

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

 ORIGINAL

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MAR 04 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

UBALDO GARCIA,

APPELLANT

APPELLATE CASE NO. 2012-209447

RECORD ON APPEAL

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HORRY COUNTY SOLICITOR OFFICE

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT
Warrant No.: M-316598

The State of South Carolina)

vs.)

Ubaldo Garcia)

Defendant)

CONSENT
ORDER MODIFYING BOND

RECEIVED
HORRY COUNTY
CLERK
OCT 16 2009 15

THIS MATTER COMES BEFORE ME on Motion to Reconsider Bond by counsel for the defendant Ubaldo Garcia.

WHEREAS, it appears that the defendant is currently on a surety bond set at \$150,000.00 on the offense of Trafficking in cocaine 200g or more, but less than 400g, and

WHEREAS, it now appears that it would be appropriate to reduce the bond to a \$45,000.00 surety bond with the condition that the defendant be placed on home detention except for purposes of going to and from work and/or school, for medical treatment, and to attend church services; and

w/ 6-15
permitted

ORDERED, ADJUDGED, AND DECREED that the defendant's bond is modified and reduced to \$ 45,000.00 surety bond with the condition that the defendant be placed on home detention, it is further

ORDERED, all other provisions of the previous order for bond shall remain in effect.

IT IS SO ORDERED this 16 day of October, 2009

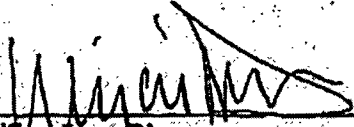

Presiding Judge for the Fifteenth Judicial Circuit

(-AX)R43 385 IN. 7112 2.004/005

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This 16th day of October, 2009
Conway, South Carolina

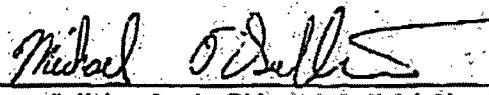
I SO MOVE!



William Isano Diges
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
843-626-4243

ATTORNEY FOR THE DEFENDANT

I CONSENT



Michael O'Dell
Assistant Solicitor for the Fifteenth Judicial Circuit

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2 COUNTY OF HORRY) (2010-GS-26-01601)
 3)
 4 STATE)
 5 VERSUS) TRANSCRIPT OF RECORD
 6)
 7 UBALDO GARCIA, JR.) December 14, 2011
 8) Conway, S. C.
 9)

9 B E F O R E:
 10 HONORABLE STEVEN H. JOHN, Judge.

12 A P P E A R A N C E S:
 13 BRADLEY COY RICHARDSON, ESQ.
 14 ASSISTANT SOLICITOR FOR HORRY COUNTY
 ATTORNEY FOR STATE
 15 WILLIAM I. DIGGS, ESQ.
 16 ATTORNEY FOR DEFENDANT

19 DIXIE COX EUBANK
 20 CIRCUIT COURT REPORTER
 FIFTEENTH JUDICIAL CIRCUIT

21
 22
 23
 24
 25

1 (THE FOLLOWING TAKES PLACE ON DECEMBER 14, 2011.)

2 MR. RICHARDSON: The State would call (2010-GS-26-
3 01601), State of South Carolina, County of Horry versus Ubaldo
4 Garcia, Jr., and that's U-B-A-L-D-O, Garcia, common spelling.
5 It's a true-bill indictment for trafficking in cocaine, an
6 amount more than four hundred grams, Your Honor.

7 The Defendant is being allowed to plead to the lesser-
8 included offense of twenty-eight to one hundred grams. That's
9 the seven to twenty-five range, Your Honor. The State is
10 recommending a range of ten to fifteen in there, Your Honor.

11 This case is from 2009.

12 THE COURT: All right. Very good.

13 MR. RICHARDSON: The Defendant is represented by Mr.
14 Bill Diggs. Brad Richardson on behalf of the State.

15 THE COURT: All right. Mr. Garcia, give me your
16 attention, sir. You come before the Court pleading guilty to
17 trafficking cocaine, weight twenty-eight to a hundred grams,
18 first offense; is that correct?

19 A. Yes sir.

20 THE COURT: All right, sir. You understand the
21 potential here can go from seven, a minimum of seven years, up
22 to twenty-five years, along with a Fifty Thousand Dollar fine;
23 you understand that?

24 A. Yes sir.

25 THE COURT: You understand that this is a lesser-

1 included offense. You understand that you were actually
2 charged with trafficking in cocaine, weight four hundred plus
3 grams; you understand that?

4 A. Yes sir.

5 **THE COURT:** All right, sir. And you understand that
6 the recommendation of the State is that the Court impose a
7 sentence from minimum of ten up to a maximum of fifteen years;
8 you understand that?

9 A. Yes sir.

10 **THE COURT:** You understand I do not have to follow that
11 recommendation, or give you a sentence in that range; you
12 understand that?

13 A. Yes sir.

14 **THE COURT:** Understanding this, do you want to go
15 forward with your guilty plea at this time?

16 A. Yes sir.

17 **THE COURT:** Are you currently under the influence of
18 any drugs or intoxicants of any kind, or currently have them
19 in your system?

20 A. No sir.

21 **THE COURT:** Are you suffering from any kind of
22 physical, mental or emotional problem that would keep you from
23 understanding what you are doing here today?

24 A. No sir.

25 **THE COURT:** When you plead guilty you give up certain

1 Constitutional Rights, among those are the right to remain
2 silent, so when you speak to me you give those rights up; you
3 understand that?

