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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NICHOLAS JOHN CAPUTO,

APPELLANT

APPELLATE CASE NO. 2024-000966

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS
CASE NO. 2021-GS-46-02999

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 -vs-)
)
 NICHOLAS J. CAPUTO,)
)
 Defendant.)
 _____)

TRANSCRIPT OF RECORD

June 3, 2024
York, South Carolina

B E F O R E:

Honorable J. Derham Cole, Judge.

A P P E A R A N C E S:

Mr. Mitchell
Probation Agent
York County Probation, Pardon and Parole
York, South Carolina

Ms. Ugonna Udogwu
Assistant Public Defender
Sixteenth Circuit Public Defender's Office
York, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1 THE COURT: All right. This is Nicholas John Caputo?

2 MR. MITCHELL: Yes, Your Honor.

3 THE COURT: Who's your lawyer?

4 MS. UDOGWU: Ugonna Udogwu of the Public Defender's
5 office, Your Honor.

6 THE COURT: Okay.

7 MR. CAPUTO: It's hard to pronounce, Your Honor.

8 THE COURT: Sir?

9 MR. CAPUTO: Her name is hard to pronounce.

10 THE COURT: Why's that? Well, it's not Caputo.

11 MR. CAPUTO: Oh. I thought you were talking about her
12 name.

13 THE COURT: I am. You said it's hard to pronounce. I
14 said, well, it's not Caputo, but you could pronounce it if
15 you wanted to, couldn't you?

16 MR. CAPUTO: Yeah. I could try.

17 THE COURT: Okay. You know why you're here?

18 MR. CAPUTO: Yes, Your Honor.

19 THE COURT: I have before me a warrant, 46-21-0344. It
20 alleges that you have failed to comply with the conditions
21 of a probationary sentence previously imposed. Do you
22 understand what they claim you did or failed to do?

23 MR. CAPUTO: Yes, Your Honor.

24 THE COURT: That you were supposed to be doing in
25 compliance with your sentence?

1 MR. CAPUTO: Yes, Your Honor.

2 THE COURT: Well, what's your understanding of the
3 allegations?

4 MR. CAPUTO: That I absconded on my probation.

5 THE COURT: Have you talked to your lawyer about it?

6 MR. CAPUTO: Yes, Your Honor.

7 THE COURT: All right. Is this a recommendation, too?

8 MR. MITCHELL: No, Your Honor.

9 THE COURT: Okay. But he has a one-year sentence
10 suspended to thirteen months?

11 MS. UDOGWU: Yes, Your Honor.

12 THE COURT: All right.

13 MS. UDOGOWU: Yes, Your Honor. I've spoken to Mr.

14 Caputo about the allegations about the violation of
15 probation. Your Honor, he does admit to absconding. He was
16 in Las Vegas, but he turned himself in to Gastonia. At that
17 point he was sent to Statesville for six -- about six
18 months, waiting to serve time from the charges he has in
19 North Carolina and he was transferred down here to York
20 County on May 21st of this year. So he's been incarcerated
21 for over six -- six or eight months now, Your Honor.

22 We're asking the Court to terminate probation and time
23 serve him on these -- on this violation, Your Honor, since
24 the State is only asking for 90 days, Your Honor.

25 THE COURT: All right. Mr. Mitchell.

1 MR. MITCHELL: Thank you, Your Honor. May it please
2 the Court. As the warrant states, saying -- warrant states
3 in W46-21-0344, it does state that he failed to report to
4 the office on 10/4/2021 and 10/5/2021. Your Honor, he also
5 failed to make his whereabouts known; therefore, he has
6 absconded from supervision and he failed he to pay on his
7 monetary obligations, Your Honor. Your Honor, he is on for
8 diving under suspended less than .10, second offense.

9 Your Honor, what the State is asking for is a partial
10 revocation of 90 days, convert surcharge to a civil judgment
11 and time, as well as Department fees based on the fact of he
12 has absconded supervision for nearly three years. He has
13 failed to report to the office when instructed. He was
14 given several opportunities to report, but he willfully and
15 intentionally failed to do so. He hasn't done anything
16 while on probation besides accumulate additional charges, to
17 which include possession of drugs, lodging in a building
18 without permission and possession of burglary tools. The
19 arrest were made in Nevada. He was never given permission
20 to go to Nevada. He has -- he has failed to fulfill his
21 obligation to successfully complete probation for a crime he
22 committed; therefore, probation is requesting a partial
23 revocation of 90 days and terminate, Your Honor. And I do
24 understand what they're stating as far as him doing time,
25 but, Your Honor, just take into consideration that that was

1 a crime that he committed in another state, Your Honor, and
2 that he done for them and he committed a crime in South
3 Carolina, Your Honor, which he needs -- well, he should,
4 Your Honor, be able to serve his sentence on that as well,
5 Your Honor, for a crime he committed here.

