

PRICE BENOWITZ LLP

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*ROBERT M. SCHWARTZMAN
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MOHSEN ZARKESH
ADMITTED DC
MATTHEW WILSON
ADMITTED MD
ELIZABETH THOMPSON
ADMITTED MD
*ANGIE DIPETRO
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ADMITTED VA
MICHAEL HARTLEY
ADMITTED VA
ANDREW LINDSEY
ADMITTED VA
KIARA SWINTON
ADMITTED VA

RECEIVED
JAN 09 2019
SC Court of Appeals

*OF COUNSEL

110 NORTH WASHINGTON STREET, SUITE 303
ROCKVILLE MD 20850

10505 JUDICIAL DRIVE, SUITE 101
FAIRFAX, VA 22030

January 7, 2019

The Honorable Jenny Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State of South Carolina v. Michael Brent Gay
TRANSMITTAL LETTER
Appellate Case No.: 2018-002262

Dear Ms. Kitchings:

I have enclosed a copy of the Transmittal Letter that was sent to the above-named Appellant on January 7, 2019. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


Dayne C. Phillips, Esq.
(803) 807-0234

Enclosures (noted)

WWW.SCCRIMINALLAWS.COM

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JAN 09 2019
SC Court of Appeals

*OF COUNSEL

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ROCKVILLE MD 20850

10505 JUDICIAL DRIVE, SUITE 101
FAIRFAX, VA 22030

January 7, 2019

Michael Brent Gay
Kirkland Correctional Institution
4344 Broad River Road
Columbia, SC 29210

Re: State of South Carolina v. Michael Brent Gay
RESPONSE DUE TO THE COURT OF APPEALS
Appellate Case No.: 2018-002262

Dear Mr. Gay:

I have enclosed a letter from the Court of Appeals stating that you must submit **in writing** any arguable basis that there are issues preserved for appeal. This writing is due twenty (20) days from the date of this letter – **January 27, 2019**. Below is the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Important: If you fail to submit the writing within twenty days, your appeal will be dismissed.

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State of South Carolina v. Michael Brent Gay

WRITING DUE TO THE COURT OF APPEALS

Appellate Case No.: 2018-002262

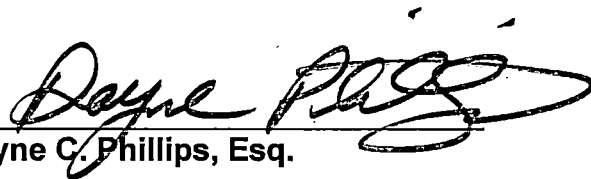
January 7, 2019

Page 2

I have also enclosed a self-addressed, stamped envelope for the Court of Appeals to help you with this process. You were previously provided a copy of the Notice of Appeal and an additional copy is provided with this letter for your review as well.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.

Columbia, SC 29201

O: 803-272-4503

C: 803-807-0234

F: 803-380-8035

dayne@pricebenowitz.com

Attorney, Price Benowitz LLP

Enclosures (noted)

cc: **Hon. Jenny Kitchings**
John Delgado (via email)



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

January 03, 2019

Mr. John Dennis Delgado, Esquire
2008 Lincoln Street
Columbia SC 29201

Mr. Dayne C. Phillips, Esquire
1614 Taylor Street
Suite D
Columbia SC 29201

Re: The State v. Michael B. Gay
Appellate Case No. 2018-002262

Dear Counsel:

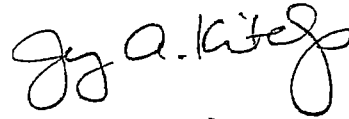
This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court, or this appeal will be dismissed.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. A. Kite". The signature is fluid and cursive, with the first and last letters of each name being capitalized and prominent.

CLERK

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Randy E. Newman, Jr., Esquire
Robert Michael Dudek, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

The Honorable Brian M. Gibbons, Circuit Court Judge

Case Nos. 2016-GS-29-00377

The State,

Respondent,

v.

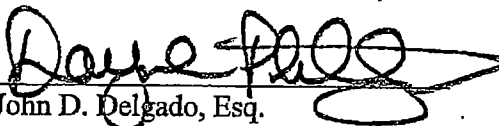
Michael Brent Gay,

Appellant.

FILED
OFFICE OF CLERK
OF COURT
CLERK OF COURT
LANCASTER, SC
2018 DEC 27 AM 11:57

NOTICE OF APPEAL

Michael Brent Gay appeals his convictions and sentences imposed by the Honorable Brian M. Gibbons on December 13, 2018. Mr. Gay pleaded guilty after initially proceeding to trial before Judge Gibbons and a jury on December 10, 2018.



John D. Delgado, Esq.
2008 Lincoln Street
Columbia, SC 29201

Dayne C. Phillips, Esq.
1614 Taylor Street, Suite D. ✓
Columbia, SC 29201

December 20, 2018

ATTORNEYS FOR APPELLANT

Other Counsel of Record:

cc:

Randy E. Newman, Jr., Solicitor
Sixth Circuit Solicitor's Office
P.O. Box 607
Lancaster, SC 29721

Jeff Hammond, Lancaster County Clerk of Court

Michael Brent Gay (SCDC)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

The Honorable Brian M. Gibbons, Circuit Court Judge

Case Nos. 2016-GS-29-00377

The State,

Respondent,

v.

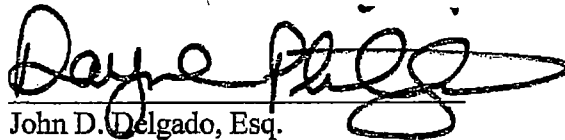
Michael Brent Gay,

Appellant.