4 A. Yes sir.

5 **THE COURT:** Other rights are the presumption of
6 innocence, the right against self-incrimination at a trial;
7 the State has to prove your guilt beyond a reasonable doubt.
8 When you plead guilty you give those rights up; you understand
9 that?

10 A. Yes sir.

11 **THE COURT:** You are entitled to a jury trial, again,
12 about the twelve men and women would listen to the State to
13 see if there's enough facts to prove you guilty beyond a
14 reasonable doubt, and in that jury trial you can testify, you
15 can call witnesses on your behalf, you can challenge the State
16 regarding it's evidence, make the State prove you guilty, if
17 it can, beyond a reasonable doubt, but when you plead guilty
18 you give all that up; you understand that?

19 A. Yes sir.

20 **THE COURT:** Now, you come before the Court and you are
21 pleading guilty to trafficking in cocaine, weight twenty-eight
22 to a hundred grams, first offense. Are you pleading guilty to
23 this crime freely and voluntarily?

24 A. Yes sir.

25 **THE COURT:** Of your own freewill and accord?

1 A. Yes sir.

2 THE COURT: Pleading guilty because you are indeed
3 guilty of this crime?

4 A. Yes sir.

5 THE COURT: Now did anybody promise you anything, or
6 threaten you, or force you in any way to get you to plead
7 guilty?

8 A. No sir.

9 THE COURT: You are here today with your attorney, Mr.
10 Diggs; is that right?

11 A. Yes sir.

12 THE COURT: Did you tell him everything you needed to
13 tell him about this case?

14 A. Yes sir.

15 THE COURT: Have you had enough time to talk to him?

16 A. Yes sir.

17 THE COURT: Do you need any more time to talk to him?

18 A. No sir.

19 THE COURT: Are you satisfied with his help and
20 representation?

21 A. No sir.

22 THE COURT: Any complaints about his representation?

23 A. No sir.

24 THE COURT: All right, Mr. Diggs, you represent the
25 interest of your client, Mr. Garcia, in this matter?

1 **MR. DIGGS:** Yes sir.

2 **THE COURT:** He comes before the Court tendering his
3 plea of guilty to the offense named; do you concur?

4 **MR. DIGGS:** I do, Your Honor.

5 **THE COURT:** And do you believe he's coming before the
6 Court of his own freewill and accord?

7 A. I believe he does.

8 **THE COURT:** And have you explained to him his
9 Constitutional Rights, any defenses he might have, as well as
10 the information, the evidence in the possession of the State?

11 **MR. DIGGS:** Yes sir.

12 **THE COURT:** Thank you very much.

13 All right, Solicitor, the facts of the case, please.

14 **MR. RICHARDSON:** Thank you, Your Honor.

15 Your Honor, on or about September 28th, 2009, at about
16 one-thirty in the afternoon, officers with the Highway Patrol
17 were traveling on 378. The Defendant was driving the vehicle.
18 It was going sixty-five in a fifty-five. The officers
19 conducted a traffic stop, made contact with this Defendant.
20 The officers noticed an odor of marijuana coming from the
21 vehicle. Officers ordered Mr. Garcia out of the vehicle and
22 conducted a search of his person, noticed that Mr. Garcia had
23 large sums of money in his right front pocket, searched the
24 vehicle. They found two hand-rolled cigars contain -- or
25 blunts, containing green, leafy substance, smelled like

1 marijuana, found three plastic bags containing a white rock-
2 like substance, Your Honor, in the third row seat area.

3 The Defendant also had Twenty-Two Hundred Dollars on
4 him.

5 Your Honor, that -- the white powder was taken, Best-
6 bagged, and submitted to S.L.E.D. for analysis, found to be
7 seven hundred fifty-one grams of, or three-quarters of a kilo
8 of cocaine, Your Honor.

9 The Defendant was facing a mandatory, I believe it was
10 twenty-five to thirty years, Your Honor. The State has
11 allowed the Defendant to plead to the lesser-included, the
12 twenty-eight to one hundred, and the State would respectfully
13 request the recommendation be followed, to ten to fifteen, and
14 I would just ask for the higher range on that, Your Honor.

15 **THE COURT:** All right. Very good. Does the Defendant,
16 as far as you know, have a prior record?

17 **MR. RICHARDSON:** Your Honor, all I could see is, he was
18 charged with possession of marijuana contemporaneously with
19 the cocaine charge.

20 **THE COURT:** All right, sir.

21 **MR. RICHARDSON:** There was some indication the
22 Defendant was going to try to work or something, but in
23 speaking with DEU they indicated recently that he's done no
24 work ---

25 **THE COURT:** All right. Very good.

1 **MR. RICHARDSON:** ---Has not cooperated.

2 **THE COURT:** All right. Very good.

3 All right, Mr. Garcia, as to the facts of this
4 particular case, as to what occurred back in 2009, you heard
5 the Solicitor state those facts for the record, and further a
6 brief summary of those facts is also set forth in your
7 indictment. My question to you is, are those facts true and
8 correct; is that what occurred?

9 A. Yes sir.

10 **THE COURT:** I'm sorry. I didn't hear you, sir.

11 A. Yes sir.

12 **THE COURT:** And you understood when you engaged in that
13 kind of activity you were committing a crime; you understood
14 that?

15 A. Yes sir.

16 **THE COURT:** Have you understood my questions here
17 today?

18 A. Yes sir.

19 **THE COURT:** Have all your answers to me been the truth?

20 A. Yes sir.

21 **THE COURT:** Anybody tell you how to answer my
22 questions?

23 A. No sir.

24 **THE COURT:** And you understand you have the right to
25 appeal your guilty plea within ten days?