6 THE COURT: All right. Anything you want to add?

7 MS. UDOGWU: Yes, Your Honor. I would like to add that
8 his brother is present in the courtroom and he would like to
9 address the Court at the appropriate time as well.

10 THE COURT: All right.

11 MR. JOSEPH CAPUTO: Thanks for letting me speak, Your
12 Honor. I'm just here to confirm that my brother --

13 THE COURT: Tell me what your name is.

14 MR. JOSEPH CAPUTO: Joseph Caputo.

15 THE COURT: All right.

16 MR. JOSEPH CAPUTO: I'm just here to confirm that he
17 has a job waiting for him, family waiting to see him when he
18 leaves here and I haven't always been the biggest fan of my
19 brother, the decisions he's made in his life, but I can
20 stand here and be proud of him for the decisions he's been
21 making recently, especially to turn himself in.

22 For the record, we weren't aware that my brother was on
23 probation in two different states, also for two different
24 crimes. Whether it's relevant or not, sir, my brother was
25 gone down a dark road and we wanted to help him the best way

1 we can and he didn't have any warrants in this state when I
2 called in November of last year. So the fact that my
3 brother was arrested, charged, sentenced in a different
4 state without the probation knowing anything about this,
5 not telling us. I had to inform them on the morning of May
6 20th after he'd been incarcerated for over seven months at a
7 different institution. My brother has been doing nothing
8 but trying to get his life together since then.

9 We're asking the Court release him so I can take him
10 home today to see his family, after he turned himself in,
11 served his time for what I believe something that a lot of
12 us have been guilty of under this roof and I just ask the
13 Court recognize the time he's served, whether it be in this
14 state or another state. That's all, Your Honor.

15 THE COURT: All right. Thank you, sir. All right.
16 John Caputo, you got anything you want to add?

17 MR. CAPUTO: That about sums it all up, Your Honor.

18 THE COURT: All right. I find he's willfully failed
19 to comply; revoke the balance, give him credit for any time
20 he's entitled to pursuant 24-13-40.

21 MR. MITCHELL: Revoke the entire balance?

22 THE COURT: Yes, sir.

23 MR. MITCHELL: Okay. Thank you, Your Honor.

24 MR. CAPUTO: Thank you, Your Honor.

25 (END OF REQUESTED TRANSCRIPT)

8
STATE OF SOUTH CAROLINA

County of York
STATE VS

Nicholas Caputo

AKA: _____
Race: W Sex: M
DOB: _____
SSN: _____
SID#: _____

IN THE COURT OF GENERAL SESSIONS

Indictment Number: 21 - GS - 46 - 02999
Probation CW#s & issuance dates: W-46-21-0344
10-19-21

Name of Original Offense: DUI less than .10 2nd
Original AWW#: 20213090034995
Date of Original Offense: 8/10/21
Conviction S.C. Code §: 56-05-2930 (A)
Conviction CDR Code #: 3 1 3 1 S 1 6
Original Sentence: 1 yr + \$2,100 Fines 5 Days + \$1,100 BAC SWS 13 mos Prob.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 8 / 30 / 21 in the Court of General Sessions of York County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____, as set forth in the attached warrant(s) or citation(s). After hearing the evidence and being duly advised, in the (presence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: *(List by number or indicate special conditions as provided in the affidavit)*

127910

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 13 (days) months/years of 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 _____ days/months/years of Hayes credit (N/A if defendant has served prior SCDC 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 3 day of June, 24,
York, SC

[Signature]
Presiding Judge 16th 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 Unable to sign
Signed this 03 day of 06 24 at _____
Day Month Year

Witnessed by [Signature]
City York SC

RETURN

STATE OF SOUTH CAROLINA
COUNTY OF YORK

THE STATE
against

NICHOLAS JOHN CAPUTO

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

Nicholas Caputo

on the

21st day of May 2021

Constable or Law Enforcement Officer

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

Signature of Judge

(L.S.)

