



State of South Carolina Office of the Governor

NIKKI R. HALEY
GOVERNOR

1205 PENDLETON STREET
COLUMBIA 29201

March 8, 2016

The Honorable Alan Wilson
P.O. Box 11549
Columbia, South Carolina 29211

Dear Attorney General Wilson,

This letter is written to ask for your opinion regarding the Governor's authority in two separate situations – 1) whether the Governor has the authority to declare a public office vacant or suspend a public official for three counts of failure to file a tax return and felony driving under the influence with bodily injury, and 2) whether the Governor has the authority to suspend a public official for a pattern of driving under the influence charges.

Situation One

On Tuesday, March 1, 2016, our office received a sentencing sheet (attached) indicating that Richland County Councilman Kelvin E. Washington waived indictment and pled guilty to three counts of failure to file a tax return in violation of Section 12-54-44(B)(3). It has also come to our attention that he has recently been charged with felony driving under the influence with bodily injury.

As you are aware, pursuant to Article VI, Section 8 of the South Carolina Constitution, the Governor may suspend an officer of a political subdivision who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment. Further, in the case of conviction, the office shall be declared vacant and the vacancy filled as may be provided by law.

Specifically, we are asking whether three counts of failure to file a tax return is a crime of moral turpitude. It is our understanding that if three counts of failure to file a tax return are found to be a crime of moral turpitude and because Mr. Washington has already pled guilty, the Governor would have the mandatory duty to declare Mr. Washington's county council seat vacant to allow for a special election to fill his seat.

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Further, we are asking whether felony driving under the influence with bodily injury is a crime of moral turpitude. We acknowledge that if it is determined that felony driving under the influence with bodily injury is a crime of moral turpitude, the Governor would not have the authority to suspend Mr. Washington for this charge until an indictment is issued or until Mr. Washington waives indictment.

Situation Two

It has come to our attention that Lexington County Solicitor Donnie Myers was recently arrested and charged with driving under the influence and was reportedly charged previously for the same offense in 2005.

As previously stated, pursuant to Article VI, Section 8 of the South Carolina Constitution, the Governor may suspend an officer of a political subdivision who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment.

Specifically, we are asking whether driving under the influence in either one or two instances is a crime involving moral turpitude. We acknowledge that if it is determined that driving under the influence is a crime of moral turpitude, the Governor would not have the authority to suspend Mr. Myers for this charge until an indictment is issued or until Mr. Myers waives indictment.

Thank you for your assistance with this request. Please let me know if you have questions.

Sincerely,



Holly G. Pisarik
Chief Legal Counsel

Enclosure(s)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND
STATE

INDICTMENT/CASE#: 2016 -GS- 40 - 1191

VS.
KELVIN EMIL WASHINGTON, Sr.
AKA:

AW#: 2016A4010500215

Race: B Sex: M Age:

Date of Offense: 04/15/13

DOB: SS#:

S.C. Code §: 12-54-44(B)(3)

CDR Code #: 2759

Address: 553 ADAMS SCOTT RD

City, State, Zip: GADSDEN SC 29052

SENTENCE SHEET

SID#

IV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADS

TO: FAILURE TO FILE TAX RETURN

In violation of § 12-54-44(B)(3)

of the S.C. Code of Laws, bearing CDR Code # 2759

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

(CSC w/minor 1" or Lawd Act)

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

ATTEST:

Solicitor

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 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 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 ☐ OrderedTotal: \$ 1000¹² plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. Or Job Corp.

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 47.8 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

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, \$47.12 requires \$500 to be paid to clerk during probation.

Presiding Judge

Judge Code: 132

Sentence Date 2-10-16

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND
STATE

INDICTMENT/CASE#: 2016 -GS- 40 - 1192

VS.

KELVIN EMIL WASHINGTON, SR.

AW#: 2016A0010500216

AKA:

Date of Offense: 04/15/14

Race: B

Sex: M

Age:

S.C. Code §: 12-54-44(B)(3)

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 2759

Address: 553 ADAMS SCOTT RD

City/State/Zip: GADSDEN SC 29052

SENTENCE SHEET

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

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TO: FAILURE TO FILE TAX RETURN

In violation of § 12-54-44(B)(3)

of the S.C. Code of Laws, bearing CDR Code # 2759

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted. ☐ Lesser Included Offense.☒ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☒ Without Negotiations or Recommendation.☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

[Signature] 14718
Attorney

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 1 days/months/years or ☐ under the Youthful Offender Act not to exceed 36 months/years

and/or to pay a fine of \$ 2500; provided that upon the service of STS days/months/years and/or payment of 36 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 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 18-25-20 or 18-25-85 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered

Total: \$ 1000 plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

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
§58-5-2895 (DUI Assessment)	\$12
§58-1-286 (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
§58-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

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, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk

Court Reporter.

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 132

Sentence Date: 2-10-16

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND
STATE

VS.

KELVIN EMIL WASHINGTON, JR.

AKA:

Race: B Sex: M Age:

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Address: 553 ADAMS SCOTT RD

City, State, Zip: GADSDEN SC 29052

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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ATTEST:

Solicitor SC Bar # 14718 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 1 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 250 days/months/years and/or payment of \$ 250 ; plus costs and assessments as applicable; the balance is suspended with probation for 26 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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§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	\$

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

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:

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Presiding Judge

Judge Code:

Sentence Date

2-10-16