

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case No. 2024-001017

THE STATE,

Respondent,

vs.

GREGORY LAMONT BENJAMIN,

Appellant.

**MOTION TO
DISMISS APPEAL WITHOUT PREJUDICE
PENDING RESOLUTION OF TIMELY-FILED POST-SENTENCING MOTION**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In August of 2022, Appellant Gregory Lamont Benjamin—while already incarcerated at the Darlington County Detention Center in connection to an unrelated matter—was arrested after he exposed his penis during a meeting with his defense counsel. In October of 2022, the Darlington County Grand Jury indicted Benjamin for one count of indecent exposure. On June 10, 2024, Benjamin appeared in the Sumter County Court of General Sessions before the Honorable R. Ferrell Cothran, Jr., circuit court judge, and—after waiving venue—pled guilty as indicted. Judge Cothran accepted Benjamin’s guilty plea, sentenced him to a 540-day term of

imprisonment, and credited him with 540 days of time already served. In addition to that, Judge Cothran ordered Benjamin to register as a sex offender.¹

II.

On June 16, 2024, Benjamin filed a notice of appeal through which he is seeking to challenge the sufficiency of Judge Cothran’s order requiring him to register as a sex offender.² Thereafter, on June 19, 2024, the State filed a *timely* post-sentencing motion seeking a written order confirming Judge Cothran’s sex offender registration findings.³ See Rule 29(a), SCRCrimP (“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.”). At present, Benjamin’s appeal is currently pending in this Court, and the State’s timely post-sentencing motion is currently pending before the Darlington County Court of General Sessions.

III.

Pursuant to the South Carolina Appellate Court Rules, a notice of appeal must be served within ten days after a plea or trial resulting in a criminal conviction. Rule 203(b)(2), SCACR. However, when a timely post-trial motion is made, “the time to appeal *shall be stayed* and shall begin to run from receipt notice of entry of an order granting or denying such motion.” Id. (emphasis added); see Rule 29(a), SCRCrimP (“The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion.”). And, significantly, when timely post-trial motions are filed

¹ Copies of the arrest warrant, indictment, and sentencing sheet have been included with the State’s motion as Attachment “A.”

² A copy of Benjamin’s notice of appeal has been included with the State’s motion as Attachment “B.”

³ A copy of the timely post-sentencing motion has been included with the State’s motion as Attachment “C.”

after a notice of appeal has already been filed, our Supreme Court has instructed the premature filing of the notice of appeal “does not deprive the lower court of jurisdiction to consider the motions” and an appellate court should dismiss the appeal without prejudice upon learning of the motions. Hudson v. Hudson, 290 S.C. 215, 215, 349 S.E.2d 341, 341-342 (1986). After dismissal, a party wishing to do so would then be free to file a new notice of appeal in a manner consistent with our state’s appellate court rules once any pending post-trial motions have been finally ruled upon. Id.; see Rule 203(b)(2), SCACR (“When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion.”).

IV.

Here, in Benjamin’s case, the State timely filed a post-sentencing motion, and that motion is now pending before the circuit court. Records for Gregory Lamont Benjamin, Darlington County Fourth Judicial Public Index, <https://publicindex.sccourts.org/darlington/publicindex>. Therefore, just as our Supreme Court has instructed, this Court should dismiss Benjamin’s appeal *without prejudice* as premature. See Hudson, 290 S.C. at 215, 349 S.E.2d at 342 (“Upon receipt of . . . notice [a time post-trial motion has been filed simultaneously with or subsequent to the filing of a notice of appeal], the appeal shall be dismissed without prejudice.”); see also Hughes on behalf of Est. of Hughes v. Bank of Am. Nat’l Ass’n, 442 S.C. 113, 139, 898 S.E.2d 102, 115 (2024) (“[W]e take this opportunity to remind the bar of the Hudson procedure and the judicial economy inherent in it.”). By doing just that, this Court will be complying with our Supreme Court’s clear directives on such matters while in no way preventing Benjamin—who will be free to file a new notice of appeal after the State’s post-sentencing motion has been ruled upon—from initiating his appeal once the proper time for doing so has truly arrived in his case.

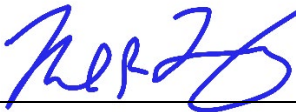
See Hudson, 290 S.C. at 215, 349 S.E.2d at 342 (“Any party can appeal within ten (10) days after the order disposing of the post-trial motions”).

