

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Sep 16 2020

SC Court of Appeals

Appeal from Richland County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDRE DESHAWN POSEY,

APPELLANT

APPELLATE CASE NO 2019-001997

RECORD ON APPEAL

VICTOR R SEEGER
Appellate Defender

ALAN WILSON
Attorney General

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

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ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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PROBATION VIOLATION HEARING TRANSCRIPT DATED NOVEMBER 22, 20191

INDICTMENTS AND SENTENCE SHEETS.....9

CERTIFICATE OF COUNSEL15

1 State of South Carolina) In the Court
 2 County of Richland) Of General Sessions
 3 State of South Carolina,) Indictment Nos.: 2015-GS-40-03909
 4) 03911
 5)
 6 Plaintiff,)
 7 vs.) Transcript of Record
 8)
 9 Andre Posey,)
 10)
 11)
 12 Defendant.)
 13 _____)

8
 9 November 22, 2019
 10 Lexington, South Carolina

11
 12 BEFORE:
 13 The Honorable Frank R. Addy, Junior, Judge

14
 15 APPEARANCES:
 16
 17 South Carolina Probation, Parole and Pardon
 18 Services
 19 Agent Price, Appearing for the Department
 20 Jean Popowski, Assistant Public Defender
 21 Attorney for the Defendant

22 ALSO PRESENT:
 23 Andre Posey

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PAGE

PROBATION VIOLATION

3

Certificate of Reporter

8

EXHIBITS

NO. DESCRIPTION

ID

EVDS.

NONE

1 Thereupon, the following proceedings were had,

2 MR. RENTIERS: Andre Posey.

3 Thereupon,

4 ANDRE POSEY

5 after having been first duly sworn, testified as follows,

6 THE COURT: Apparently Mr. Posey is on probation for
7 assault and battery by a mob, false imprisonment, and
8 burglary third degree. Judge Hood put him on probation
9 for all this back in 2015. Agent, you want to tell me
10 about the situation here, how he's done while on
11 probation please.

12 AGENT PRICE: Your Honor, first off, I would like to
13 say about the sentences. This case originated in
14 Richland County. They entered these incorrectly. These
15 are all suspended YOA sentences.

16 THE COURT: Oh, okay. Go ahead please.

17 AGENT PRICE: The current violation is financial,
18 Your Honor. All of his previous violations have been
19 financial. Normally we wouldn't recommend a revocation,
20 but in this case Mr. Posey has tested positive for
21 marijuana multiple times over the course of his
22 probation. He just admitted this morning when he came in
23 that he would be positive today for it so he has money to
24 buy weed but he doesn't have money to pay his
25 restitution. He has paid a total of \$836.00 since 2015

1 which averages out to about \$16.72 a month on
2 restitution. He didn't pay anything for the entire year
3 2017. The last time he made a payment was in May. The
4 last time before that was in December. It just seems as
5 though he's not making an effort to pay this restitution
6 off.

7 THE COURT: All right. Tell me about Mr. Posey, if
8 you could.

9 MS. POPOWSKI: Thank you, Your Honor. Mr. Posey is
10 20 years old. He has no other prior record besides this
11 incident that he's on probation for and that incident he
12 was arrested for that when he was 16. They came and
13 arrested him at his school and that was the end of his
14 time in high school. Right now he's working full-time
15 and he's also doing online classes to get his GED at
16 night. He works at Pro Composite. He tells me makes
17 \$1200.00 or less per month. He has a two year old little
18 girl and her mother both live with him. He's financially
19 supporting them. The mother's income is fairly
20 inconsistent is what he tells me.

21 He tells me he has a hundred dollars today. That's
22 all he's got to pay and from what I can tell with my
23 discussions with the agent and my client, he shows up
24 when he's supposed to. He has not absconded in any way.
25 He's also honest with the agent. I witnessed that today

1 when the agent asked him if he would test positive for
2 marijuana. He was honest. He also tells me that before
3 they have not had to actually test him because he's just
4 been honest about that. He tells me it's just marijuana
5 and that he doesn't actually buy it. It's something that
6 is shared with him with friends. It's not a daily thing,
7 but he is willing to submit to substance abuse counseling
8 should the court order that, and he also tells me that if
9 he is incarcerated today, that his child and mother won't
10 have any financial support. That's all I have, Your
11 Honor.

