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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina)

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vs.)

Sep 11 2023

ORDER

Bernard Joseph Jackson,)

SC Court of Appeals

Indictment 1998-GS-23-04295

Defendant)
)
)
)

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Paul Hickenheimer-CDC-BUL-SC

This matter came before the Court on March 17, 2023, on Defendant's Motion for Release from Electronic Monitoring. M. Kyle Thompson of the Thirteenth Judicial Circuit Solicitor's Office appeared for the State. Octavia Wright appeared on behalf of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS). Christopher D. Scalzo of Turner Padgett Graham & Laney, P.A. For the reasons set forth below, the Court **denies** the Motion.

Factual Background

On April 1, 1999, Defendant pled guilty to the offense of Criminal Sexual Conduct 2nd degree with a minor. The Court sentenced him to five years imprisonment. Upon his release from custody, he was required to register on the Sex Offender Registry.

In 2007, following a violation of Community Supervision provisions of the Sex Offender Registry, the Court ordered him to begin wearing an electronic monitor pursuant to Jason's Law, S.C. Code Ann. § 23-3-540. As part of being subject to electronic monitoring, Defendant is required to comply with GPS Tracking Program Conditions, which is monitored by SCPPPS. Defendant most recently confirmed by his signature that he was aware of these conditions and understood them on April 6, 2022. On that date, he agreed, as Condition 2 of the GPS Tracking Program Conditions, that he would reside at 9 Dobbs St., Greenville, South Carolina 29605.

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In October 2022, the Greenville County Sheriff's Office obtained warrants against Defendant for Failing to Register as a Sex Offender (1st Offense) and Violating Residency Limitations (1st Offense). According to information presented to the Court, Defendant was not living at 9 Dobbs Street, and deputies relied upon the electronic monitoring information provided to obtain those warrants. The Greenville County Sheriff's Office arrested Defendant on those warrants on November 15, 2022, and he pled guilty to both charges on February 9, 2023.

On February 28, 2023, Defendant filed this motion.

Legal Analysis

Defendant asserts that he should no longer be subject to electronic monitoring due to more than ten years passing since he began to be electronically monitored. S.C. Code Ann. § 23-3-540(H) states in relevant part:

Ten years from the date the person begins to be electronically monitored, the person may petition the chief administrative judge of the general sessions court for the county in which the person was ordered to be electronically monitored for an order to be released from the electronic monitoring requirements of this section. ... If the court finds that there is clear and convincing evidence that the person has complied with the terms and conditions of the electronic monitoring and that there is no longer a need to electronically monitor the person, then the court may order the person to be released from the electronic monitoring requirements of this section.

Defendant asserted that he has fully complied with the terms and conditions and that there is no need to monitor him.

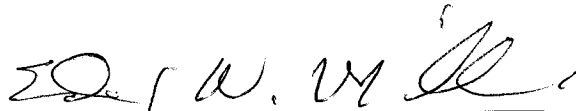
The Court disagrees. Defendant pled guilty to a criminal charge of failing to register as a sex offender. The warrant to which he pled guilty asserted that he had moved away from the address where he had previously registered (9 Dobbs St.) and had failed to notify the Greenville County Sheriff's Office. His guilty plea was an admission that he was not living at the address provided as part of the GPS Tracking Program Conditions. By failing to reside at the given address on the GPS Tracking Program Conditions, he violated the "terms and conditions of the electronic monitoring."

Furthermore, Defendant has not provided any evidence that there is no longer a need to electronically monitor him. As the moving party, Defendant has the burden to prove that there is no longer a need to monitor him. He did not introduce any testimony, affidavits, reports, or any other evidence indicating that there is no longer the need to monitor him. On the contrary, the fact that he was not residing at the address provided either to SCPPPS as part of the GPS Tracking Program Conditions or the address provided for the Sex Offender Registry makes it clear that continuing monitoring is needed.

THEREFORE,

IT IS ORDERED that Defendant's Petition for Release from Electronic Monitoring is **denied**.

IT IS SO ORDERED!



Edward W. Miller
Presiding Judge

Greenville, South Carolina
Date 4/15/23