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Office of the State Attorney
251 N. Ridgewood Ave.
Daytona Beach, FL 32114

RE: Redacted

Dear State:

My Firm represents Mr. Redacted in an attempt to correct what we believe was a sentencing error going back some twelve years. In brief, Mr. Redacted was in front of the Judge to resolve a third degree felony - at that moment in time he was eligible for a withhold of adjudication on that charge in Volusia. He had been adjudicated guilty on a related charge in another county, but that case was on appeal. Amused at Redacted's confidence in his chances of post-conviction relief, the Judge stated:

14 THE COURT: I'll adjudicate him with an
15 understanding or a stipulation that I can revisit
16 to modify the judgment beyond the 60 days required
17 should he get a reversal of his Third District
18 appeal. If he gets that reversed and he's no
19 longer convicted over there, then I'll go back and
20 withhold over here.

Clearly, Parson's intent was that if the prior adjudication was removed (which he saw as a practical bar to withholding adjudication in the instant case) he would withhold in the Volusia Case (which Redacted was actually eligible for because of the timing of the convictions).

13 THE COURT: Or you can file a post trial
14 motion. But I mean, what I'm saying is I feel
15 compelled to adjudicate him in light of his earlier
16 adjudication. If that gets undone -- and I'm
17 amused by his confidence. I'm intrigued by it,
18 actually, because the reversal rate is something
19 like --

Judge does not care the vehicle by which the matter is revisited - he again stresses the focus is on the prior adjudication being changed.

16 THE COURT: Overturned on appeal and, I mean,
17 the end result that he no longer has a conviction.
18 In other words, if it's overturned on appeal and
19 the judge goes back and has a new trial and
20 convicts him...

This was the "sticking point" for the State Attorney on the rehearing in front of the second Judge - but read in context with all of the first Judge's' other comments it is clear the Judge did not care what happened exactly just so long as Redacted ended up without an adjudication of guilt. This is exactly what happened, just not through an appeal. The State **stipulated to vacating the conviction and entering a new sentence, withholding adjudication retroactively**, which I think demonstrates an even greater "victory" than prevailing on appeal. The Judge never said Redacted had to go back, go to trial and win - Redacted got the new trial but decided to resolve it (he had already served the probation and paid the restitution) as almost any rational person would have. I believe Redacted meet not only the letter of the Judge's "order" but also its spirit.

19 THE COURT: All right. And it's further the
20 order of this Court that I reserve this
21 jurisdiction to allow you to file a belated motion
22 to modify sentence, and the Court will consider
23 that as to the adjudication only if you can
24 demonstrate that the pending action that you've
25 been adjudicated on has been reversed and that you

1 have been either exonerated or -- I guess he would
2 have to be exonerated to make this a qualifying
3 offense or otherwise had that action dismissed
4 without a withhold adjudication or an adjudication.

Clearly, the Judge's intent was that if the prior adjudication was removed (which he saw as a practical bar to withholding adjudication in the instant case) - regardless of how exactly it occurred - he would withhold in the Volusia Case (which Redacted was actually eligible for because of the timing of the convictions).

I think it is important to recognize the Judge's reputation for being unconventional and for engaging in banter with those in front of him. Obviously, Mr. Redacted entered the plea because he **knew** he would get the conviction "reversed" (as a layman he did not really grasp the nuances and procedures) and ultimately he did. Candidly, his lawyer did not help him much during the plea negotiations by not insisting on a thorough Order for the court file which would have helped us tremendously. The Judge's Order is on a court action form and now, years later, it is of almost no help; although the Judge's oral pronouncement controls, I concede the Judge's oral statements are capable of multiple interpretations, although the rule of lenity would suggest they should be interpreted in a light most favorable to the defendant.

Mr. Redacted was successful on probation, paid his restitution and was ultimately granted an early termination of probation. He also succeeded in contesting his conviction in the other county; our Motion spells out the procedural history, but essentially the State conceded the issue and the Court entered an Order retroactively with-holding adjudication. The State stipulated to vacating the judgment and sentence and Mr. Redacted then pled, received a withhold of adjudication and had probation immediately terminated. By the plain terms of the Judge'd oral pronouncement he should have been eligible for relief in Volusia County.

However, when the case was heard, the Judge was not on the Bench and his successor Judge initially granted, then reversed himself, denying the requested relief. Reviewing the audio of the hearing it appears the State argued that Mr. Redacted had not won his appeal so, strictly speaking, the Judge's ruling did not apply. However, this strict interpretation ignores the oral pronouncements (which control over the written Order as well as the clear intent of what the Judge was saying.) Additionally, Mr. Redacted's attorney did not seem to have the facts clearly spelled out for the State to demonstrate that Mr. Redacted, who was originally eligible for the withhold, had done exactly what the Judge contemplated. We believe the successor prosecutor did not honor the spirit of the agreement entered into by the State and seized on what she perceived was a technicality to deny Mr. Redacted's relief.

Mr. Redacted has since gone on to become a successful and productive member of society - forty years old, and the proud father of three children, Mr. Redacted has been married for eleven years to his wife. In 2014, Mr. Redacted became an Federal Aviation Authority ("FAA") licensed pilot, in 2015 an FAA certified mechanic and most recently received the FAA's highest level of responsibility and privilege—a licensed Inspection Authority. Attached is a personal statement from Mr. Redacted detailing his life since his involvement in this case in Volusia County. He needs your help now because the rules have changed and he must now report ALL felonies on his medical application—it is likely he will lose everything unless we are successful in getting him a withhold of adjudication. To this end, we have filed the enclosed Motion which we know may be time barred. However, we ask you to consider the unique history of this case and Mr. Redacted and help us set this matter right.

I have enclosed a proposed Stipulation and Order for your review if your office is willing to get involved directly in this litigation.

As always, I thank you for your consideration and your time.

Yours,

Aaron D. Delgado, B.S.C.
For the Firm