrawal Reason Ref:

End of Report

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.



Procedures & Compliance, Director



FILED-CLERK'S OFFICE
ANDERSON SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

2017 OCT -9 AM 9:08

TENTH JUDICIAL CIRCUIT

Jerome J. Noone,

COMMON PLEAS AND
GENERAL SESSIONS

Case No.: 2017-CP-04-1012

Applicant,

-vs-

AFFIDAVIT OF AUTHENTICITY

State of South Carolina,

Respondent.

I, **Brandy A. Duncan**, the undersigned, hereby certify: that I am a custodian of records for the South Carolina Department of Motor Vehicles; that the attached copy of the records of **Jerome Joseph Noone, Jr.** are a true and exact copy of the official records maintained by the South Carolina Department of Motor Vehicles; that these records contain matters observed or recorded pursuant to a duty imposed by law; that these records are kept in the course of the regularly conducted activity of South Carolina Department of Motor Vehicles; that these records constitute written records that it is the regular practice of the South Carolina Department of Motor Vehicles to prepare and maintain; and that these records reflect documentation similar to that which is routinely maintained by South Carolina Department of Motor Vehicles on all persons.

Further, S.C. Code §56-1-800 states:

In all proceedings held under the provisions of this article, photostatic, optical disk, or other copies of the reports filed with the Department of Motor Vehicles, including official reports received from directors of the motor vehicle divisions, court officials, or other agencies of other states charged with the duty of keeping records of offenses against the traffic laws of such states and reports of courts martial or United States Commissioners, are deemed to be true copies, when such copies are duly certified by the director or his designee as true copies of the original on file therewith, and as such shall be deemed prima facie evidence of the information contained on such reports for the purpose of showing any conviction.

Pursuant to S.C. Code §56-1-800, it is my understanding the attached documents may be entered

into evidence without testimony.

Date: Oct. 3, 2017

Brandy A. Duncan
Signature

Brandy A. Duncan
Printed Name

STATE OF SOUTH CAROLINA

COUNTY OF Richland

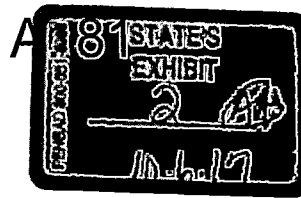
SWORN TO AND SUBSCRIBED BEFORE ME

this 3 day of October, 2017

Wfanda R. Ealey
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4/4/2021

South Carolina
Department of Motor Vehicles



04/29/2016

NOONE, JEROME JOSEPH JR
[REDACTED]
EASLEY, SC 29642-7813

CUSTOMER NO: 31784581
FILE NO: 20720995
DL NO: [REDACTED]

Dear Customer:

This is to advise you of your present standing under the Habitual Offender Law. This law states that any person who is convicted of three major violations or is convicted of a combination of ten minor and/or major violations that occurred within a three year period will be classified as a Habitual Offender.

Our records now reveal that you have accumulated 02 major and 00 minor violations. Should you be convicted of any additional major or minor violations which would classify you as an Habitual Offender, your driving privileges will be suspended for a period of five years.

A listing of the major and minor offenses is printed below, and we earnestly request that you improve your driving habits in order to protect your privilege to drive on the streets and highways of South Carolina.

MAJOR VIOLATIONS

Felony Child Endangerment	Reckless Driving
Driving Under Suspension	Reckless Homicide
Driving Under the Influence	Felony in a Motor Vehicle
Unlawful Alcohol Concentration	Felony Controlled Substance
Felony Driving Under the Influence	
Manslaughter/Involuntary Manslaughter	
Leaving the Scene of Accident-Bodily Injury	
Passing Stopped School Bus/Bodily Injury/Death	
Negligent or Criminal Operation of CMV-Fatality	
Failure to Stop for Blue Light with Bodily Injury/Death	
Any offenses punishable as a felony under the motor vehicle laws of this State.	

