

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

November 28, 2018

N448 STATE MAIL
Mr. Michael C. Stelljes
SBI: 00543789
Howard R. Young Correctional Institution
1301 E. 12th Street
Wilmington, DE 19801

RE: State of Delaware v. Michael C. Stelljes
Case ID: 1702005851

Dear Mr. Stelljes:

I have reviewed your motion for postconviction relief, and it is denied.¹

You pled guilty to driving under the influence and two counts of vehicular assault on September 20, 2018. The sentence reflected the plea agreement. On the driving under the influence charge, you were imprisoned for 18 months with the balance suspended after serving 90 days under the provisions of 11 Del.C. § 4204(k) for level 2 probation. On each of the vehicular assault in the second

¹ This motion was submitted under Superior Court Criminal Rule 61. The Rule speaks of “judgment of conviction” which technically is a guilty verdict after trial. An admission at a violation is not a guilty verdict, and the motion is summarily dismissed. The use of a Rule 61 application to attack the sentence received for a violation of probation is inappropriate. *State v. Berry*, 2007 WL 2822928 at *1 (Del. Super. Ct. Sept. 25, 2007). On the other hand, Rule 61 consideration was given to violation of probation proceedings in *State v. Phillips*, 2002 WL 524281 (Del. Super. Ct. March 4, 2002); *Phillips v. Kearney*, 2003 WL 2004392 at *2 (D. Del. April 21, 2003). However, even if Rule 61 applies, which it does not in my view, the motion would nonetheless be denied for the reasons discussed above.

degree charges, a one year sentence was entered suspended for probation.²

Upon release from level 5, you started probation. On January 18, 2018, your probation officer filed a violation report.³ It alleged that you violated conditions 1, 2, 3, 7 and 9. Condition 1 reported an arrest for shoplifting which was pending in Kent County, Case ID #1801003194; The docket is attached as *Exhibit B*. You made reference to a drug paraphernalia charge in Court of Common Pleas Kent County Case ID 1802008651. The docket is attached as *Exhibit C*. There was no mention of the charge in the violation report. Condition 2 alleged that you failed to report the shoplifting arrest and police contact; Condition 3 claimed you failed to report to probation on 12/19/17; Condition 7 alleged you tested positive for illegal drugs without a prescription and Condition 9 alleged a violation of a zero tolerance condition related to the drug use. A hearing was held on February 23, 2018 and you were represented by Mr. Jeffery McLane, Esquire, a public defender.⁴ At his request, Condition 1 was not adjudicated because the charge was pending. You admitted violating all the remaining conditions. A TASC evaluation was requested by me to learn further information, and sentencing was deferred.

On March 23, 2018, a sentencing hearing was held.⁵ Again, you were represented by the public defender's office. TASC assessed you and presented a verbal report. Your background with drugs was discussed. The recommendation was for closer supervision. This could be at either the Crest Program or at level 4 home confinement with TASC and an Intensive Outpatient Program ("IOP"). Your probation officer recommended the Crest Program. Ultimately, you were sentenced to level 5 imprisonment suspended for completion of Crest.

On March 28, 2018, you arrived at the Central Violation of Probation Center to begin the Residential Substance Abuse Treatment Program. On April 2, 2018, you were discharged for refusing to participate. Your refusal was the basis for a second violation of probation report. On April 9, 2018, a hearing was held

² *State v. Michael C. Stelljes*, Del. Super. Ct. Crim. Dkt. No. 1702005851, at Docket Item ("D.I.") 15 attached as *Exhibit A*.

³ D.I. 16.

⁴ D.I. 21, 23.

⁵ D.I. 25.

and you were again represented by the public defender's office.⁶ As you refused to do the program you were resentenced to the level 5 Key Program as recommended by your probation officer.

On your appearances for the three hearing dates, your public defender advised you of the appeal rights to the Supreme Court.⁷ No appeal was filed. However, you did file two requests for reduction of the sentence under Rule 35 which were denied.⁸ A Supreme Court appeal was not filed from them. Presently, you continue to be in the Key Program.