WHEREFORE, the State prays this Court will dismiss this appeal *without prejudice* as premature; hold the matter in abeyance pending a ruling on this motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

By: 
Mark R. Farthing
S.C. Bar Number 76901

July 15, 2024

ATTACHMENT "A"

ARREST WARRANT

2022A1610200080

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Darlington

THE STATE

202208-0099

against

Gregory Lamont Benjamin

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 8 Weight: 200

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0160000

Prosecuting Agency: Darlington County Sheriff

Prosecuting Officer: Charles N Cusack - S00061

Offense: Sex / Indecent exposure

Offense Code: 0091

Code/Ordinance Sec: 16-15-0130

This warrant is CERTIFIED FOR SERVICE in the

[] County/ [] Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered to

defendant on 8-2-2022

Gregory Benjamin

Signature of Constable/Enforcement Officer

RETURN WARRANT TO:

General Sessions
1 Public Square 5Th Floor
Darlington, SC 29532

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)

[X] County/ [] Municipality of)

Darlington)

Personally appeared before me the affiant Charles N Cusack who

being duly sworn deposes and says that defendant Gregory Lamont Benjamin

did within this county and state on or about 8/2/2022 violate the criminal laws of the

State of South Carolina (or ordinance of [X] County/ [] Municipality of Darlington)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Indecent exposure

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT THE DEFENDANT DID IN THE DARLINGTON AREA OF DARLINGTON COUNTY, ON THE 1ST DAY OF AUGUST 2022, DID COMMIT THE OFFENSE OF INDECENT EXPOSURE (SC CODE OF LAW 16-15-130) TO WIT: THAT THE DEFENDANT, WHILE IN CUSTODY AT THE DARLINGTON COUNTY DETENTION CENTER, DID WILLFULLY AND MALICIOUSLY EXPOSE HIMSELF AND BEGAN MASTERBATING TOWARDS THE VICTIM DURING A CASE MEETING IN THE INTERVIEW ROOM AT THE DETENTYION CENTER. THE VICTIM GOT UP TO LEAVE AND THE DEFENDENT FOLLOWED HER TO THE DOOR MASTERBATING TOWARDS HER.

Signature of Affiant

STATE OF SOUTH CAROLINA)

[X] County/ [] Municipality of)

Darlington)

Affiant's Address P O Box 783

Darlington, SC 29540-

Affiant's Telephone [REDACTED]

RECEIVED

AUG 15 2022

Darlington County
Clerk of Court

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/2/2022 defendant Gregory Lamont Benjamin

did violate the criminal laws of the State of South Carolina (or ordinance of

[X] County/ [] Municipality of Darlington) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Indecent exposure

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her 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

Sworn to and subscribed before me

on 8/2/2022

Signature of Issuing Judge (L.S.)

Craig Landon La Cross

Judge Code: 7342

Judge's Address 404 South Fourth Street

Hartsville, SC 29551-1765

Judge's Telephone (843)332-9661

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

RECEIVED

AUG 22 2022

BAIL set by

WITNESSES



Judge Deatrice B. Curtis
on August 3, 2022
Type and Amount: \$5000 PK
Name of Surety: _____

Name: _____
Address: _____
Telephone: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Name: _____
Address: _____
Telephone: _____

Decision: _____

Name: _____
Address: _____
Telephone: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Name: _____
Address: _____
Telephone: _____

Disposition: _____
Sentence: _____

Name: _____
Address: _____
Telephone: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

WITNESSES

Charles N Cusack

Darlington County Sheriff

Law Enforcement Case #: 202208-0099
836

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2022A1610200080

ARRESTED ON: 2022-08-02

ACTION OF GRAND JURY

TB 10/6/22

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2022-GS-16-1477

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
October 2022

THE STATE

vs.

Gregory Lamont Benjamin

INDICTMENT FOR

Sex / Indecent exposure

§16-15-0130

CDR Code: 0091

COPIY

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

INDICTMENT FOR
Sex / Indecent exposure

§16-15-0130

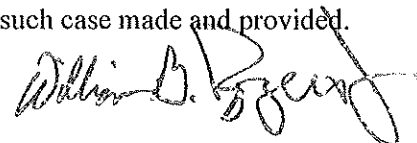
At a Court of General Sessions, convened on October 06, 2022, the Grand Jurors of Darlington County present upon their oath:

INDECENT EXPOSURE

CDR: 0091 16-15-0130

That Gregory Lamont Benjamin did in Darlington County on or about August 2, 2022 at the Darlington County Detention Center located at 2349 Rogers Road, Darlington, SC, willfully, maliciously and indecently expose himself in a public place, on property of others, or to the view of any person on a street or highway, in violation of Section 16-15-0130, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Darlington)

IN THE COURT OF GENERAL SESSIONS

STATE)
VS.)

INDICTMENT/CASE#: 2022-GS-16 - 1477

Gregory Lamont Benjamin)

AW#: 2022A1610200080

AKA: _____)

Date of Offense: 09/02/2022

Race: Black Sex: Male Age: 38)

S.C. Code §: 16-15-0130

DOB: [REDACTED] SS#: [REDACTED])

CDR Code #: 0091

Address: [REDACTED])

City, State, Zip: _____)

DL#* [REDACTED] SID# _____)

SENTENCE SHEET

*0-3 years and/or online
detention sex offender
registry*

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Sex/ Indecent Exposure

In violation of § 16-15-0130 of the S.C. Code of Laws, bearing CDR Code # 0091

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. *Time Served 540 days Open Registry*

