

# fax

Subject: Fred Smith

Date: February 24, 2012

Pages including cover: 3

To: Judge Pope & Thomas Deen

From: Burnett Law Firm

Phone Number:

Phone Number: (870)622-9911

Fax Number: 1-870-853-2032

Fax Number: 870-622-9916

1 870-367-9696

Comments: here is a copy of the corrected Order. I have mailed one that you may have received please discard that one. Thanks.



Katie Clowes  
Legal Assistant  
[Clowes.katie@yahoo.com](mailto:Clowes.katie@yahoo.com)

**David Burnett**  
Attorney at Law  
306 W. Hale/P.O. Box 704  
Osceola, AR 72370  
(870) 622-9911  
(870) 622-9916-Fax

**State Senator**  
District 15  
Arkansas State Senators  
State Capitol Rm 320  
Little Rock, AR 72201  
[David.Burnett@senate.ar.gov](mailto:David.Burnett@senate.ar.gov)

Thomas D Dean, Prosecuting Attorney  
506 S. Main  
Monticello, AR 71655

February 22, 2012

RE: Fred Smith CR-2009-93-1

Enclosed please find an Order of Dismissal prepared in the above captioned case. This letter will also confirm our telephone conversation of this date with regard to this matter. Since this was a deferred judgment, I feel that Mr. Smith is entitled to have the matter dismissed having completed the terms and conditions of the probation, rather than having the case sealed. I also believe there would be a significant difference in his future activities and records. If this Order meets yours and Judge Pope's satisfaction please execute and return a filed copy.

Thank you for your attention to this matter, I am,

Yours very truly,

---

David Burnett

Cc: Honorable Judge Pope  
215 W. Jefferson/Courthouse  
Hamburg, AR 71646

Fred Smith  
P.O. Box 434  
West Memphis, AR 72303

IN THE CIRCUIT COURT OF CHICOT COUNTY  
ARKANSAS CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

V.

CR-2009-93-1

FRED SMITH

DEFENDANT

ORDER OF DISMISSAL

Now on this \_\_\_\_\_ day \_\_\_\_\_, 2012, comes the Defendant, Fred Smith, and for a dismissal of the criminal charges pending against him in CR-2009-93-1:

1. The case was heard on a non-jury trial on November 22, 2010 with the court sitting as trier of fact.
2. The court entered it findings of fact and disposition order on February 13 2011.
3. Therein the court deferred judgment and placed Defendant on twelve (12) month probation with conditions of probation or suspension imposed.
4. The Defendant, Fred Smith, has now complied with all terms and conditions of suspension or probation and has made full restitution of monies received and held by mistake.
5. The Defendant has lived a law abiding life and conformed to all conditions imposed in the deferred sentence. All fees, costs and other conditions have been complied with.
6. In the Court's deferral order Act 346 of 1975 was approved.

WHEREFORE, the Defendant, Fred Smith, having successfully completed the twelve (12) month period of probation and complying with all terms and conditions of the court including the full payment of restitution. The judgment heretofore entered against him should be dismissed and set aside as if it had not occurred.

IT IS SO ORDERED,

Date of Entry:

\_\_\_\_\_  
Circuit Judge

IN THE CIRCUIT COURT CHICOT COUNTY, ARKANSAS  
CRIMINAL DIVISION

STATE OF ARKANSAS

v.

No. CR-2009-93-1

FRED SMITH


STATE'S RESPONSE TO MOTION TO DISMISS

NOW COME the State of Arkansas, and for its response to motion to dismiss, states as follows:

1. The defendant was convicted herein of theft of mislaid property following a trial. He has completed his probation, and seeks to have the case dismissed pursuant to Act 346 of 1975.
2. Act 346 is only available "whenever an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt." Ark. Code Ann. § 16-93-303(a)(1).
3. The defendant elected to contest his guilt, and he is therefore legally ineligible for first offender treatment under Act 346.

WHEREFORE, the State of Arkansas prays that the motion to dismiss be denied; and for all other relief to which the State may be entitled.

STATE OF ARKANSAS

  
\_\_\_\_\_  
THOMAS D. DEEN  
Prosecuting Attorney  
Tenth Judicial District

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was transmitted via First Class U.S. Mail on this 24 day of February, 2012, to David Burnett, Attorney at Law, P.O. Box 704, Osceola, Arkansas 72370.

  
\_\_\_\_\_  
THOMAS D. DEEN



Katie Clowes  
Legal Assistant  
[Clowes.katie@yahoo.com](mailto:Clowes.katie@yahoo.com)

David Burnett  
Attorney at Law  
306 W. Hale/P.O. Box 704  
Osceola, AR 72370  
(870) 622-9911  
(870) 622-9916-Fax

State Senator  
District 15  
Arkansas State Senators  
State Capitol Rm 320  
Little Rock, AR 72201  
[David.Burnett@senate.ar.gov](mailto:David.Burnett@senate.ar.gov)

Honorable Judge Sam Pope  
& Mr. Thomas Deen  
Via Fax- 870-853-2032 & 870-367-9696

February 24, 2012

RE: State v. Fred Smith; Letter Pleading

Dear Sirs,

This will acknowledge receipt of the state's response in case CR-2009-93-1. Please be advised that the Defendant, Fred Smith, is not asking that Act 346 of 1975 be applied in this particular case. Mr. Smith, after a hearing before the court, received a diversionary sentence and has completed the terms and conditions of that diversion. Therefore, it is the contention and belief of the defendant that he is entitled to have the conviction expunged, dismissed or set aside rather than applying act 346 of 1975 and sealing the conviction.

It is entirely within the discretion of the court to impose a diversionary sentence. It is our opinion and belief that with a diversionary sentence the court retains jurisdiction to enter any order it chooses after the completion of the terms within the diversionary sentence. Accordingly, we request that the court dissolve the conviction and enter an Order dismissing the case and conviction.

I have no objection to this matter being decided on the pleadings filed as I believe this to be an exclusive matter of discretion with the court.

Respectfully Submitted,

  
David Burnett

Cc: Josephine Griffin  
Chicot County Clerk