In your Rule 61 motion, you claim your public defender was ineffective. The statement is made: "counsel never told me to or advised me if I wanted to wait the charges to be dealt with ..." This claim necessarily focuses on the February 23 date. Apparently, you surmise that the hearing would have been postponed; you would not have been sent to the Crest Program, and, therefore, you would not have been in a position to refuse to participate.

Such vague, speculative and conclusory allegations are never sufficient for Rule 61 relief. Further, the pending shoplifting charge played no role in the proceedings. Your admissions to violating the remaining conditions provided an ample basis to support the new sentence. Furthermore, your hearing would never have been postponed to await a decision on the shoplifting charge where you have an illegal drug and failure to comply with supervision background. The Court has authority to adjudicate new charges in a violation hearing because trial and probation standards are different. Indeed a later acquittal of new charges after an earlier violation of them in a probation hearing does not change the result.⁹

Moreover, to prevail on an ineffectiveness of counsel basis, the two-prong test laid out by the United States Supreme Court in *Strickland v. Washington*¹⁰ must be satisfied. *Somerville v. State* explained the applicable standard in the

⁶ D.I. 31.

⁷ D.I. 22, 26, 32.

⁸ D.I. 34, 35, 36, 37.

⁹ *State v. Diaz*, 113 A.3d 1081 (Del. 2015).

¹⁰ *Strickland v. Washington*, 466 U.S. 668 (1984).

context of a guilty plea that is roughly analogous to a probation admission:

Strickland requires a defendant to show that: (1) counsel's representation fell below an objective standard of reasonableness, and (2) counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial...[R]eview is subject to a strong presumption that counsel's conduct was professionally reasonable. The purpose of this presumption is to eliminate the distorting effects of hindsight in examining a strategic course of conduct that may have been within the range of professional reasonableness at the time.¹¹

You have not met either prong of the analysis. You made no showing to prove that your counsel acted below an objective standard of reasonableness when providing assistance at the time of the violation hearing. No judge would have delayed the violation proceedings, and defense counsel made no error and acted within recognized standards of competence. There is no showing that you would not have admitted the violation but for counsel's alleged error in not seeking a postponement.

You also complain about the lack of access to a law library. This kind of claim is procedurally barred under Criminal Rule 61(i)(3),¹² (with the exception of the ineffective assistance of counsel claim). This provision states that "any ground for relief that was not asserted in the proceedings leading up to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows (A) cause for relief from the procedural default and (B) prejudice from violation of the movant's rights."¹³ In order to show cause, you must allege

¹¹ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

¹² Super. Ct. Crim. R. 61(i)(3) provides:
(3) *Procedural default*. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows (a) cause for relief from the procedural default and (b) prejudice from violation of the movant's rights.

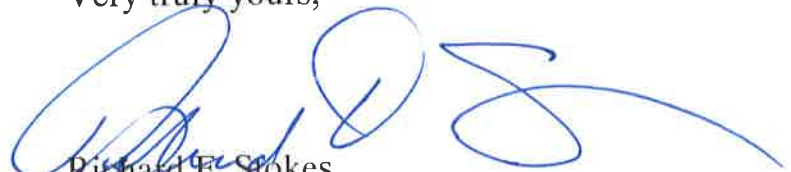
¹³ Rule 61(i)(3).

more than the fact that a claim was not raised earlier in the process.¹⁴ You must show that “some external impediment” prohibited raising the claim.¹⁵ Further, to show prejudice, you must demonstrate that there was a “substantial likelihood” that, had the claim been raised, the outcome of the case would have been different.¹⁶ Here, the violation hearing would not have been delayed. Assuming without deciding that the alleged lack of legal resources was “an impediment”, you suffered no prejudice. Therefore, your claim is procedurally barred. You must show both cause and prejudice to overcome the procedural default bar.¹⁷

Considering the foregoing, your motion is denied. Although you did not raise this point, upon review, you are entitled to more credit time. The adjustment does not effect the sentencing to Key. A corrected order is attached.

IT IS SO ORDERED.

Very truly yours,



Richard F. Stokes

RFS:tls

Enclosures

cc: David Hume, IV, Esquire, Department of Justice
Jeffery P. McLane, Esquire, Office of Defense Services

¹⁴ *State v. Wescott*, 2014 WL 7740466, at *1 (Del. Super. Ct. Nov. 24, 2014).