1 A. Yes sir.

2 **THE COURT:** I find there's been a substantial factual
3 basis for the plea; I find the Defendant's decision to plead
4 guilty has been done freely, voluntarily, knowingly and
5 intelligently made, he's had the advice of competent counsel
6 with whom he's satisfied, therefore Mr. Garcia's decision to
7 plead guilty to trafficking cocaine, weight twenty-eight to a
8 hundred grams, first offense, is accepted.

9 Yes sir, Mr. Diggs. Be glad to hear from you, sir.

10 **MR. DIGGS:** Your Honor, first of all, it's been a
11 privilege to represent Ubaldo. I've had an opportunity to get
12 to know him as you can see from the paperwork in the case.
13 The incident occurred over two years ago. He has been on
14 monitor and house detention since that time, and eventually,
15 when the Court imposes a sentence, we are going to ask the
16 Court to consider giving him credit for that, a period of time
17 that he has been on the monitor.

18 Your Honor, he is, in spite -- when you look at what the
19 Solicitor said on it's face it appears to be a serious
20 offense. We know about drug activity. We know what can
21 happen and all that, but when you look at your paperwork that
22 was submitted, we don't have a situation here where there is a
23 victim, where somebody is saying, look, this is what he did
24 that caused me to have this particular problem. He's not at
25 that stage in his life. Your Honor, when this happened he was

1 nineteen years old.

2 His father, or step-father, one of the two, had been
3 killed himself in a drug-related shooting. He's a young man,
4 Your Honor. He hasn't really had an opportunity to learn
5 about the world, to learn what the possibilities are in life,
6 and I guarantee you there's going to be a time when this young
7 man, who is now twenty-one, who was nineteen at the time,
8 there's going to come a time in his life when he would not
9 think about doing this again. He knows now that he shouldn't
10 have done it, but he knows -- I submit to you, Your Honor,
11 there will come a time in his life when he wouldn't consider,
12 would not even consider doing it.

13 Your Honor, he's a young man that's very much loved by
14 his family, by his friends, people in the community.

15 I'm going to ask everyone to stand who is here today on
16 behalf of Mr. Garcia.

17 Your Honor, these are family members, they are teachers
18 from school, they are friends in the community, young
19 children, siblings.

20 You can sit.

21 **THE COURT:** Thank you.

22 **MR. DIGGS:** And Your Honor, some of them may want to
23 make a statement to the Court, but he is a student out at
24 Horry-Georgetown Technical College at this point. He's
25 studying Graphic Design. He's talented. Some of the

1 individuals here could show you some of the artwork he's done,
2 has been able to produce.

3 But Your Honor, all of these people are here because
4 they believe in him, and love him. They care about what
5 happens to him. They understand the nature of the incident.
6 They understand how the Court's hands, a lot of times, and in
7 this situation particularly, are simply tied.

8 Your Honor, we appreciate the State working with us in
9 this case, we do, but I'm asking Your Honor to consider the
10 minimum sentence in this situation. Your Honor, seven years
11 for a twenty-one year old individual is a long time, and I
12 would submit the equities in the case are such that Ubaldo is
13 deserving of mercy from the Court.

14 Your Honor, you know, it's just not a situation where he
15 knows these things are bad and he's out there doing them
16 anyway, without any care or concern about. Your Honor can
17 look at him and see the remorse that he feels, the hurt and
18 the pain that he feels now because of what he's done, and he
19 knows the hurt and pain that he's caused his family, what they
20 are going to have to experience in the future, the near
21 future, because they are going to lose him.

22 Your Honor, we are asking you to consider all of these
23 things, the fact he doesn't have a criminal record, because he
24 is young. We are asking Your Honor to consider a seven year
25 sentence. Now the State agrees to charge him for a twenty-

1 eight to one hundred grams. We appreciate that opportunity,
2 Your Honor, we do, but Your Honor, that's an eighty-five
3 percent. It's just enough to get him over that hurdle.

4 There's not a hope for parole after a third. This is
5 some sentence that he's going to have to do what Your Honor
6 imposes, and you can see, without probation or without any big
7 suspended in terms of the sentence, and Your Honor, we are
8 asking that you consider imposing the minimum allowed by the
9 statute in this situation.

10 Your Honor, one additional request we would ask. He
11 knows he is going to have to go to prison. Your Honor, it is
12 the middle of December and we are asking that he be permitted
13 to report after Christmas. I know the Court, from time to
14 time, is able to do that on behalf of Defendants. Your Honor,
15 he has reported here every opportunity, or every time when
16 requested or required to be in court. If he was going to run
17 certainly he would have done it before now. And Your Honor,
18 we are asking you to consider allowing him to remain free
19 until after the Christmas Holidays so that he can spend that
20 with his family.

21 Your Honor, I don't know how many young children are
22 here, but I know there were at least four youngsters across
23 the hall that were too young to come in the courtroom. All of
24 those people are part of his family. Your Honor, we would ask
25 you to consider this request at this time.

1 We appreciate your listening to us, appreciate the time
2 you have given us.

3 **THE COURT:** All right. Was there an individual who
4 wanted to speak on his behalf?

5 Have them come around up to you, Mr. Diggs.

6 A. I just want to say ---

7 **THE COURT:** I'm sorry, sir. Could you tell me your
8 name, please sir.

9 A. My name is Durell Ferguson. I am a friend of his, and
10 I just wanted to say, I knew Junior before the situation, and
11 as you can see, I know him after that, and I just want to say,
12 man, this is like the best friend that I ever had in my life,
13 like he's that kid that tells you not to do something, you
14 know what I mean, and I understand what he's up here charged
15 with, but like, I just don't want you to get the wrong
16 impression of him in your head because of the case that he's
17 charged with, like, as you see, everybody over there likes
18 him. We just ask you for, you know, the least you can give
19 him, Your Honor.

