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Jul 31 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEWEY MCNAIR,

APPELLANT

APPELLATE CASE NO. 2023-000516

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
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ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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WITNESS

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No Witnesses.

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

* * * * *

PROBATION OFFICER: Dewey McNair.

(The defendant was personally present, together with counsel.)

THE CLERK: Would you raise your right hand?

THE DEFENDANT: (Complying.)

THE CLERK: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

THE DEFENDANT: Yes.

THE COURT: All right. Tell me about Mr. McNair.

PROBATION OFFICER: Yes. Mr. McNair was sentenced to probation on July 10, 2018, for domestic violence, second degree, three years suspended to three-years probation.

He had an admin hearing on this case for violating DV condition one, both standard and DV, by not reporting, restructured, failing to report on 3/30/22 as directed during a home visit on 3/3/22 and any time thereafter, and in person on 3/23 and 4/28 over the phone, and 4/4 via letter.

He is behind on his payments. He's six payments behind on his supervision fees; \$100 in arrears on the Public Defender; and one payment on

1 his drug test fee.

2 He also violated administration sanctions order
3 by hearing officer on 12/9/2021, and that the
4 subject failed to report immediately upon release
5 and enroll in the substance abuse counseling program
6 within 30 days of release.

7 He also violated administrative sanctions order
8 by hearing officer on December 9th of 2021 in that
9 the subject failed to report immediate --
10 immediately upon release, and to enroll in a
11 substance abuse counseling program within 30 days of
12 release, and that the offender never contacted his
13 agent. Never made agent contact with via subject
14 during home visit on 12/22 of '21 -- 12/22 of 2021.

15 Twenty-three days after he was released,
16 subject failed to make contact with substance abuse
17 provider as instructed during home visit on 1/6 of
18 2022. Subject was fined -- subject fined and was to
19 write a copy of referral form on 1/6 of 2022.

20 Both violations by violating conditions ten of
21 both standard and DV conditions to follow the advice
22 and instructions of his supervising agent evidenced
23 by the above conditions.

24 THE COURT: Okay. Mr. McNair, do you admit or
25 deny that you violated your probation as she stated?

1 THE DEFENDANT: I've violated my probation.

2 THE COURT: You're in willful violation. Go
3 ahead.

4 MR. BRADLEY: May it please the Court, Your
5 Honor?

6 Mr. McNair, speaking to him, he tells me that
7 he's not been out doing anything illegal. He's not
8 caught any new charges since being placed on
9 probation in 2018. He's literally just been at home
10 taking care of his mother.

11 There's no transportation. Says that the car
12 in the driveway has four flat tires and doesn't
13 go -- doesn't go anywhere.

14 And he, unfortunately, did not -- he tells me
15 he did not know he could call in to report.

16 And he does wish to speak to you at the
17 appropriate time, Your Honor.

18 But he's 54-years old. Single. He does have
19 one grown daughter, but he's not been working. He's
20 been at home taking care of his mother. And he
21 tells me he has spoken with someone about a job
22 lined up for him. He will be able to get out of
23 jail doing construction work, roofing. He has -- he
24 does have a degree from Tri-County. No current
25 health conditions.

1 But he's been on since July of 2018. It's
2 supposed to end -- his term is supposed to end July
3 of this year.

4 He understands he does have some prior
5 violations for essentially doing the same thing,
6 just being a homebody and not going in to report.

7 But he's served 59 days as of today, Your
8 Honor. We would ask that you consider something
9 much less than a full revocation than probation is
10 seeking. If you consider something along the lines
11 of 6 months and terminate, Mr. McNair would be
12 appreciative, but I believe Mr. McNair would like to
13 address you, as well.

14 THE COURT: All right. Mr. McNair.

15 THE DEFENDANT: Yes, sir. I want to apologize
16 to the State for my ignorance and my actions. I
17 didn't think you could call in just to report.
18 That's my ignorance. I thought a person had to show
19 up and basically report.

20 But my mom is on her deathbed, and I -- I need
21 to be with her. She's my backbone, and she won't be
22 here if I go in there. She won't be here when I
23 come home. I just hope this Court would take that
24 into consideration. I don't want my mom to die and
25 me not be there to make it easier on her. She

1 doesn't have anybody else. I'm the only family she
2 has.

3 THE COURT: Anything from probation?

4 PROBATION OFFICER: We're asking for a full
5 revocation, terminate the case. Since the start of
6 probation, the offender has had four warrants
7 violating.

8 Violations: He has failed to complete
9 substance abuse counseling, any treatment directed
10 by the Court. He would not report. He continues to
11 abscond probation. He has shown minimal efforts in
12 completing probation and he has refused to even make
13 phone calls to report when he was given that option.
14 He has appeared twice before an administrative
15 hearing where he was ordered to complete substance
16 abuse counseling directly by the hearing officer and
17 he has failed to do so.

18 THE COURT: Well, Mr. McNair, I'm sorry to hear
19 about your mother, but you appeared in front of me
20 and I put you on probation to give you an
21 opportunity not to have to serve the sentence as a
22 result of this offense that you committed and you
23 admitted to being convicted. And probation is a way
24 to get out of having to serve that sentence.