12 THE COURT: All right. Mr. Posey, anything else
13 you want to say, sir?

14 ANDRE POSEY: Uhm, she basically just stated
15 everything.

16 THE COURT: All right. Mr. Posey, they've done
17 everything they can for you and I did some quick
18 calculations. If you had paid or saved up one dollar per
19 day since the time that you were beginning - or since the
20 time that you began your probation, you would have paid,
21 or would have \$1460.00 to have paid your restitution and
22 I find it hard to believe that you have been completely
23 unable to make those payments so the Court will be
24 activating the Youthful Offender Act sentence and asking
25 that you be screened for the Shock incarceration program.

1 Mr. Posey, you've got discipline issues and it has
2 nothing to do with money at this point. Any outstanding
3 restitution will be enrolled as a civil judgment against
4 Mr. Posey. I am not revoking the probation on the false
5 imprisonment charge. That's not actually a crime so
6 that's just going to be terminated. But the Y's on the
7 other two charges will be activated and he will be
8 screened for Shock. Wish you luck, Mr. Posey.

9 AGENT PRICE: Thank you, Your Honor.

10 ANDRE POSEY: There's no chance for me to speak up?

11 THE COURT: I gave you a chance a moment ago, but
12 I'm happy to hear something that you want to tell me now,
13 if you want.

14 ANDRE POSEY: I don't see how it would be a
15 discipline issue. Like I have a piece of crap car like
16 that's old. It's costing me money to fix. Like I didn't
17 have a job. I farmed through the summer and sell
18 watermelons or chop down trees and sell wood and like
19 it's been hard out here on the street and then I got out
20 at 16 years old. I don't know nothing like about this.
21 I got a felony on my record. It's super hard to get a
22 job. Like it's either harder to find a job to work, but
23 like I just got off of the child support, just got back
24 in my daughter's life.

25 THE COURT: And I'm not -- I'm hoping you're not

1 gone that long, Mr. Posey.

2 ANDRE POSEY: I don't get how it's a discipline
3 issue? Like I work every day. I come home and go to
4 school online. Like I can give you my teacher's number.
5 She actually has it like a time that I be on the computer
6 at my house. Like she have a log.

7 THE COURT: You've got four prior violations.
8 There's a time when the chickens just have to come home
9 to roost, Mr. Posey.

10 ANDRE POSEY: For financial violations.

11 THE COURT: I understand.

12 ANDRE POSEY: I've never been violated for any,
13 breaking a crime, breaking the law or anything.

14 THE COURT: I appreciate your position, Mr. Posey.

15 ANDRE POSEY: Well, can I - can I make - can I call
16 my father? I drove his truck over here. He's currently
17 at work.

18 THE COURT: They will make arrangements. If you
19 want to give the keys to the jailer or somebody, they can
20 make arrangements for your dad to come get your truck,
21 okay? Good luck, sir.

22 AGENT PRICE: Thank you, Your Honor.

23 WHEREUPON, THE HEARING WAS CONCLUDED.

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CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)
(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
and Official Circuit Court Reporter for the Eleventh Judicial
Circuit in and for the State of South Carolina, do hereby
certify that I reported the proceedings in the before
captioned case in the Court of General Sessions in and for the
State of South Carolina on the 22nd day of November, 2019.

I FURTHER CERTIFY that the forgoing 7 pages
constitute a true and accurate record of said proceedings.

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

IN WITNESS WHEREOF, I have hereunto set my hand at
Lexington County, this 1st day of March, 2020.

By s/Steven E. LeBlanc

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

WITNESSES

(S) Chauncey B Duckett
- Columbia Police Department

DOCKET NO. 2015GS4003909

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

2015A4021600190

COURT OF GENERAL SESSIONS

JULY TERM 2015

007

THE STATE
vs.