Subsequent offenses of:
Failure to Stop for Blue Light

MINOR VIOLATIONS

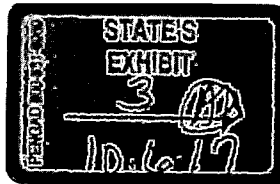
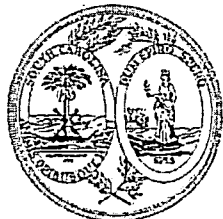
Driving on wrong side of the road	Following too closely
Reckless driving	Speeding (over 10 MPH)
Failure to yield right of way	Turning Unlawfully
Passing stopped school bus	Passing unlawfully
Hit & Run-Property and Damage only	
Disobeying official directing traffic	
Disregard Railroad Sign or Signal	
Disobedience to Signal of approaching Train	
Driving through or within a safety zone	
Driving too fast for conditions-over 10 MPH	
Failure to give or giving improper signal	
Operating vehicle with improper brakes	
Disobeying an official traffic device	
Speeding more than 25 MPH over posted speed	

Driver Records Manager

FILED-OLENKS OFFICE
ANDERSON SC
2017 OCT -9 AM 9:08
COMMON PLEAS AND
GENERAL SESSIONS

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

A. L. Phelps
Driver Services, Deputy Director



A. 82

Henry McMaster
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

CERTIFICATE OF MAILING

This warning letter is a true and correct copy of the original warning letter which was computer generated on 4-29-16, processed in the normal course of business and placed in the United States mail with postage prepaid addressed to the driver at the address contained in the DMV records and electronically stored on file with the South Carolina Department of Motor Vehicles.

10-4-17

Date

[Signature]

Driver Service

FILED-CLERKS OFFICE
ANDERSON SC
2017 OCT -9 AM 9:09
COMMON PLEAS AND
GENERAL SESSIONS

South Carolina
Department of Motor Vehicles



A. 83

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

A. L. Phillips

Driver Services, Deputy Director

02/10/2017

NOONE, JEROME JOSEPH JR
[REDACTED]
EASLEY, SC 29642-7813

CUSTOMER NO: 31784581
FILE NO: 22096670
DL NO: [REDACTED]

OFFICIAL NOTICE

REASON: You have accumulated violations in a 3 year period that result in you being declared an Habitual Offender. SECTION OF LAW: 56-1-1030 and 56-1-1090

VIOL DATE	CONV DATE	TICKET#	VIOLATION DESCRIPTION
09/24/2015	02/02/2017	2016GS0400899	Driving Under the Influence
10/12/2015	02/11/2016	F330632	Driving Under Suspension
06/02/2013	10/03/2013	31528GD	Unlawful Alcohol Concentration

BEGINNING DATE: 12:01 AM 03/12/2017 ENDING DATE: MIDNIGHT 03/12/2022

HEARING:

Section 56-1-1030 allows you to appeal the DMV's decision. There is a \$200 filing fee for a hearing. (Personal checks not accepted.) Should you desire a hearing, you must submit a written request within 30 days from the date of this letter. State the reasons why you believe that the Department has made an error. Mail or deliver the request and the fee to the South Carolina Office of Motor Vehicle Hearings, 1205 Pendleton St., Suite 325, Columbia, SC 29201. If you do not request a hearing, the suspension will become effective on the date indicated above. After you have completed two years of the suspension, you may request a reduction of the suspension. You can obtain an application and instructions at the Department's website at www.scdmvonline.com or by contacting a Customer Service Representative at (803)896-5000.

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. You may not drive until the suspension period has ended and you have done the following:

FINANCIAL RESPONSIBILITY:

You must do one of the following for 3 years from the ending date listed above:

1. have your insurance agent file a Certificate of Insurance(SR-22), or
2. deposit \$40,000 per motor vehicle with SC State Treasurer's Office, or
3. have a surety company issue a bond for you.

REINSTATEMENT FEE:

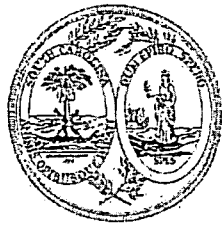
You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

TESTS:

You must successfully complete the vision, knowledge and skills test.

Driver Records Manager

FILED-CLERK'S OFFICE
ANDERSON SC
2017 OCT -9 AM 9:09
COMMON PLEAS AND
GENERAL SESSIONS



Henry McMaster
Governor

Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

CERTIFICATE OF MAILING

This notice of suspension is a true and correct copy of the original notice of suspension which was computer generated on 2-10-17, processed in the normal course of business and placed in the United States mail with postage prepaid addressed to the driver at the address contained in the DMV records and electronically stored on file with the South Carolina Department of Motor Vehicles.

10-4-17
Date

[Signature]
Driver Service