

STATE OF MAINE  
KENNEBEC, ss

SUPERIOR COURT  
CRIMINAL ACTION  
DOCKET NO. CR-11-321  
NM - KEN - 4/3/2012

STEVEN J. BURD, JR.,

Petitioner

v.

ORDER ON PETITION FOR  
POST-CONVICTION  
REVIEW

STATE OF MAINE

The petitioner challenges the use of his conviction for OUI in AUGDC-03-305 in the indictment charging class C OUI in AUGSC-10-442. He argues that he did not validly waive his right to counsel and his right to a jury trial. For the following reason, the petition is granted.

FINDINGS

Attorney Steven Parker's calendar shows that he was the lawyer for the day in the Augusta District Court when the petitioner's plea to OUI was entered on 2/19/03. Attorney Parker's calendar shows further that he was scheduled to be in the Waterville District Court at 1:00 p.m. on 2/19/03. Understandably, Attorney Parker has no recollection of the events of that day.

The petitioner also did not remember everything that occurred on 2/19/03. He did not recall being told about forms to fill out for an attorney and a jury trial. When his name was called, he spoke to the judge. At that time, he had not spoken to the lawyer for the day, who was not present, and the case was continued to the afternoon. The

lawyer for the day did not return to the Augusta District Court for the afternoon of 2/19/03.

The petitioner spoke to the judge but cannot recall what the judge said. There is no transcript of the proceedings.

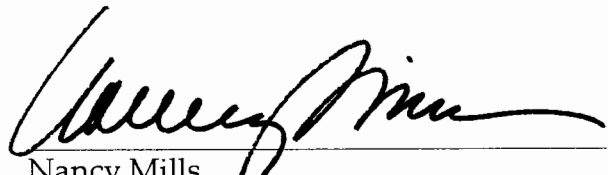
The petitioner also spoke to the Assistant District Attorney. The petitioner does not remember exactly what was said but "it didn't sound good." The petitioner eventually pleaded guilty to the OUI charge.

Based on this record, the court concludes the petitioner never spoke to the lawyer for the day. The court cannot conclude that the petitioner waived his right to counsel and to trial voluntarily, knowingly, and intelligently. State v. Watson, 2006 ME 80, ¶ 15, 900 A.2d 702, 708.

The entry is

The Petition for Post-Conviction Review is GRANTED. The OUI Conviction in AUGDC-CR-03-305 is stricken from the Indictment in AUGSC-10-442.

Date: April 3, 2012

  
Nancy Mills  
Justice, Superior Court

STEVEN J BURD JR  
vs  
STATE OF MAINE

SUPERIOR COURT  
KENNEBEC, ss.  
Docket No AUGSC-CR-2011-00321

**DOCKET RECORD**

PL. ATTY: CHARLES FERRIS  
FERRIS GURNEY AND CROOK PC  
11 PARK STREET  
WATERVILLE ME 04901  
APPOINTED 03/06/2012

State's Attorney: EVERT FOWLE

Filing Document: PETITION  
Filing Date: 05/03/2011

Major Case Type: POST CONVICTION REVIEW

**Charge(s)**

**Docket Events:**

05/03/2011 FILING DOCUMENT - PETITION FILED ON 05/03/2011

05/16/2011 POST CONVIC. REVIEW - REVIEW SENT FOR REVIEW ON 05/16/2011

07/07/2011 POST CONVIC. REVIEW - ASSIGNMENT ASSIGNED TO DOCKET ON 07/01/2011

07/22/2011 POST CONVIC. REVIEW - ASSIGNMENT ASSIGNED TO JUSTICE ON 07/06/2011  
ROBERT E MURRAY JR, JUSTICE

07/28/2011 POST CONVIC. REVIEW - RESPONSE TO PETITION FILED ON 07/25/2011

RESPONDENT'S MOTION TO DISMISS GROUNDS ONE AND TWO OF THE PETITION FOR POST CONVICTION REVIEW

07/28/2011 POST CONVIC. REVIEW - RESPONSE TO PETITION FILED ON 07/25/2011

RESPONDENT'S ANSWER TO THE PETITION FOR POST CONVICTION REVIEW DATED 4/27/11

07/28/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 07/20/2011

08/15/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 08/12/2011  
ROBERT E MURRAY JR, JUSTICE  
COPY TO PARTIES/COUNSEL

08/15/2011 Party(s): STEVEN J BURD JR  
ATTORNEY - APPOINTED ORDERED ON 08/12/2011

Attorney: ARNOLD CLARK

09/29/2011 POST CONVIC. REVIEW - ASSIGNMENT ASSIGNED TO JUSTICE ON 09/29/2011  
NANCY MILLS , JUSTICE  
AMENDED

11/08/2011 POST CONVIC. REVIEW - PCR CONFERENCE SCHEDULED FOR 12/20/2011 at 08:00 a.m.  
NANCY MILLS , JUSTICE

11/08/2011 POST CONVIC. REVIEW - PCR CONFERENCE NOTICE SENT ON 11/08/2011

12/20/2011 POST CONVIC. REVIEW - PCR CONFERENCE HELD ON 12/20/2011  
NANCY MILLS , JUSTICE  
Attorney: ARNOLD CLARK  
DA: PAUL RUCHA

12/20/2011 POST CONVIC. REVIEW - ORDER RESULTING FROM PCR CONF FILED ON 12/20/2011  
CR\_200

NANCY MILLS , JUSTICE

12/22/2011 HEARING - EVIDENTIARY HEARING SCHEDULED FOR 02/27/2012 at 01:00 p.m.

NOTICE TO PARTIES/COUNSEL

12/22/2011 HEARING - EVIDENTIARY HEARING NOTICE SENT ON 12/22/2011

02/22/2012 MOTION - MOTION TO DISMISS FILED BY STATE ON 07/25/2011

DA: PAUL RUCHA

02/23/2012 CASE STATUS - CASE FILE LOCATION ON 02/23/2012

W/ J. MILLS FOR HEARING

03/05/2012 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 03/02/2012

03/29/2012 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 03/06/2012

M MICHAELA MURPHY , JUSTICE

COPY TO PARTIES/COUNSEL

03/29/2012 Party(s): STEVEN J BURD JR

ATTORNEY - WITHDRAWN ORDERED ON 03/06/2012

Attorney: ARNOLD CLARK

03/29/2012 Party(s): STEVEN J BURD JR

ATTORNEY - APPOINTED ORDERED ON 03/06/2012

Attorney: CHARLES FERRIS

04/04/2012 HEARING - EVIDENTIARY HEARING HELD ON 02/27/2012

NANCY MILLS , JUSTICE

DA: PAUL RUCHA

Defendant Present in Court

04/04/2012 FINDING - GRANTED ENTERED BY COURT ON 04/03/2012

NANCY MILLS , JUSTICE

THE PETITION FOR POST CONVICTION REVIEW IS GRANTED. THE OUI CONVICTION IN AUGDC-CR-03-305 IS STRICKEN FROM THE INDICTMENT IN AUGSC-CR-10-442

04/04/2012 ORDER - COURT ORDER ENTERED ON 04/03/2012

NANCY MILLS , JUSTICE

ORDER ON PETITION FOR POST CONVICTION REVIEW

A TRUE COPY

ATTEST: \_\_\_\_\_

Clerk