20 **THE COURT:** All right. Thank you very much, sir.
21 Anything else, Solicitor?

22 **MR. RICHARDSON:** No sir, Your Honor. I believe
23 everything has been stated as far as the State, other than the
24 State believes that all mercy due to him has been tendered by
25 the State.

1 **THE COURT:** All right. Very good.

2 (2010-GS-26-01601), State of South Carolina, County of
3 Horry versus Ubaldo Garcia, Jr. regarding trafficking in
4 cocaine, weight twenty-eight to a hundred grams, first
5 offense, Mr. Garcia, I have taken into consideration what's
6 been said on your behalf. I have also taken into
7 consideration the State -- and you were originally indicted
8 for a crime for which the minimum sentence was twenty-five
9 years. The State has offered you a plea bargain which you
10 have decided in your best interest to accept, to a lesser-
11 included offense where the range is seven to twenty-five
12 years.

13 The sentence of the Court in this particular matter is,
14 Defendant is committed to the State Department of Corrections
15 for a determinate term of ten years.

16 Defendant is given credit for any jail time that he has
17 actually served. I do not believe it is proper to extend
18 credit for time spent on GPS monitoring.

19 Mr. Diggs, I appreciate your request regarding the
20 Christmas Holidays. I think, in these circumstances, with the
21 length of the sentence, it's either the pain is going to come
22 now or it's going to come later, and I'm -- in my
23 consideration we are going to impose a sentence and it will
24 start now.

25 Thank you very much.

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MR. RICHARDSON: Thank you, Your Honor.

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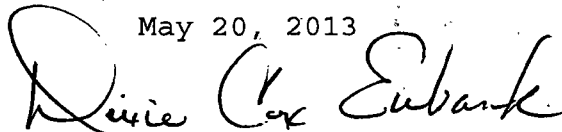
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the **GUILTY PLEA** of the captioned case, relative to appeal, in the **COURT OF GENERAL SESSIONS** for **HORRY COUNTY, SOUTH CAROLINA**, on the 14th day of December, 2011.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

May 20, 2013



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 The State,)
)
 v.)
)
 Ubaldo Garcia,)
)
 Defendant.)
)
 _____)

THE COURT OF GENERAL SESSIONS
 FOR THE 15th JUDICIAL CIRCUIT

Warrant: M-316598 (Trafficking in Cocaine)

**MOTION TO RECONSIDER
 SENTENCE**

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 11 DEC 28 AM 9:45
 CLERK OF COURT

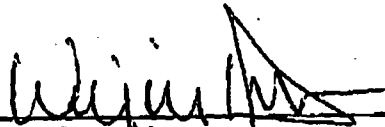
**TO: THE HONORABLE J. GREGORY HEMBREE, SOLICITOR, AND THE
 DEPUTY AND ASSISTANT SOLICITORS OF THE FIFTEENTH JUDICIAL
 CIRCUIT:**

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his undersigned counsel, would request of the Court that it reconsider the sentence imposed in this case. Said motion is based on the grounds that (1) mitigating circumstances warrant a minimum sentence in this case; and (2) defendant should be given credit for the time served under house arrest and electric monitoring, to wit: from the time of arrest on September 28, 2009 until the date of his sentencing, December 14, 2011.

BE SO NOTIFIED!

Respectfully submitted

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
 1700 Oak Street, Suite D
 Myrtle Beach, SC 25977
 843-626-4243

**ATTORNEY FOR THE DEFENDANT,
UBALDO GARCIA**

This 23rd day of December, 2011
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 The State,)
)
 v.)
)
 Ubaldo Garcia,)
)
 Defendant.)

THE COURT OF GENERAL SESSIONS
 FOR THE 15th JUDICIAL CIRCUIT

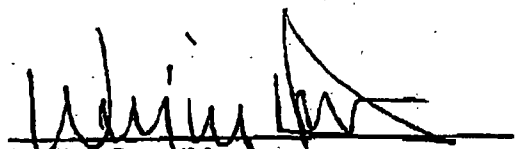
Warrant: M-316598 (Trafficking in Cocaine)

CERTIFICATE OF SERVICE

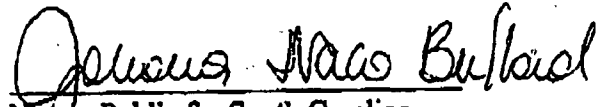
CLERK OF COURT
 11 DEC 28 AM 9:45

This is to certify that I have this 23rd day of December, 2011 deposited one copy of the Motion to Reconsider Sentence in the U.S. Postal Service with proper postage affixed thereto and addressed to opposing counsel as follows:

Brad C. Richardson
 Senior Solicitor
 P.O. Box 1276
 Conway, SC 29526


 William Isaac Diggs

Sworn to before me this 23rd day of
 December, 2011


 Notary Public for South Carolina
 My Commission Expires
 April 7, 2015

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2 COUNTY OF HORRY) (2010-GS-26-01601)
 3)

4 STATE)
 5 VERSUS) TRANSCRIPT OF RECORD
 6)
 7 UBALDO GARCIA, JR.) February 29, 2012
 8) Conway, S. C.
 9)

10 B E F O R E:
 11 HONORABLE STEVEN H. JOHN, Judge.

12 A P P E A R A N C E S:
 13 NANCY COTE, ESQ.
 14 ASSISTANT SOLICITOR FOR HORRY COUNTY
 15 ATTORNEY FOR STATE
 16
 17 WILLIAM I. DIGGS, ESQ.
 18 ATTORNEY FOR DEFENDANT

19 DIXIE COX EUBANK
 20 CIRCUIT COURT REPORTER
 21 FIFTEENTH JUDICIAL CIRCUIT
 22
 23
 24
 25

1 (THE FOLLOWING TAKES PLACE ON FEBRUARY 29, 2012.)