¹⁵ *Id.* (Citing *Younger v. State*, 580 A.2d 552, 556 (Del. 1990)).

¹⁶ *Flamer v. State*, 585 A.2d 736, 748 (Del. 1990).

¹⁷ *Blackwell v. State*, 736 A.2d 971, 973 (Del. 1999).

SUPERIOR COURT CRIMINAL DOCKET
(as of 11/13/2018)

State of Delaware v. MICHAEL C STELLJES
 State's Atty: AMANDA R NYMAN , Esq.
 Defense Atty: MICHAEL A CAPASSO , Esq.

DOB: 09/09/1989
 AKA: MICHAEL STELLJES
 MICHAEL STELLJES
 MICHAEL STEELJES
 MICHAEL S STELLJES

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	1702005851	IS17020734R1	VEH.ASSAULT 2ND	GLTY	09/20/2017
	1702005851	VS1702073401	VIOL O/PROBATN	VF	02/23/2018
	1702005851	VS1702073402	VIOL O/PROBATN	VF	04/19/2018
002	1702005851	IS17020735R1	VEH.ASSAULT 2ND	GLTY	09/20/2017
	1702005851	VS1702073501	VIOL O/PROBATN	VF	02/23/2018
	1702005851	VS1702073502	VIOL O/PROBATN	VF	04/19/2018
003	1702005851	IS17020736W	DR LIC SUSP/REV	NOLP	09/20/2017
004	1702005851	IS17020737R1	DUI OF DRUGS	GLTY	09/20/2017
	1702005851	VS1702073701	VIOL O/PROBATN	VF	02/23/2018
	1702005851	VS1702073702	VIOL O/PROBATN	VF	04/19/2018
005	1702005851	IS17020738W	OPER UNREG MV	NOLP	09/20/2017
006	1702005851	IS17020739W	FAIL REQ INS	NOLP	09/20/2017
007	1702005851	IS17020740W	FAIL STOP SIGN	NOLP	09/20/2017

No.	Event Date Event	Docket Add Date	Judge
1	02/27/2017 CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: R9W	02/28/2017	
2	02/27/2017 INDICTMENT, TRUE BILL FILED.	02/28/2017	
3	02/27/2017 APPLICATION FOR WARRANT AND CERTIFICATION PURSUANT TO SUPERIOR COURT CRIMINAL RULE 9 WARRANT FILED BY AMANDA NYMAN.	03/01/2017	
4	02/27/2017 ORDER: IT IS ORDERED, PURSUANT TO RULE 9 THAT WARRANTS FOR THE SAID SHALL BE ISSUED.	03/01/2017	GRAVES T. HENLEY
5	02/27/2017 MEMORANDUM/R9W BOND RECOMMENDATIONS FILED. TO: COURT FROM: DAG-NYMAN RECOMMENDED AMOUNT: \$2,000 SECURED NO CONTACT WITH VICTIMS MICHAEL FANNIN AND MATTHEW BALDWIN.	03/01/2017	
6	02/28/2017 RULE 9 WARRANT ISSUED.	03/01/2017	

"Exhibit A"

SUPERIOR COURT CRIMINAL DOCKET
(as of 11/13/2018)

State of Delaware v. MICHAEL C STELLJES
State's Atty: AMANDA R NYMAN , Esq.
Defense Atty:

