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August 27, 2013

(By E-Mail)

Patrick G. Dennis, Esq. (PatrickDennis@schouse.gov)
SC House of Representatives
House Judiciary Committee
P. O. Box 11867
Columbia, SC 29211

Re: State v. Samuel Avery McCauley
Charges: Felony DUI/Reckless Homicide
Case Nos: 2011-GS-10-07382 and 2011-GS-10-06799
Our File No. 2011-1196

Dear Mr. Dennis:

Bob Rees of your office called me yesterday, to ask that I provide you with a timeline of the events with respect to the above case.

I understand from Mr. Rees that Judge Thomas Hughston suggested to you that I would be able to produce such a chronology. I am speculating that Judge Hughston may have been alluding to an e-mail that I sent to Charleston Post-Courier reporter David Slade, in response to the Judge's request to Solicitor Scarlett Wilson and to me to provide the newspaper with copies of all communications exchanged with respect to the McCauley case.

Accordingly, you will find enclosed my email of July 26th to Mr. Slade, together with copies of the documents to which the e-mail to Mr. Slade refers.

Additionally, and because I am not fully certain what information you seek, following is a brief synopsis of the events in the case:

1. May 14, 2012. Mr. McCauley pled guilty to one count each of Felony DUI/Death and Reckless Homicide, arising from a single, one-death accident. Sentencing was deferred for a pre-sentence investigation. At the Defendant's request he was taken into custody.

2. November 19, 2012. Pre-sentence report was submitted to the court.

3. January 11, 2013. Sentencing is set for January 18th. Defendant's Sentencing Memorandum is filed with the court; copies are provided to Judge Hughston and Assistant Solicitor Jennifer K. Williams. (Slade email, item #2)

4. January 18, 2013. McCauley is sentenced to 15 years, suspended on service of ten for the felony DUI, and 10 years, concurrent, for the reckless homicide.

5. January 25, 2013. McCauley files motion to reduce sentence. (Slade email, item #4)

6. February 4, 2013. Judge Hughston writes assistant solicitor Williams and me, setting a briefing schedule for the motion for reconsideration. It is noteworthy that Judge Hughston advises counsel: "...I will then do an order, or may ask for a hearing..." (Slade email, item #5)

7. February 22, 2013. McCauley files Memorandum in Support of motion to reduce sentence. (Judge Hughston had extended the timeline for filing.) (Slade email, item # 8)

8. March 4, 2013. State files response to the motion for reduction of sentence.

9. March 11, 2013. McCauley files reply memorandum to State's response. (Slade email, item # 9)

10. May 20, 2013. Judge Hughston files Order reducing the active sentence from 10 years to five years; however, only addressing indictment #6799 (the felony DUI charges).

11. May 30, 2013. I write to Judge Hughston, pointing out that his May 20th Order only addressed the felony DUI indictment; and asking whether he intended to also address the reckless homicide. The Solicitor is cc'd with my letter.

12. June 4, 2013. Judge Hughston files an amended sentencing order for the reckless homicide case, reducing the active sentence from ten years to five years. (Note: My office discovered Judge Hughston's order reducing the felony DUI sentence only because my paralegal routinely checks filings in my active cases. At the time, I did not stop to think that the Clerk of Court's practice in Common Pleas Court of notifying attorneys of record when orders are filed is not also followed in General Sessions cases. Therefore, I assumed that at some point Solicitor Wilson had been notified by the Clerk of Court about filing of the orders on May 20th and June 4th. I understand, from a later conference with Judge Hughston and Solicitor Wilson, that Judge Hughston also thought that the process for the Clerk to notify attorneys of record was the same in General Sessions as it was in Common Pleas.)

13. July 17, 2013. Solicitor files motion to re-open defendant's sentencing hearing.

14. July 19, 2013. Judge Hughston writes attorneys with respect to a hearing on the State's motion.

15. July 25, 2013. McCauley files motion to dismiss the State's motion to re-open; and return to State's motion to re-open. (Slade email, item # 15)

16. August 1, 2013. A hearing is held on State's motion to re-open. Judge Hughston files an order declining to change the sentences last imposed.

I hope that this chronology and the attached documents will be of some assistance to you. Because we have not yet spoken, and because I see that you are counsel to the House Judiciary Committee, I must assume that your inquiry may have something to do with Judge Hughson's reappointment.

I acknowledge that my standing to comment about Judge Hughston may be subject to scrutiny because my client's sentence was the subject of the court's decision that has most likely given rise to this inquiry. Notwithstanding, I feel compelled to

observe that I have always known Judge Hughston to be professional, straightforward, above board, honest and considerate with all attorneys, clients and victims who have appeared before him. In competence, I would rank him very highly among the circuit judges before whom I have practiced.

With respect to the current case, I believe that Judge Hughston has been unfairly criticized in at least three respects:

First, I am convinced as a matter of law that there was no legal requirement that a physical hearing be held on the motion to reduce sentence. Without unnecessarily repeating the arguments made in Mr. McCauley's return to the State's motion to re-open (Slade email, item #15), Rule 29 of the Rules of Criminal Procedure clearly provides that a court need not conduct a physical hearing on a post-trial motion to reduce sentence. This has been the practice for the forty-four years in which I have engaged in the active practice of law, particularly dating back to the days when circuit judges rotated more frequently then presently. The practice enables a trial judge to make decisions as to post trial matters, without the necessity of physically returning to the circuit for a hearing.

The Victim's Bill of Rights provides that a victim has the right to be present when a defendant has a right to be present, for a proceeding. In the case of *State vs. Bradley,* cited in our return to the State's motion to re-open, the Court of Appeals clearly held that a defendant need not be present at his own motion to reduce sentencing, even when the trial judge denies the motion. Therefore, if the defendant had no right to a hearing, neither did the victim.

Secondly, in Judge Hughston's letter of February 4, 2013 to counsel, he specifically informed us that he might rule on the motion for reduction of sentence without a hearing. The assistant solicitor then assigned to the case did not ask Judge Hughston for a hearing, nor did she object to his deciding the issue on the briefs.

It is unfair, now, to criticize Judge Hughston for that decision. Particularly in the face of the clear authority of the court to decide post trial criminal motions on the briefs, it was also inappropriate to mischaracterize the judge's discretionary decision as "threatening the integrity of our criminal justice system" or not "treating the victims with fairness, respect and dignity," because the judge was clearly authorized to handle the matter the way that he did.

Thirdly, and finally, a news article in the Post-Courier on Saturday, August 24th purports to compare Judge Hughston's sentencing practices with two other resident

circuit judges, and includes quotes from blogs and from disgruntled family members that his sentencing history is too lenient.

The unfairness of this criticism is that Judge Hughston is routinely assigned to be the "plea judge" in general sessions court. Routine guilty pleas are the necessary mechanism to manage the general sessions docket. In 99% of those pleas, everybody - which is to say the assistant solicitors, the defense lawyers, the defendants, the probation officers, the sheriffs and the victims- everybody knows that the defendants will receive probationary sentences. To now suggest that what has been openly the practice is somehow wrong, is disingenuous in the extreme.

Please advise me if I may assist to shed more light on this case.

Sincerely,

Capers G. Barr, III

CGBIII/meg
Enclosures (as stated).