ATTEST: Jean Budge 102009 Muel Rini [Signature] 103637
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 540 days/months/years Time Served Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. _____ days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

2022 JUN 11 P 2:57
FILED
COTT B. SIEGGER
CLERK OF COURT/ROD.
DARLINGTON COUNTY, S.C.
TRUE CERTIFIED COPY,
Jean B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling Completion of GED Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp No Contact with Victim Domestic Violence Intervention Program
- Mental Health Counseling May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:		\$
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____ Beginning	_____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ <u>3.75</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
TOTAL		\$ <u>128.75</u>

Clerk of Court/Deputy Clerk: Michelle Winburn
 Court Reporter: Sherri Jones

Presiding Judge: [Signature]
 Judge Code: 21414
 Sentence Date: June 10, 2024

FILED
 2024 JUN 11 P 12:51
 SCOTT B. SUGGS
 CLERK OF COURT/R.M.C.
 DARLINGTON COUNTY, S.C.

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 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

ATTACHMENT "B"

RECEIVED

Jun 17 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of General Sessions
R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2022-GS-16-1477

The State,

Respondent,

v.

Gregory Lamont Benjamin,


Appellant.

NOTICE OF APPEAL

Gregory Lamont Benjamin appeals his conviction and sentence in this case. The sentence was imposed by the Honorable R. Ferrell Cothran, Jr. on June 10, 2024. Appellant received written notice of entry of the sentencing order on June 11, 2024.

Mr. Benjamin plead guilty to Indecent Exposure and was ordered to be placed on the Sex Offender Registry pursuant to S.C. Code § 23-3-430. Mr. Benjamin contends that the circuit court judge did not make a specific finding of fact on the record that, based on the circumstances of the case, warranted registry as a sex offender.

June 16, 2024



Ashley N. Berry
Berry Law Office, Inc.
926 Carolina Drive
Lugoff, South Carolina 29078
(803)602-4052
Attorney for Appellant

Other Counsel of Record:
Jason E. Bridges Assistant
Attorney General South
Carolina Attorney
General's Office
P.O. Box 11549 Columbia,
SC 29211
jasonbridges@scag.gov
Attorney for Respondent

ATTACHMENT "C"

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
THE STATE OF SOUTH CAROLINA,)
)
 v.)
)
GREGORY LAMONT BENJAMIN,)
)
 DEFENDANT.)
_____)

IN THE COURT OF GENERAL SESSIONS
FOURTH JUDICIAL CIRCUIT

**MOTION FOR
POST-SENTENCING ORDER**

2024-GS-16-01477

The Defendant, Gregory Lamont Benjamin, pled guilty before the Hon. R. Ferrell Cothran, Jr., on June 10, 2024, in Sumter County to the indictment listed above. The Defendant waived venue on the record and proceeded with the guilty plea in Sumter County. The Defendant pled guilty to one count of Indecent Exposure and the Court sentenced him to 540 days with 540 days of time credit. The Court, after hearing from the parties, also ordered that the Defendant be placed on the sex offender registry pursuant to S.C. Code §23-3-340.

On June 17, 2024, the Defendant filed a timely Notice of Appeal, which contends the Court, “did not make a specific finding of fact on the record that, based on the circumstances of the case, warranted registry as a sex offender.” Contrary to that contention, the State believes the Court did, in fact, make the requisite finding on the record during the Defendant’s guilty plea hearing when ordering him to register as a sex offender.

However, to ensure there is no confusion as to the Court’s ruling for appellate purposes, the State now moves pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure for this Court to issue a written order confirming its finding that, based on the circumstances of the Defendant’s case, the Defendant should register as a sex offender following his conviction for

FILED
2024 JUN 19 11:31
COTHRAN, SUZAN
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.
TRUE CERTIFIED COPY,
Scott B. Suggs
**CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.**

Indecent Exposure. Consistent with the requirements of Rule 29, the State is timely making this motion within ten days of the imposition of Benjamin's sentence. See Rule 29(a), SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence. . . . The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from receipt of written notice of entry of the order granting or denying such motion.").

I SO MOVE



JASON E. BRIDGES
ASSISTANT ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
1000 ASSEMBLY STREET
COLUMBIA, SC 29201
803-734-1445
JASONBRIDGES@SCAG.GOV

FILED

2024 JUN 19 P 3:11

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

RECEIVED

Jul 15 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case No. 2024-001017

THE STATE,

Respondent,

vs.

GREGORY LAMONT BENJAMIN,

Appellant.

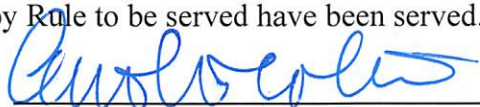
PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Motion to Dismiss Appeal Without Prejudice Pending Resolution of Timely-Filed Post-Sentencing Motion on Appellant by sending an electronic copy via email to the addresses listed in AIS for the following individuals:

Ashley N. Berry, Esquire
Berry Law Office, Inc.
926 Carolina Drive
Lugoff, South Carolina 29078

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 15th day of July, 2024.



CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General