DOB: 09/09/1989
AKA: MICHAEL STELLJES
MICHAEL S STELLJES

No.	Event Date Event	Docket Add Date	Judge
7	05/24/2017 RULE 9 WARRANT RETURNED SECURED BAIL-HELD DEFENDANT ARRAIGNED, WAIVED READING, ENTERED PLEA OF NOT GUILTY AND REQUESTED A TRIAL BY JURY. CCR-6/19/17	05/24/2017	HOWARD ALICIA B. 2,700.00 100%
8	05/30/2017 DISCOVERY REQUEST FILED BY MICHAEL CAPASSO, ESQ.	05/31/2017	
10	05/31/2017 DISCOVERY RESPONSE/STATE'S RECIPROCAL REQUEST FOR DISCOVERY FILED BY AMANDA REESE NYMAN, ESQ	06/05/2017	
9	06/01/2017 RELEASED ON \$2,700.00 SECURED BAIL FOR APPEARANCE ON 6/19/17.	06/01/2017	
11	06/19/2017 CASE REVIEW CALENDAR CAPIAS ORDERED-\$5000.00 CASH ONLY. BEGIN FORFEITURE PROCEEDINGS. CR/HAYNES	06/19/2017	BRADY M. JANE
12	06/26/2017 CAPIAS RETURN - TRIALABLE PENDING CASH BAIL DEFENDANT SCHEDULED FOR CASE REVIEW 7/17/17 AT 9AM.	06/26/2017	HOWARD ALICIA B. 2,700.00 100%
13	07/17/2017 CASE REVIEW CALENDAR: SET FOR FINAL CASE REVIEW. FCR: 8/23/2017 TJT: 8/29/2017	07/17/2017	
14	07/25/2017 CONTINUANCE REQUEST FILED BY DAG NYMAN, THE STATE CHEMIST IS OUT ON VACATION LEAVE. GRANTED. NEW DATES: FCR: 9/20/17 AND JT: 9/26/17.	07/27/2017	
15	09/20/2017 FINAL CASE REVIEW: DEFENDANT PLED GUILTY/SENTENCED PLEA AGREEMENT, TRUTH IN SENTENCING/GUILTY PLEA FORM, IMMEDIATE SENTENCING FORM, N/P REMAINING CHARGES. ATTY: CAPASSO CR: KH	09/20/2017	STOKES RICHARD F
16	01/18/2018 VIOLATION OF PROBATION REPORT FILED BY KELLIE MASSEY 567534. REQUESTING A CAPIAS. SENT TO CHAMBERS.	01/25/2018	
17	01/22/2018 CAPIAS ISSUED FOR VIOLATION OF PROBATION. \$8000.00 CASH ONLY.	01/25/2018	STOKES RICHARD F
18	02/01/2018 CASH BAIL REFUND IN THE AMOUNT OF \$2,700. TO: AMERICAN FUNDING CHECK #6105.	02/01/2018	

SUPERIOR COURT CRIMINAL DOCKET
(as of 11/13/2018)

State of Delaware v. MICHAEL C STELLJES
State's Atty: AMANDA R NYMAN , Esq.
Defense Atty:

DOB: 09/09/1989
AKA: MICHAEL STELLJES
MICHAEL S STELLJES

No.	Event Date Event	Docket Add Date	Judge
19	02/14/2018 CAPIAS RETURN - NON-TRIABLE PENDING CASH BAIL DEFENDANT SCHEDULED FOR VOP HEARING ON 2/23/18 AT 9:30AM BEFORE JUDGE STOKES.	02/14/2018	HOWARD ALICIA B. 8,000.00 100%
20	02/14/2018 LETTER FROM CHAMBERS TO DEFENDANT. RE: VOP HEARING SCHEDULED FOR 2/23/2018 @ 9:00 A.M.	02/16/2018	
21	02/23/2018 VIOLATION-OF-PROBATION HEARING: DEFENDANT FOUND IN VIOLATION.SENTENCING DEFERRED.SENTENCING DATE: DEFENDANT TO HAVE A TASC EVALUATION SENTENCE DATE: 3/23/2018 AT 9:00 ATTY; MCLANE CR: KH	02/23/2018	STOKES RICHARD F
22	02/23/2018 ADVICE REGARDING APPEAL FROM VOP HEARING FILED MR. MCLANE, ESQ	02/23/2018	
23	02/23/2018 ORDER: NOW THIS 23RD DAY OF FEBRUARY, 2018, THE DEFENDANT WAS BEFORE THE COURT THIS DATE FOR A VIOLATION OF PROBATION HEARING IN THE ABOVE CAPTIONED CASE; AND WHEREAS, THE DEFENDANT WAS FOUND TO BE IN VIOLATION OF PROBATION, BOND WAS REVOKED, AND IT IS HEREBY ORDERED THAT TASC SHALL EVALUATE THE DEFENDNATN FOR TREATMENT NEEDS AND REPORT TO THE COURT AT SENTENCING ON FRIDAY, MARCH 23, 2018 AT 9:30 A.M IT IS SO ORDERED.	02/23/2018	STOKES RICHARD F
24	02/23/2018 LETTER FROM CHAMBERS TO DEFENDANT RE: DEFENDANT VOP SENTENCING ON 3/23/2018 AT 9:30 A.M	02/23/2018	
25	03/23/2018 SENTENCING CALENDAR: DEFENDANT SENTENCED. ATTY; ROBINSON CR: KH	03/23/2018	STOKES RICHARD F
26	03/23/2018 ADVICE REGARDING APPEAL FROM VOP HEARING FILED BY ROBERT ROBINSON,ESQ	03/23/2018	
27	03/23/2018 DEFENDANT ENTERS INTO THE DRUG COURT PROGRAM.	04/04/2018	
33	04/04/2018 CORRECTED SENTENCE FILED. NOW THIS 4TH DAY OF APRIL, 2018, THE SENT ORDER IS HEREBY CORRECTED TO REMOVE THAT THE DEFENDANT WAS DEEMED A HABITUAL OFFENDER, WHICH WAS ERRONEOUSLY ADMITTED ON THE ORDER DATED 9/20/2017. ALL PREVIOUS TERMS AND CONDITIONS WILL REMAIN IN EFFECT.	04/25/2018	STOKES RICHARD F
28	04/06/2018	04/06/2018	HOWARD ALICIA B.