Andre Deshawn Posey

ACTION OF GRAND JURY

TRUE BILL

JUL 17 2015

Foreperson of Grand Jury

Date:

VERDICT

Indictment for
BURGLARY / BURGLARY (AFTER JUNE
20, 1985) - FIRST DEGREE

SC Code: 16-11-0311
CDR Code: 0079

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 15, 2015, the
 Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Andre Deshawn Posey did in Richland County on or about December 31, 2014, enter the dwelling of ELENA HERNANDEZ located at 906 Rosedale Arch, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant, did enter during the hours of darkness or during nighttime hours and/or did cause physical injury to a non-participant in the crime and/or used or threatened to use a dangerous instrument in violation of Section 16-11-0311(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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Chauncey B Duckett

- Columbia Police Department

DOCKET NO. 2015GS4003911

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

2015A4021600192

COURT OF GENERAL SESSIONS

JULY TERM 2015

007

ACTION OF GRAND JURY

**THE STATE
vs.**

Andre Deshawn Posey

TRUE BILL

JUL 17 2015

Foreperson of Grand Jury

Date:

VERDICT

**Indictment for
ASSAULT & BATTERY BY MOB, 3RD
DEGREE**

**SC Code: 16-03-0210 (D)
CDR Code: 3433**

Foreperson of Petit Jury
Date:

COUNTY OF Richland
STATE VS.
Andre Deshawn Posey
AKA:
Race: BLACK Sex: M Age: 16
DOB: SS#:
Address: Drive Lot 8
City, State, Zip: Columbia, SC
DL#: SID#:

INDICTMENT/CASE#: 2015GS4003909
A/W#: 2015A4021600190
Date of Offense: 12/31/2014
S.C. Code § : 16-11-0311
CDR Code #: 0079

RECOMMENDED
SENTENCE SHEET
NEGOTIATED

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Burglary 3rd Degree

CONVICTED OF or PLEADS

in violation of § 16-11-313 of the S.C. Code of Laws, bearing CDR Code # 427
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: Pauling, Hans SC Bar# 068602 Defendant Attorney for Defendant SC Bar# 101350

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of days/months/years or under the Youthful Offender Act not to exceed 5 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 3

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 JTUP AFTER 2Y
Total: \$ 1080 plus 20% fee: \$
days/hours Public Service Employment

Payment Terms: Joint + SEVERAL
Set by SCDPPPS per order

Recipient: 2015H4013906

Table with 2 columns: Fee 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 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 \$

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:
NO CONTACT WITH VICTIM(S)
DIRECTLY OR INDIRECTLY

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

Clerk of Court/ Deputy Clerk Jeanette McBride B
Court Reporter: Ambrozine
SCCA/217 (03/2011)

Presiding Judge Pettard
Judge Code: 9/28/15
Sentence Date: 2/16/16

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

Andre Deshawn Posey

AKA: _____

Race: BLACK Sex: M Age: 16

DOB: _____ SS#: _____

Address: _____ Drive Lot 8

City, State, Zip: Columbia, SC

DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery by Mob, 3rd degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4003911

A/W#: 2015A4021600192

Date of Offense: 12/31/2014

S.C. Code § : 16-03-0210 (D)

CDR Code #: 3433

RECOMMENDED
SENTENCE SHEET
NEGOTIATED

CONVICTED OF or PLEADS

in violation of § 16-03-0210 (D) of the S.C. Code of Laws, bearing CDR Code # 3433

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: Hans Paulig 68002 Andre Posey 101350
Paulig, Hans SC Bar# Defendant Attorney for Defendant SC Bar#

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

for a determinate term of _____ days/months/years or under the Youthful Offender Act not to exceed 1 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 3

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

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 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		\$

PTUP After 24
_____ 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: _____

NO CONTACT WITH VICTIM(S)
DIRECTLY OR INDIRECTLY

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Jeanette McBride B
Ambrose

Presiding Judge

Judge Code:

Sentence Date:

Rehoad

2164

9-28-15

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Victor R Seeger
Appellate Defender

RECEIVED
Sep 16 2020
SC Court of Appeals

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

ATTORNEY FOR APPELLANT

This 16th day of September, 2020.