2 THE COURT: All right. This is (2010-GS-26-01601), the
3 State of South Carolina versus Ubaldo Garcia, Jr. The matter
4 was previously before the Court on December 14, 2011, in which
5 time the Court sentenced - as a result of a guilty plea -
6 sentenced Mr. Garcia regarding the offense of trafficking in
7 cocaine, weight twenty-eight (28) to a hundred (100) grams,
8 first offense, to a sentence of ten years. There was a
9 recommendation -- well, the potential sentence could have been
10 from seven to twenty-five years and a Fifty Thousand
11 (\$50,000.00) Dollar fine. There was a recommendation by the
12 State regarding a range of ten to fifteen years. The Court
13 qualified the plea and sentenced the Defendant to the
14 Department of Corrections for a determinate term of ten years,
15 marking the category on the sentencing sheet that the
16 Defendant be given credit for time served.

17 Mr. Diggs has filed a Motion to Reconsider the Sentence
18 in this matter, stating the grounds in the written motion that
19 mitigating circumstances warrant a minimum sentence in this
20 case, and the Defendant should be given credit for the time
21 served under house arrest and electronic monitoring, to wit,
22 from the time of arrest on September 28, 2009, until the date
23 of sentencing, December 14, 2011.

24 All right. Let's see. The Motion was filed on December
25 23rd, 2011, and delivered to the Court at that point in time,

1 on December 23rd, 2011. So it would seem that -- not adding
2 it up in my head, but just the date seems to reflect that it
3 falls within the ten-day time limit regarding the motion,
4 proper time limit for the motion.

5 All right, Mr. Diggs, what do you want to add to your
6 motion, sir?

7 **MR. DIGGS:** Your Honor, we appreciate the Court's time
8 on this case, and the consideration that has already been
9 given by the Court to Mr. Garcia.

10 I would argue, Your Honor, that the mitigating
11 circumstance that I refer to in the Motion is primarily one
12 based on Mr. Garcia's youth. He was nineteen years old at the
13 time of this occurrence, being born in May -- I think it was
14 May 23rd or 26th, of 1990.

15 **THE COURT:** Right. That's -- on the sentencing sheet
16 it has that he was -- date of birth, May 26, 1990, and that
17 would have made him, I guess, twenty-one at the time he was
18 sentenced, I guess.

19 **MR. DIGGS:** Correct, Your Honor. But, of course, being
20 arrested two years prior.

21 **THE COURT:** Right. I understand that.

22 **MR. DIGGS:** Your Honor -- and we made mention of this
23 at the time of the guilty plea that was done in this Court.
24 Mr. Garcia was simply in a really difficult situation. His
25 father, I think the record will reflect - we made note of this

1 at the time - was actually killed in a drug-related incident.
2 It put him -- we go back to, initially on this case, with Mike
3 O'Sullivan out of the Solicitor's Office, was working on it,
4 and the Solicitor's Office was willing to work with Mr. Garcia
5 in the event that he was able to work with the State and help
6 them in their efforts to combat drug activity in this area
7 that was taking place at that time.

8 I would ask the Court to consider what circumstance,
9 what the situation was exactly with Mr. Garcia. He saw his
10 father being killed on one hand, and had concern for himself
11 and his family, I'm sure, on the other hand. I just don't
12 know what a reasonable person is going to do in that situation
13 at the age of nineteen years.

14 Your Honor, he's a good young man. He was in school.
15 He wanted to study to become a culinary -- graphic design. He
16 was in school taking classes to do that. He's talented. I
17 remember one of his instructors coming to be with us during
18 the hearing, at the sentencing initially, the guilty plea and
19 the initial sentencing.

20 And Your Honor, with those things being considered, and
21 now with the passage of time, Mr. Garcia's opportunity to face
22 the reality now of what prison life is like, I would submit to
23 you that justice would be served by imposing a minimum -- the
24 mandatory minimum sentence in this case that's available under
25 the statute, which would be seven years.

1 The Prosecution has allowed Mr. Garcia to plea guilty to
2 that level of offense, and having done so I would ask the
3 Court to consider the mandatory minimum in this situation, and
4 primarily based on Mr. Garcia's youth, his lack of criminal
5 activity, the fact that he had started on a path of learning,
6 studying, and developing -- having career aspiration, and
7 seeking training to develop talents in that area.

8 Your Honor, we would ask you, respectfully, to
9 reconsider the ten years that were imposed, the sentence that
10 was imposed at that time, and reduce it to seven.

11 And additionally, Your Honor, we looked at a lot of the
12 case law on this issue about home detention and the GPS.
13 Admittedly, as an officer of the Court, I didn't discover --
14 didn't come across any case law that directly was on our side
15 on this issue, but as Your Honor knows, the GPS and the house
16 detention issue is slightly separate issues, but both
17 applicable in this case. Mr. Garcia was on house arrest and
18 he was on GPS monitoring, and that's a little bit different
19 from any of the factual scenarios that we find in the case law
20 out of the State of South Carolina regarding credit, or the
21 issue of being given credit for those situations. Admittedly
22 house arrest hasn't warranted credit for -- you know, as a
23 time-served circumstance in our State, but I would submit that
24 house arrest with the GPS monitoring, the limitations on his
25 traveling, that imposed in this case, the typical ones of not

1 being able to travel, other than to go to church and/or to
2 meet with his attorney sufficiently restrictive, sufficiently
3 severe, I would submit, that it warrants meeting the
4 definition of confinement, and we would ask the Court to,
5 under the circumstances of this case, find that Mr. Garcia was
6 a Defendant who was detained, under the circumstances of this
7 case, restrictions on his movement sufficient to allow him
8 credit for the time served under those circumstances,
9 circumstance of house arrest and the GPS monitoring warrant
10 finding that he would be entitled to be given credit for the
11 time that he served under those conditions, Your Honor.