SUPERIOR COURT CRIMINAL DOCKET
(as of 11/13/2018)

Page 4

State of Delaware v. MICHAEL C STELLJES
State's Atty: AMANDA R NYMAN , Esq.
Defense Atty:

DOB: 09/09/1989
AKA: MICHAEL STELLJES
MICHAEL S STELLJES

No.	Event Date Event	Docket Add Date	Judge

	ADMINISTRATIVE WARRANT FILED IN SUPERIOR COURT. PROBATION OFFICER: BAIL HEARING HELD THIS DATE AND BAIL SET ON VOPS AS FOLLOWS: BAIL SET: HELD WITHOUT BAIL VOP HRNG. ON 4/19/18 AT 1:30 P.M. BEFORE JUDGE STOKES.		
29	04/06/2018	04/06/2018	
	VIOLATION OF PROBATION REPORT FILED BY DOREEN WILLIAMS 584905.		
30	04/06/2018	04/06/2018	
	LETTER FROM CHAMBERS TO DEFENDANT. RE: ADVISING OF VOP HEARING SCHEDULED FOR 4/19/18 @ 1:00 P.M.		
31	04/19/2018	04/19/2018	STOKES RICHARD F
	VIOLATION-OF-PROBATION HEARING: DEFENDANT FOUND IN VIOLATION.SENTENCED. ATTY: ROBINSON CR; KH		
32	04/19/2018	04/19/2018	
	ADVICE REGARDING APPEAL FROM VOP HEARING FILED BY ROBERT ROBINSON, ESQ		
34	07/09/2018	07/09/2018	STOKES RICHARD F
	MOTION FOR REDUCTION OF SENTENCE FILED BY DEFENDANT.		
35	07/13/2018	07/16/2018	STOKES RICHARD F
	MOTION FOR REDUCTION OF SENTENCE DENIED. IT IS SO ORDERED		
36	08/10/2018	08/13/2018	STOKES RICHARD F
	MOTION FOR REDUCTION OF SENTENCE FILED BY DEFENDANT.		
37	08/15/2018	08/17/2018	STOKES RICHARD F
	MOTION FOR REDUCTION OF SENTENCE DENIED. IT IS SO ORDERED.		
38	08/30/2018	08/30/2018	
	MOTION FOR POSTCONVICTION RELIEF FILED BY DEFENDANT. R1		

*** END OF DOCKET LISTING AS OF 11/13/2018 ***
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COURT OF COMMON PLEAS CRIMINAL DOCKET
 (as of 11/13/2018)

State of Delaware v. MICHAEL C STELLJES
 State's Atty: , Esq.
 Defense Atty: DEFENDER PUBLIC , Esq.