25 What I'm hearing is you haven't done anything.

1 You haven't paid your money. You haven't reported.
2 You didn't call in. You didn't do the substance
3 abuse counseling. They brought you back to court
4 multiple times. This is not a successful probation
5 case. This is a failure.

6 So I'm going to -- I'm going to
7 terminate the -- I'm going to terminate probation.
8 I'm going to revoke the three-year sentence. I give
9 him credit for 59 days, plus the 48 days that he
10 served when he was sentenced. It's very frustrating
11 for the Court to see someone mess their probation
12 up, but I don't have any choice. Good luck to you,
13 Mr. McNair.

14 PROBATION OFFICER: Judge Sprouse, what is --
15 you said revoke three years and what else?

16 THE COURT: Terminate probation. Let the time
17 satisfy all the monies that he owes, so he starts
18 with a clean slate. No administrative monitoring.

19 PROBATION OFFICER: Okay. Thank you.

20 MR. BRADLEY: Thank you, Your Honor.

21 (The proceedings concluded at 10:28 a.m.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 17th day of March, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 24, 2023

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of ANDERSON

STATE VS.

DEWEY RAY MCNAIR

AKA: None

Race: White Sex: Male

DOB: [REDACTED]/1969

SSN: [REDACTED]

SID#: 00868477

IN THE COURT OF GENERAL SESSIONS

Indictment Number:

2016 - GS - 04 - 02386

Probation C/W#s & issuance dates: W-04-22-0249 issued 6/02/2022 and W-04-22-0454 issued 12/19/23

Original Offense: Domestic Violence 2nd Degree

Original A/W#: 2016A0410200932

Date of Original Offense: 7/2/2016

Conviction S.C. Code §: 16-25-0020(A) and 16-25-0020(B)

Conviction CDR Code #: 3 / 8 / 1 / 1

Original Sentence: 3 years upon service of 48 days ss 3 yrs

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 7 / 10 / 2018 in the Court of General Sessions of ANDERSON County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 6/15/21, 12/9/21, as set forth in the attached warrant(s) or citation(s). After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above name defendant has violated the following condition(s) of probation; *(List by number or indicate special conditions as provided in the affidavit)*

1,7,9, and 10

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve the remainder of the original sentence.
- the suspended sentence be partially revoked and the above named defendant be required to serve _____ days/months/years of the original sentence; and
 - Terminate the balance of probation.
 - Continue/reinstate probation, subject to the conditions set forth in the original sentence and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on electronic monitoring pursuant to §23-3-540.
- Financial Obligations: Order satisfies:
 - Department fees (arrearage)
 - Fines and other fees (arrearage / balance)
 - Restitution (and 20%) (arrearage / balance)
 Civil judgment:
 - Department fees
 - Fines and other fees
 - Restitution (and 20%)
- Additional Conditions ordered by the Court (Jail time credits should not be reported in this section):

No A/M.

- The defendant is given credit for 59 days/months/years pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant is to be given credit for 48 days/months/years of Hayes credit (N/A if defendant has served prior SDC time).
- No pre-revocation hearing detention time to be awarded because a citation was issued.
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 17th day of March, 2023
Anderson, SC

[Signature]
Presiding Judge 10 Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed. This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Witnessed by

[Signature]

Signed this 17th day of March, 2023 at Anderson SC
Day Month Year City

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF GENERAL SESSIONS

Indictment No. 16-GS-04-02386

Probation/ Community Supervision
Program (CSP) Violation
Warrant/Citation # W-04-22-0454

State of South Carolina,)
)
v.)
)
Dewey R. McNair,)
)
)
Offender.)

**NOTICE OF PROBATION /CSP VIOLATION
HEARING AND ACKNOWLEDGMENT
OF NOTICE**

You are hereby directed to appear at a Probation/CSP Violation Hearing in General Sessions on 03/17/2023 a 09:30 am / pm in Anderson County Courthouse, Anderson, South Carolina.

You may have an attorney represent you at this hearing. If you cannot afford an attorney and you desire the representation of the Anderson County Public Defender, you must apply for an appointed attorney with that office. If you choose to appear at the hearing without an attorney, you may be required to represent yourself. You are hereby advised that there are dangers and disadvantages to self-representation. An attorney may better understand courtroom procedure and may be better able to think of and present defenses to your violations. By appearing without an attorney you are acknowledging these dangers but are knowingly and voluntarily choosing to proceed without counsel.

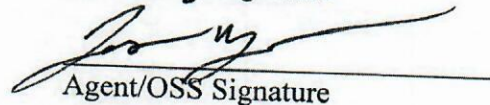
At the violation hearing you will have an opportunity to speak, and you may present witnesses or documentary evidence on your behalf. If requested, you will also have an opportunity to confront and cross-examine any witnesses called to testify against you; however, the Department may elect to present affidavits of witnesses or police officers in lieu of testimony. State v. Pauling (Ct. App. 2006). It is your responsibility to have your witnesses and attorney present. If you are released on bond prior to your hearing date, you must report to the Probation Office immediately upon your release.

