

**IN THE CRIMINAL COURT  
OF HAMILTON COUNTY, TENNESSEE  
DIVISION ONE**

**ADAM TATUM**

**vs.**

**STATE OF TENNESSEE**

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**CASE NO: 286051**

**ORDER**

Comes now by the parties by agreement and would submit an order to this Honorable Court regarding the above-captioned post-conviction petition

1. That Petitioner's counsel filed a post-conviction petition on November 20, 2012.

2. That the petition requests setting aside a guilty plea to four assaults.

Petitioner pleaded guilty to four assaults in Hamilton County General Sessions Court on July 12, 2012 and was represented by Attorney Michael Acuff. The Petitioner's post-conviction petition and this Honorable Court's Preliminary Order incorrectly state the petitioner pleaded guilty to possession of marijuana and one count of assault.

3. The post-conviction petition contends the District Attorney's Office withheld evidence at a General Sessions court appearance and such activities induced the petitioner to plead guilty.

4. The Petitioner was originally charged on June 14, 2012 by arrest warrants with disorderly conduct, resisting arrest, simple possession of marijuana and two counts of aggravated assault upon Sean Emmer and James Smith.

These charges are more specifically described in Hamilton County General Sessions Case Numbers 1474657-1474661.

5. The Petitioner was further charged on June 28, 2012 by arrest warrants with three aggravated assaults upon Adrian McGhee, Audra Wilson and Clayton Payne. These charges are more specifically described in Hamilton County

General Sessions Case Numbers 1476370-1476302.

6. On July 12, 2012, Assistant District Attorney Rachel Winfrey and Defense Attorney Mike Acuff watched a video of the incident. The video was provided by Salvation Army representatives.

7. The Hamilton County General Sessions Court records reflect the petitioner pleaded guilty to four reduced charges of assault as Class A Misdemeanors. The petitioner pleaded guilty to Hamilton County General Sessions Case Numbers 147465, 1474658, 1476370 and 1476371. The guilty plea was accepted and judgments of guilt were entered by General Sessions Judge Christie Sell on July 12, 2012. Based upon the petitioner's plea of guilt, all other charges were dismissed.

8. Since the Hamilton County General Sessions Courts are not courts of record, an audio recording and transcript of the petitioner's plea are unavailable to review. An audio recording or plea transcript would allow an opportunity to examine petitioner's claim his plea was unknowing and involuntary.

9. Pursuant to Tennessee Code Annotated 40-30-101, et al., petitioner's

post-conviction petition was reviewed by this Honorable Court and a preliminary order was entered on January 10, 2013 holding that : (1)the petition stated a colourable claim, (2)petitioner's counsel allowed an opportunity to amend the original petition and (3)the District Attorney's office provide discovery to petitioner as dictated by Tennessee law.

10. Petitioner's counsel requested numerous discovery items from the District Attorney's Office on February 7, 2013. The items requested include videos of the incident, police reports, 911 calls and any internal affairs files of Sean Emmer and Adam Cooley.

11. On February 26 and 28, 2013, the District Attorney's Office provided discovery in accordance with this Honorable Court's order.

12. In addition to reviewing discovery items, petitioner's counsel and the District Attorney's Office have met on several occasions reviewing the petitioner's allegations.

13. After further investigation and review, the parties have determined the District Attorney's Office did not withhold any evidence from the petitioner and his counsel at the General Sessions Court.

14. It is further determined the petitioner's General Sessions Court plea fails to meet safeguards guaranteed by the United States Constitution, Tennessee Constitution and Tennessee statutory law.

15. Tennessee Code Annotated 40-1-109 mandates that an individual expressly waive his rights to indictment, presentment, grand jury investigation and a jury trial before entering a plea of guilt.

16. The petitioner's General Sessions Court plea in case number 1474657 fails to comply with these legal requirements.

17. Further, the General Sessions Court Case numbers 1474657, 1474658, 1476370 and 1476371 do not adequately provide the petitioner notice as to which victims the petitioner was guilty of assaulting. These inadequacies render the petitioner's plea unknowing and involuntary.

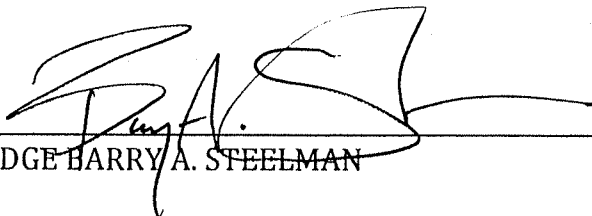
18. Without benefit of an audio recording of the plea or plea transcript, the District Attorney's Office concedes the post-conviction petition should be granted because the petitioner's plea was unknowing and involuntary. This concession is based upon apparent inadequate notice to the petitioner as to the identity of victims he was pleading guilty to assaulting.

19. Further, the District Attorney's office concedes the petitioner's plea fails to comply with statutory requirements rendering any such judgment voidable.

20. The District Attorney's Office does not concede to the petitioner's claim of withholding evidence and petitioner's counsel strikes those allegations from the original petition.

21. That case numbers 1474657, 1474658, 1476370 and 1476371 should be restored to the Hamilton County General Sessions Court for disposition.

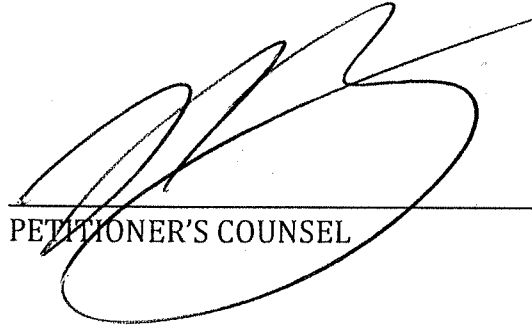
Enter this the 11 day of March 2013

  
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JUDGE HARRY A. STEELMAN

APPROVED FOR ENTRY:

*Adam Yates*

PETITIONER

A large, stylized signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

PETITIONER'S COUNSEL

*Michael W. Zander*

PETITIONER'S COUNSEL

*Neal Poulter*

DISTRICT ATTORNEY OFFICE