DOB: 09/09/1989
 AKA: MICHAEL STELLJES
 MICHAEL STELLJES
 MICHAEL STEELJES
 MICHAEL S STELLJES

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	1801003194	MK18021369	SHOPLIFT <1500	DISM	07/30/2018

No.	Event Date Event	Docket Add Date	Judge
	02/22/2018	02/22/2018	
	CASE FILED ON 02/21/2018; ARREST DATE 01/09/2018		
	ARRAIGNMENT SCHEDULED FOR 04/25/2018 AT 01:00 PM		
	RELEASED/OWN RECOG. 0.00		
	MK18021369	DE11084000A1	SHOPLIFT <1500
	04/24/2018	04/24/2018	
	ARRAIGNMENT SCHEDULED FOR 04/25/2018 AT 09:00 AM		
	04/24/2018	04/24/2018	
	CASE MOVED TO ANOTHER CALENDAR FOR CONSOLIDATION/JUDICIAL REVIEW PURPOSES		
	04/27/2018	04/27/2018	
	DEFENDANT PLED NOT GUILTY AND DEMANDED JURY TRIAL.		
	04/27/2018	04/27/2018	
	JURY TRIAL CASE REVIEW SCHEDULED FOR 06/20/2018 AT 09:00 AM		
	06/13/2018	06/13/2018	
	CASE MOVED TO ANOTHER CALENDAR FOR CONSOLIDATION/JUDICIAL REVIEW PURPOSES		
	06/20/2018	06/20/2018	
	DEFENDANT REJECTED PLEA OFFER.		
	06/20/2018	06/20/2018	
	JURY TRIAL SCHEDULED FOR 07/30/2018 AT 09:00 AM		
	07/30/2018	07/30/2018	REIGLE ANNE HARTNETT
	CASE DISMISSED UNDER RULE 48(B) ON 7/30/18 AS TO 18-02-1369.		
	JUDGE/REIGLE	DAG/K.SMITH	PD/MATONI

*** END OF DOCKET LISTING AS OF 11/13/2018 ***
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"Exhibit B"

COURT OF COMMON PLEAS CRIMINAL DOCKET
 (as of 11/13/2018)

State of Delaware v. MICHAEL C STELLJES
 State's Atty: , Esq.
 Defense Atty: DEFENDER PUBLIC , Esq.

DOB: 09/09/1989
 AKA: MICHAEL STELLJES
 MICHAEL STELLJES
 MICHAEL STEELJES
 MICHAEL S STELLJES

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	1802008651	MK18021096	POSS DRUG PARAP	NOLP	07/30/2018

No.	Event Date Event	Docket Add Date	Judge
	02/20/2018	02/20/2018	
	CASE FILED ON 02/16/2018; ARREST DATE 02/13/2018		
	ARRAIGNMENT SCHEDULED FOR 04/25/2018 AT 01:00 PM		
	RELEASED/OWN RECOG. 0.00		
	MK18021096	DE164771000a	POSS DRUG PARAP
	04/24/2018	04/24/2018	
	ARRAIGNMENT SCHEDULED FOR 04/25/2018 AT 09:00 AM		
	04/24/2018	04/24/2018	
	CASE MOVED TO ANOTHER CALENDAR FOR CONSOLIDATION/JUDICIAL REVIEW PURPOSES		
	04/27/2018	04/27/2018	
	DEFENDANT PLED NOT GUILTY AND DEMANDED JURY TRIAL.		
	04/27/2018	04/27/2018	
	JURY TRIAL CASE REVIEW SCHEDULED FOR 06/20/2018 AT 09:00 AM		
	06/20/2018	06/20/2018	
	DEFENDANT REJECTED PLEA OFFER.		
	06/20/2018	06/20/2018	
	JURY TRIAL SCHEDULED FOR 07/30/2018 AT 09:00 AM		
	07/30/2018	07/30/2018	REIGLE ANNE HARTNETT
	NOLLE PROSEQUI ENTERED ON 7/30/18 AS TO 18-02-1096.		
	JUDGE/REIGLE	DAG/K.SMITH	PD/MATONI

*** END OF DOCKET LISTING AS OF 11/13/2018 ***
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"Exhibit C"