

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM OCONEE COUNTY
COURT OF GENERAL SESSIONS

THE HONORABLE R. LAWTON MCINTOSH, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2021-000873

CASE NOS. 2012-GS-23-07504,07507

THE STATERESPONDENT

v.

George Cleveland IIIPETITIONER

PETITIONER'S MOTION TO STAY PROBATION PENDING CERTIORARI CONSIDERATION

George Cleveland III, *pro se* Petitioner

400 Hunter Street

Seneca, S.C. 29678

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Table of Authorities

Cases

Adkins v. Comcar Indus., Inc. 323 S.C. 409, 411, 475 S.E. 2d 762, 763 (1996)4

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Motion to Stay Probation

Pursuant to Rule 240 (a) SCACR, Petitioner Cleveland respectfully request that this court grant this instant motion to Stay Probation Pending Certiorari consideration in this court as of November 15, 2021 because of the undue burden of being required to pay \$140.00 a month in restitution, and I've been on Probation since being released from South Carolina prison on March 31, 2017 that has exceeded five years in violation of S.C. Code Ann. §24-21-440 ("The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended within the above limit."). See attached Petitioner Cleveland's supporting affidavit at par. 2.

Legal Standard/Argument

"The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended within the above limit' ". State v. Miller 404 S.C. 29, 34 (2013). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature' ". Elmore v. Ramos 327 S.C. 507, 510, 489 S.E. 2d 663, 665 (ct.app. 1997) quoted from State v. Hackett 363 S.C. 177, 181 (2005). " ' In construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Adkins v. Comcar Indus., Inc. 323 S.C. 409, 411, 475 S.E. 2d 762, 763 (1996).

"The service of a notice of appeal by a criminal defendant shall operate as a stay of the execution of the sentence until the appeal is finally disposed of; provided, however, a sentence of confinement shall not be stayed until the defendant has posted bail under S.C. Code Ann. §18-1-80 and -90 (1985). There is currently little caselaw in South Carolina relevant to my issue. In Starkey v. State 382 P. 3d. 1209, 1210-11 Alaska Court of Appeals (2016) the Alaska Court of Appeals reasoned that

Defendant Starkey's probation was automatically stayed under Alaska Appellate Rule 206 (a) on the basis he filed a notice of appeal.

In this instant case, Rule 246 (a) SCACR authorizes this court with the power to stay my probation until this court considers my pending certiorari petition. Under my probation terms, I'm required to pay \$140 per month in restitution. I cannot afford that amount, and it has increased from \$50.00 per month. See attached supporting affidavit at par. 2. There are not many cases in our state that address my specific stay of probation for Certiorari Petition.

One case is close. That case is State v. Cooper 342 S.C. 389, 394 (2000), the circuit court judge ordered the office of Indigent Defense to pay for a psychiatric evaluation and if funds were not available, the Attorney General's office must then pay for the psychiatric evaluation. The Attorney General asserted that they did not have the funds either. The State initiated the case for involuntary civil commitment process for long term control, care, and treatment after his fifteen years imprisonment for criminal sexual conduct with a minor, *id.*, at 394.

"As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order on appeal...", *id.*, at 399. Citing rule 225, SCACR, amended to Rule 246 SCACR by order of this court dated January 29, 2009. The Cooper court is not exactly on point with my case because the state filed several petitions in the court of appeals, but this court certified that case for review pursuant to Rule 204 (b) SCACR, and the order directing the Attorney General to pay for the psychiatric evaluation of Mr. Cooper was stayed, *id.*, at 393.

Rule 246 SCACR does not include the language to stay criminal cases or probation sentences pending certiorari petition consideration. Rule 246 SCACR only contains "notice of appeals", but in Cooper, the state filed a "Petition for a Writ of Supersedes" "Petition for an Extraordinary Writ", *id.*, at

393. I submit, under Rule 246 SCACR also requires Probation to be stayed in Certiorari Petitions while pending in this court.

If this court deems Rule 246 (a) SCACR is unpersuasive, Cooper allows this court to grant a stay of probation in this Certiorari Petition case; accordingly, I'm respectfully requesting this court GRANT this instance motion and STAY Probation by the Oconee County, S.C. Probation pending Certiorari consideration in this case.

ORDER any additional relief this court deems just, fair, and/or equitable.

Respectfully Submitted,

s/

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Dated: August 09, 2022