12 **THE COURT:** All right. Thank you, sir.

13 **MR. DIGGS:** Thank you, Your Honor.

14 **THE COURT:** All right. Ms. Cote, be glad to hear from
15 you, Ma'am.

16 **MS. COTE:** Thank you, Your Honor. The State would ask
17 for you to deny this motion, and not reduce the sentence that
18 you imposed back in December of last years. Mr. Garcia has
19 already had his sentencing hearing, Your Honor; you already
20 heard already all these mitigating circumstances about his
21 youth, and you entered the seven years after hearing both from
22 the State and from the Defense at that time.

23 The State and the Court have been more than generous,
24 and more than fair to Mr. Garcia. As you are aware, he was
25 originally indicted with more than four hundred grams on

1 trafficking weight cocaine, Your Honor. It was seven hundred
2 fifty-one grams which carries the mandatory twenty-five to
3 thirty year range, so we allowed him to plead to a reduction
4 of three levels in the twenty-eight to one hundred grams.

5 When I recommended the range of ten to fifteen it wasn't
6 a number that I just pulled out of thin air; it wasn't
7 something that I entered into lightly with Mr. Diggs.
8 Originally Mr. O'Sullivan, who had the case before me, he had
9 a negotiated fifteen years. Mr. Diggs asked me to reduce
10 that. I came up with the range of ten to fifteen. After
11 speaking with DEU it was understood that Mr. Garcia was going
12 to work with them, but then he never did. I didn't want to
13 punish him for that, but I didn't want to reward him for that
14 either. And after speaking with DEU they
15 indicated that Mr. Garcia was still involved in drugs, so I
16 didn't want to reduce it any lower than that ten-year
17 sentence.

18 He -- as for the home detention matter, he had problems
19 while on home detention. Aside from the problems that he had
20 on home detention we don't feel that that's applicable to his
21 time served, based on the case law of our State. But the home
22 detention problems, he was staying out all night, and he
23 actually had a revocation while on home detention, and he
24 would claim his reasons for staying out all night, not
25 attending his medical appointments, school, lawyers, school or

1 church services, were because he was working with DEU, which
2 just wasn't the case; he never worked with DEU.

3 Again, Your Honor, this was a significant amount of
4 cocaine. If I had proceeded to trial he would have been
5 facing twenty-five years, so in our opinion ten years is a
6 gift, and we would ask that you not reduce the sentence
7 anything below what you imposed in December.

8 Thank you.

9 **THE COURT:** Thank you, Ma'am.

10 **MR. DIGGS:** Your Honor, can I make just one point
11 there?

12 **THE COURT:** Yes sir.

13 **MR. DIGGS:** We don't really dispute anything that the
14 Solicitor says. It's unusual, I would submit, for any such a
15 young man, such an early access or entry into the drug
16 activity that takes place in the community because -- and I
17 say that again because he doesn't have any history, that we
18 know of, or any history that he admits to involving drug
19 activity. It's unusual for such a young man, lack of
20 experience in this world, the drug world, to be in possession
21 of such a large amount of cocaine. Normally someone who has
22 that much contraband is going to be higher up in the
23 hierarchy, at a higher level to be able to access and control
24 that much cocaine, and typically they'll get a warrant -- it's
25 going to be an older person, they get a warrant, and more

1 severe sentence under normal circumstances what the Solicitor
2 says is exactly right, it would be a gift to such a person,
3 but to a young man who is not experienced, his first time in
4 this court or any court facing a criminal charge, I would
5 submit that justice -- concern that you would have, Your
6 Honor, of doing justice in this case could be met, it would be
7 met with a seven year sentence in the case. Ordinarily,
8 again, ten years would be a gift to someone facing twenty-five
9 or thirty years in prison, there's no doubt about it, but the
10 circumstances are a little bit different here, and I would
11 submit warrant this consideration of the seven year sentence.

12 **THE COURT:** All right. Thank you, sir.

13 Based on the matters presented to the Court I will
14 respectfully decline to reconsider the sentence that I imposed
15 previously. I took the matters into consideration regarding
16 Mr. Garcia's youth, the lack of a record, where he was in his
17 stage of life. I also took into consideration the facts and
18 evidence presented by the State, and the matters to which Mr.
19 Garcia had plead guilty to. I am not now, nor did I, because
20 it wasn't before me at the time, taking into consideration any
21 opinion as to what Mr. Garcia might still have been doing
22 after he was arrested on September 28, 2009. I took only into
23 consideration the facts of that particular crime, and the
24 other surrounding circumstances when I imposed the sentence,
25 and I felt, and still feel that it is the proper and just

1 sentence in this matter, and respectfully decline to reduce it
2 or to change it.

3 As to the issue about the house arrest and electronic
4 monitoring, I believe the matter has been addressed at least
5 by our Court of Appeals. In State versus Higgins - and that's
6 at 357 S.C. 382 - the credit is for the time that a person has
7 spent in a penal institution, confined in some type of penal
8 institution, and not for house arrest.