You are required to be present at your hearing as scheduled above. If you do not appear, a bench warrant or a failure to appear warrant will be issued for your arrest. Furthermore, the Court may choose to proceed with the hearing in your absence. This directive remains in effect until you are granted leave by the Court.

This directive has been read to me and I have been provided with a copy. I was also given an opportunity to ask questions about this directive before it was signed.

1/18/23
Date


Offender's Signature


Agent/OSS Signature

Form 16.1-Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-180
March 15, 1978

Probation

ARREST WARRANT

Indictment Number: 16-GS-04-02386

Warrant Number: W-04-22-0454

State Identification No. (SID) 00868477

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF ANDERSON, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

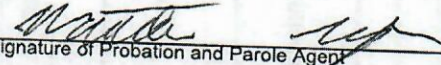
It appearing from the attached affidavit that there are reasonable grounds to believe that DEWEY RAY MCNAIR, did on the 19 day of December, 2022 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

The offender has violated conditions 1, 10 of the standard Department conditions associated with Section 24-21-430. The offender has also violated special conditions imposed by the General Sessions Court per order dated July 10, 2018. This warrant or citation is issued pursuant to section 24-21-450 or 300.

Now, therefore, you are empowered and directed to arrest the said defendant and bring DEWEY RAY MCNAIR before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at ANDERSON, S. C. this 19 day of December, 2022.

County of **ANDERSON**


Signature of Probation and Parole Agent

(L.S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Matthew Cooper, who, first being duly sworn, deposes and says that DEWEY RAY MCNAIR did within this County and State on the 19 day of December, 2022, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

The offender has violated conditions 1, 10 of the standard Department conditions associated with Section 24-21-430. The offender has also violated special conditions imposed by the General Sessions Court per order dated July 10, 2018. This warrant or citation is issued pursuant to section 24-21-450 or 300.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Failing to follow advice and instructions of Agent. Failing to appear before General Sessions Hearing on 12-16-2022 having been given verbal and written notice to do so on 11-14-2022 without reason or excuse. Failing to report immediately upon release from the Anderson County Detention Center to the Anderson SCDPPPS Office after his release on 11-14-22 or anytime there after. Additionally Agent performed a Home Visit at the last known address on 12-12-22 instructing the Offender to report and having never made contact with his Agent. Such actions constitute violation of conditions 1, 10.

Sworn to and Subscribed before me
this 19 day of December, 2022.


Signature of Notary Public

(L.S.)

3-20-2028

My Commission Expires


Affiant

Address: P.O. BOX 8002
ANDERSON, SC 29622

(864) 260-2230

RETURN

STATE OF SOUTH CAROLINA
COUNTY OF

ANDERSON

THE STATE
against

DEWEY RAY MCNAIR

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

Dewey R Mcnair

on the 18 day of Jan, 2023.

[Signature]
Constable or Law Enforcement Officer

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 12/19/2022

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Matthew Cooper

This Warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to dealt with according to law.

Signature of Judge _____ (L.S.)

Disposition _____

Sentence _____

Co-Defendants _____

WARRANT ENTERED IN SCW/NCIC

Date Entered: 12-20-22

Date Served: _____

FIOS Notified: _____ by (initials) _____

INFORMATION ON DEFENDANT

Name DEWEY RAY MCNAIR

Address CAIN CT
IVA, SC 29655

Phone _____

Sex Male Race White Height 507

Weight 190 Birth date _____ 1969

Social Security Number _____

INFORMATION ON WITNESSES

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

PRELIMINARY HEARING held by

Magistrate _____

on _____ with _____

Attorney for the Defendant.

Decision _____

BAIL

Date Set _____

Magistrate _____

Amount _____

Surety _____

CERTIFICATE OF COUNSEL FOR APPELLANT

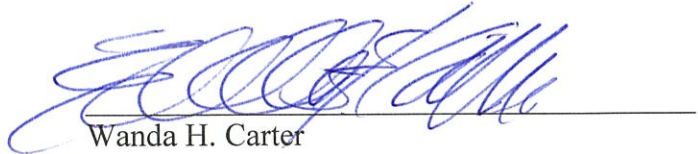
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Jul 31 2023

SC Court of Appeals



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 31st day of July, 2023.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

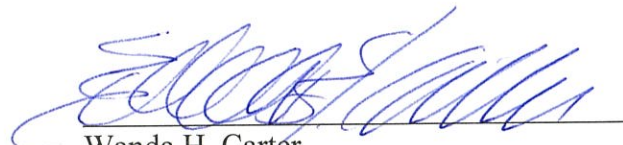
V.

DEWEY MCNAIR,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Dewey McNair, 390562, Livesay Pre-Release Center, P.O. Box 580, Una, SC 29378, this 31st day of July, 2023.



Wanda H. Carter
Deputy Chief Appellate Defender