



Kenneth M. Carpenter, Esq., Chief
Executive Officer
Glenda S. Herl, Chief Operating
Officer
Kenny Dojaquez, Esq.
Sara N. Huerter, Esq.
Shannon K. Holstein, Esq.

April 21, 2020

Mr. Gregory O. Block
Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Ave., N. W. - Suite 900
Washington, D.C. 20004-2950

RE: **Philbrook, Gary**
No. 18-5628
Citation to Supplemental Authority by the Appellant

Dear Clerk:

Pursuant to U.S. Vet.App. R. 30(b), the Appellant wishes to bring to the Court's attention supplemental authority that is relevant to the above-referenced case now pending before the Court. The supplemental authority is as follows:

State v. Saunders, 195 Or.App. 357, 97 P.3d 1261 (2004)

In this decision, the Court of Appeals of Oregon held that prior adjudications finding the defendant guilty except for insanity of public indecency were not convictions, such that he could be charged with the elevated crime of felony public indecency for a subsequent violation. This decision explained after examining ORS 161.325 that:

P.O. Box 2099
1525 SW Topeka Blvd., Ste D
Topeka, KS 66601
Phone: 785-357-5251 Fax: 785-357-4902

April 21, 2020
Page 2
RE: Gary Philbrook

The plain language of this statute tells us that the person was not, in fact, convicted. It therefore follows that, in the absence of being convicted, one cannot have a conviction. In sum, ORS 161.325 provides the contextual clue that when a defendant is guilty except for insanity, there is no conviction.

Saunders, 195 Or.App. 361.

During oral argument a question arose concerning whether an adjudicative finding, such as the one of record, RBA 797-799, based upon a plea of guilty except for insanity constituted a conviction of a felony. Mr. Philbrook argued that it did not. The Secretary argued that it did.

Mr. Philbrook submits the above described supplemental authority in support of his argument that plea of guilty except for insanity does not constitute a conviction of a felony.

Thank you for your attention to this matter.

Sincerely,

/s/Kenneth M. Carpenter
Kenneth M. Carpenter
Counsel for Appellant,
Gary Philbrook
Electronically filed April 21, 2020