9 I understand there was a GPS monitoring attached to the
10 house arrest. I do not think that creates any further
11 exception or credit, and it is also the Court's understanding
12 that when you are out on house arrest you are not subject to
13 the same restraint on liberty and freedoms that you are when
14 you are confined in a penal institution, and therefore I think
15 there is valid reason for the distinction, and for the credit,
16 and the Court did not, and I specifically did not put on the
17 sentencing sheet that he would be given credit for that time
18 under house arrest because I did not think it was applicable,
19 and again, respectfully decline to give him credit for the
20 time of house arrest slash GPS monitoring in this matter.

21 Based upon that then the Court respectfully declines to
22 grant the motion to reconsider the sentence, and reaffirms, in
23 full, the sentence the Court imposed in this matter on
24 December 14, 2011.

25 I believe it would be appropriate, Ms. Cote, if you do

1 not mind, to do a short order to that effect. I appreciate it
2 if -- probably the best thing to do, when you have it
3 prepared, is to e-mail it to my law clerk and to Mr. Diggs at
4 the same time, so that if he has any comments on the proposed
5 order he will be receiving it at the same time the Court does.

6 MS. COTE: Yes sir, Your Honor. Thank you.

7 THE COURT: Yes sir, Mr. Diggs.

8 MR. DIGGS: Your Honor, thank you for hearing us.

9 That's all we have.

10 THE COURT: All right. Very good. Thank y'all very
11 much.

12 MS. COTE: Thank you, Your Honor.

13 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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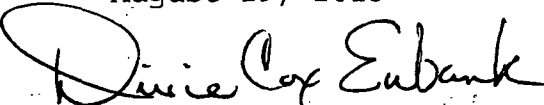
25

C E R T I F I C A T E

1
2
3 I, the undersigned, DIXIE COX EUBANK, Official Court
4 Reporter for the Fifteenth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate and complete Transcript of Record of all the
7 proceedings had and evidence introduced in the **MOTION HEARING**
8 in the captioned case, relative to appeal, in the **COURT OF**
9 **GENERAL SESSIONS for Horry County, South Carolina**, on the 29th
10 day of February, 2012.

11 I DO FURTHER CERTIFY that I am neither of kin, counsel
12 nor interest to any party hereto.

13 August 19, 2013

14 
15 DIXIE COX EUBANK

16 CIRCUIT COURT REPORTER

17 FIFTEENTH JUDICIAL CIRCUIT
18
19
20
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22
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24

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

STATE OF SOUTH CAROLINA

VS.

UBALDO GARCIA JR

DEFENDANT.

) IN THE COURT OF GENERAL SESSIONS

) Indictment: 2010GS2601601

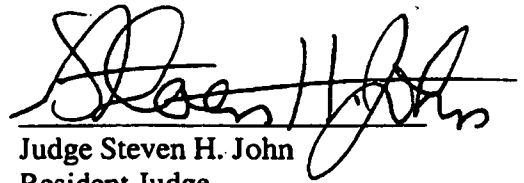
ORDER DENYING MOTION TO RECONSIDER SENTENCE

FILED
2012 MAR - 1 PM 2:53
MELANIE HUBBARD
CLERK OF COURT
WARD

Nancy G. Cote, attorney for the State, and Attorney William I. Diggs on behalf of the Defendant, appear before the Court on this matter. The Defense moved for the Court to reconsider the sentence of ten years imposed by The Honorable Steven H. John on December 14, 2011. The Defense requested the minimum sentence of seven years be imposed as well as that credit should be given to the defendant for time he was on home detention and electronic monitoring.

After hearing from the Defense and the State, the Court denied the Defense's motion and upheld the sentence of 10 years imposed on December 14, 2011. Additionally, the Court denied the request for credit for time served while the Defendant was on home detention. *State v. Higgins*, 357 S.C. 382, 593 S.E.2d 180 (Ct. App. 2004).

AND IT IS SO ORDERED.



Judge Steven H. John
Resident Judge
Fifteenth Judicial Circuit

February 29, 2012
Conway, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge
Case No. 2010-GS-26-01601

The State,

Respondent,

v.

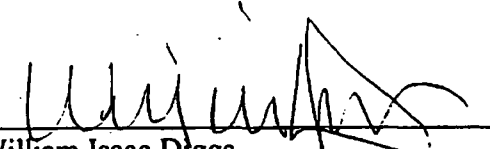
Ubaldo Garcia Jr.

Appellant.

NOTICE OF APPEAL

Ubaldo Garcia Jr. appeals the Order dated February 29, 2012, Denying Motion to Reconsider Sentence imposed by the Honorable Steven H. John on December 14, 2011. The order denying reconsideration was received by counsel on March 6, 2012.

March 8, 2012



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243
Attorney for the Appellant

Other Counsel of Record:

Nancy G. Cote
Assistant Solicitor
P.O. Box 1276
Conway, SC 29526
843-915-5460
Attorney for the Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge
Case No. 2010-GS-26-01601

The State,

Respondent,

v.

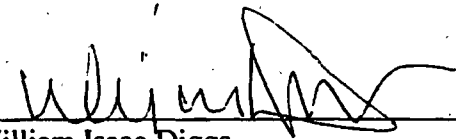
Ubaldo Garcia Jr.

Appellant.