FILED
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SOUTH CAROLINA
2018 DEC 27 AM 11:57
LANCASTER COUNTY

EXPLANATION PURSUANT TO
RULE 203(d)(1)(B)(iv)

Pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules, the undersigned Counsel is filing this appeal at Mr. Gay's request. *See In re Anonymous Member of the Bar*, 303 S.C. 306, 400 S.E.2d 483 (1991); *see also Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002). Counsel is unaware of any legal issues from Appellant's guilty plea hearing that are preserved for appellate review.



John D. Delgado, Esq.
2008 Lincoln Street
Columbia, SC 29201

Dayne C. Phillips, Esq. ✓
1614 Taylor Street, Suite D.
Columbia, SC 29201

December 20, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

The Honorable Brian M. Gibbons, Circuit Court Judge

Case Nos. 2016-GS-29-00377

The State,

Respondent,

v.

Michael Brent Gay,

Appellant.

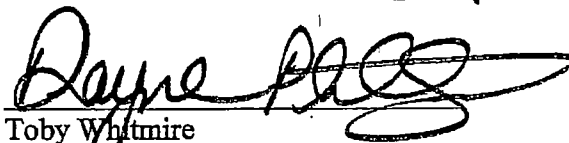
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jeff Hammond, Randy Newman, and Michael Brent Gay, by depositing a copy of it in the United States Mail, postage prepaid, on December 20, 2018, addressed to the following parties:

Randy E. Newman, Jr., Solicitor, Sixth Circuit Solicitor's Office
P.O. Box 607, Lancaster, SC 29721

The Honorable Jeff L. Hammond, Lancaster County Clerk of Court
P.O. Box 1809, Lancaster, SC 29721

Michael Brent Gay, Kirkland Correctional Institution,
4344 Broad River Road, Columbia, SC 29210



Toby Whitmire
Law Clerk for Dayne Phillips, Esq.
1614 Taylor Street, Suite D.
Columbia, SC 29201

December 20, 2018

FILED
OFFICE OF CLERK
OF COURT
2018 DEC 27 AM 11:57
CLERK OF COURT
LANCASTER, SC

WITNESSES

P. Crawford - LCSO #15-57542

+ Catoe

ARREST WARRANT NUMBER/DOA

Count I IN RE: AW #

2015A2910200184 (DOA-12-6-15)

Direct Indictment -Count II IN RE: AW #

2015A2910200184

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 19 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-29-377

**The State of South Carolina
County of Lancaster**

COURT OF GENERAL SESSIONS

MARCH TERM 2016

**THE STATE
vs.**

Michael Brent Gay

Indictment for

**COUNT I
Murder**

SC Code: §16-3-10

CDR Code: 0116

Class: Felony, EXM:

**Direct Indictment for
Count II**

**POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A
VIOLENT CRIME**

S. C. Code: 16-23-490

CDR Code: 0549

Class: Felony, F

FILED
OFFICE OF CLERK
OF COURT
2016 MAR 19 AM 11:41
CLERK OF COURT
LANCASTER, SC

CERTIFIED TO BE A TRUE COPY

JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on March 10, 2016, the Grand Jurors of Lancaster County present upon their oath:

COUNT I

MURDER

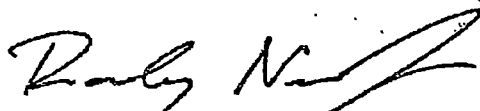
That Michael Brent Gay did at 1239 Branch Street, in Lancaster County, South Carolina on or about December 5, 2015, feloniously, willfully, and with malice aforethought kill and murder the victim Joshua Flint McManus by shooting the victim in the head with a pistol which constituted as the proximate cause of the death of the victim on December 5, 2015, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

COUNT II

POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A VIOLENT CRIME

That Michael Brent Gay did in Lancaster County, South Carolina, on or about December 5, 2015, possess or visibly display a firearm, to wit: a handgun during his/her commission of a violent crime, to wit: Murder of Joshua Flint McManus, in violation of §16-23-490, *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.



Randy E. Newman, Jr.; SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lancaster
STATE VS.

Michael Brent Gay

AKA:

Race: WHITE Sex: M Age: 35

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

INDICTMENT/CASE#: 2016GS2900377 Count II

A/W#: 2015A2910200184 Direct Ord. In Re AW

Date of Offense: 12/5/2015

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST: Collins, Lisa SC Bar# 07892 Defendant Delgado, John Attorney for Defendant SCB1621

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of 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 Services standard conditions of

probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 1665-29-377

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic

Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$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/ca \$

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date: 12/13/16

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lancaster
STATE VS.

Michael Brent Gay

AKA:

Race: WHITE Sex: M Age: 35

DOB: 12-04-1983 SS#:

Address: 1239 Branch St.

City, State, Zip: Lancaster, SC 29720

DL#: 001122547 SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Manslaughter / Voluntary manslaughter

INDICTMENT/CASE#: 2016GS2900377 Court I
A/W#: 2015A2910200184
Date of Offense: 12/5/2015
S.C. Code §: 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: Collins, Lisa SC Bar# 07892 Michael Brent Gay Defendant Delgado, John Attorney for Defendant SCB1621 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 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 Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$

Payment Terms:
Set by SCDPPPS
days/hours Public Service Employment

Recipient:

Table with 2 columns: Description and Amount. 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 61.6 (Public Def/Probation) \$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, 3% to County (if paid in installments)

TOTAL \$ 128.75

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

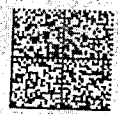
Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk:
Court Reporter:
SCCA/217 (07/2016)

Presiding Judge:
Judge Code:
Sentence Date: 12/18/18

██████████
██████████ Taylor Street, Suite D.
Columbia, SC 29201

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The Honorable Jenny Kitchings
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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