CERTIFICATE OF SERVICE

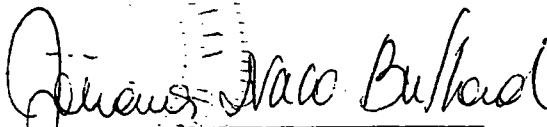
This is to certify that I have this 8th day of March, 2012 deposited one copy of the Notice on Appeal in the U.S. Postal Service with proper postage affixed thereto and addressed to opposing counsel as follows:

Nancy G. Cote
Assistant Solicitor
P.O. Box 1276
Conway, SC 29526



William Isaac Diggs

Sworn to before me this 8th day of
March, 2011



Notary Public for South Carolina
Commission Expires
April 7, 2015



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street, Suite D
Myrtle Beach, SC 29577

843.626.4243

843.626.5123 Fax

www.MyrtleBeachLaw.com

March 27, 2012

The Honorable V. Claire Allen, Deputy
Clerk
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: The State v. Garcia, Ubaldo

Dear Ms. Allen

This is in response to your letter dated March 23, 2012, and pursuant to S.C.A.C.R. 203(d)(1)(B)(iv). Mr. Garcia did plead guilty before the Honorable Steven H. John, Judge on December 14, 2011 to trafficking in cocaine. He received a sentence of 10 (ten) years. Two years prior to the plea, Mr. Garcia had been admitted to bail. A condition of his release was home detention *and* he was required to wear a GPS monitoring device. He did so for two (2) years. At the time he was sentenced, counsel argued that Mr. Garcia should receive credit for the time he has served on home detention and while wearing the GPS monitor. There is no case law directly on point in this circumstance in South Carolina. The closest case rejects the argument for receiving time served while on home detention. However, that case did not require the defendant to wear a GPS monitoring device. Judge John denied my request.

Mr. Garcia filed a motion to reconsider. ~~This motion was heard on February 23, 2012~~ Again the argument for home detention GPS monitoring credit was made, but again it was rejected. That is the order / ruling which has been appealed. Thus, we would assert that the issue is appealable and preserved, notwithstanding the guilty plea which was entered. If you have any questions, please advise. With kind regards, I am

Sincerely yours,

William Isaac Diggs

RECEIVED

MAR 29 2012

Cc: Chief Appellate Defender Robert M. Dudek
Senior Assistant Deputy Attorney General Salley W. Elliott

SC OFFICE OF
APPELLATE DEFENSE

38

WITNESSES

Matthew Sarvis South Carolina Highway Patrol

DOCKET NO. 2010-GS-26-1601

The State of South Carolina

County of Horry

Michael J. O'Sullivan
09H04030

COURT OF GENERAL SESSIONS

APRIL, 2010 TERM

ARREST WARRANT NUMBER

M318598
CDR: 0281 44-53-0370(e)(2)(e)
DOA: 9/29/2009

THE STATE

vs.

Ubaldo Garcia Jr. H/M
Myrtle Beach, SC 29588-6850

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAR 25 2010

ATTORNEY: Diggs, William I.

VERDICT

Indictment for

TRAFFICKING COCAINE

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

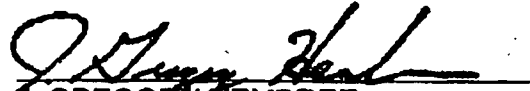
At a Court of General Sessions, convened on March 25, 2010, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING COCAINE

CDR: 0281 44-53-0370(e)(2)(e)

That **Ubaldo Garcia Jr** did, in Horry County, State of South Carolina, on or about September 28, 2009, knowingly sell, deliver, purchase or bring into this State, or aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than four hundred grams, the same being a controlled substance all within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of Section 44-53-370(e)(2)(e), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

COUNTY OF Horry
STATE VS.
Ubaldo Garcia Jr

INDICTMENT/CASE#: 2010GS2601601
A/W#: M316598
Date of Offense: 9/28/2009
S.C. Code §: 44-53-0370(e)(2)(d)
CDR Code #: 0288

AKA: _____
Race: HISPANIC Sex: M Age: 21
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Myrtle Beach, SC 29588-6850
DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Trafficking in cocaine, 28--100 g. 1st offense (7-25 yrs. + 50,000)

in violation of § 44-53-0370(e)(2)(b)1 of the S.C. Code of Laws, bearing CDR Code # 2359
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST: Nancy G. Cote SCB76347 SC Bar# _____ Defendant Ubaldo Garcia Jr Attorney for Defendant W. J. ... SC Bar# 11689

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

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 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/ca
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 236.90

May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pp in equal, consecutive weekly or monthly
pmts. of \$ 25.00 beginning 11/11/2009
\$ _____ paid to Public Defender Fund
Other: _____

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

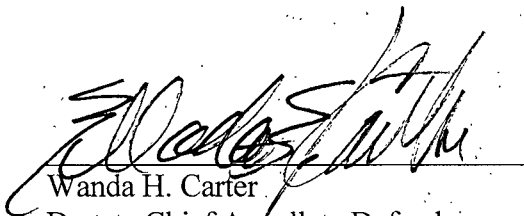
Clerk of Court/ Deputy Clerk Mebanie Huggins Ward
Court Reporter: Dixie Eubank
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 129
Sentence Date: 12/14/11

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 4th, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

MAR 04 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County
Steven H. John, Circuit Court Judge

RECEIVED

MAR 04 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

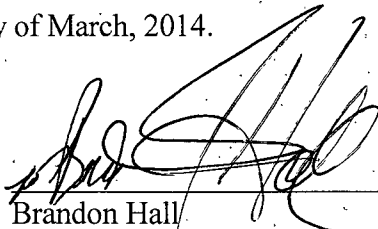
V.

UBALDO GARCIA,

APPELLANT

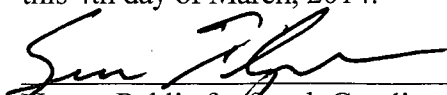
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of March, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of March, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022