Constable or Law Enforcement Officer

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 10/19/2021

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

Danzel Mitchell

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name NICHOLAS JOHN CAPUTO

Address

Phone

Sex Male Race White Height 603

Weight 210 Birth date

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

Form 16.1- Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 15, 1978

Probation

ARREST WARRANT

Indictment Number: 21-GS-46-02999

Warrant Number: W-46-21-0344

State Identification No. (SID) 02407968

STATE OF SOUTH CAROLINA

COUNTY OF YORK

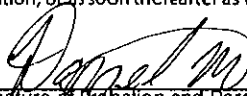
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF YORK, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that NICHOLAS JOHN CAPUTO, did on the 19 day of October, 2021 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

The offender has violated conditions 1, 2, 7, 9, 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 August 30, 2021. 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 NICHOLAS JOHN CAPUTO 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 YORK, S. C. this 19 day of October, 2021.



Signature of Probation and Parole Agent (L.S.)

County of YORK

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Danzel Mitchell, who, first being duly sworn, deposes and says that NICHOLAS JOHN CAPUTO did within this County and State on the 19 day of October, 2021 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

The offender has violated conditions 1, 2, 7, 9, 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 August 30, 2021. 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:

By failing to report as instructed to the Rock Hill office on 10/04/2021 and 10/05/2021 as evident by telephone contact on 10/04/2021 and 10/05/2021. Subject failed to make his whereabouts known therefore has absconded. By failing to pay drug test fee as evident by owing \$20.00, being 1 payment in arrears. By failing to pay court ordered fines as evident by owing \$200.00, being 1 payment in arrears. By failing to pay regular supervision as evident by owing \$50.00, being 1 payment in arrears. By failing to follow the advice and instructions of agent. Such actions constitute violation of conditions 1, 2, 7, 9, 10.

Sworn to and Subscribed before me
this 19 day of October, 2021.



Affiant



Signature of Notary Public (L.S.)

Address: 1070 HECKLE BLVD.
SUITE 3400, BOX 14
ROCK HILL, SC 29732

June 10, 2031
My Commission Expires

(803) 909-7282

DOCKET NO. 2021-GS-46-02999

The State of South Carolina

County of York

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



Defendant

ARREST WARRANT NUMBER

20213090034995

COURT OF GENERAL SESSIONS

AUGUST 30, TERM 2021

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

ACTION OF GRAND JURY

THE STATE

VS.

NICHOLAS JOHN CAPUTO



Defendant

Foreperson of Grand Jury

Date:

Witness:

VERDICT

INDICTMENT FOR

DRIVING UNDER THE INFLUENCE

C.C.C. PLS. AND G.S.

SC Code: § 56-05-2930(A)

CDR Code: 3356

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA
COUNTY OF YORK

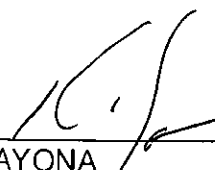
INDICTMENT

At a Court of General Sessions, convened on August 30, 2021, the Grand Jurors of York County present upon their oath:

DRIVING UNDER THE INFLUENCE

The defendant, Nicholas John Caputo, did on or about May 10, 2021, in York County, drive a motor vehicle while under the influence of alcohol and/or any other drug or a combination of drugs and/or substances which cause impairment to the extent that the defendant's faculties to drive were materially and appreciably impaired and while having an alcohol concentration of less than .10%, such not being the first offense within a period of ten years including and immediately preceding the foregoing date, all in violation of Section 56-05-2930(A), *Code of Laws of South Carolina* (1976, as amended).

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



KEVIN BAYONA
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

ORIGINAL

STATE VS.

INDICTMENT/CASE#: 2021-GS-46-02999

NICHOLAS JOHN CAPUTO

A/W#: 20213090034995

AKA: Race: W Sex: M Age: 30

Date of Offense: 05/10/2021

DOB: [redacted] SS# [redacted]

S.C. Code §: 56-05-2930(A)

Address: [redacted] Circle

CDR Code #: 3356

City, State, Zip: Greer, SC 29650

SENTENCE SHEET

DL#* SID# SC02407968

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

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

TO: DUI less than .10, 2nd Offense (5 days to 1 year & \$2,100-5,100)

In violation of § 56-05-2930(A) of the S.C. Code of Laws, bearing CDR Code # 3356

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

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

The plea is: [] Without Negotiations or Recommendation, [X] Negotiated Sentence, [] Recommendation by the State.

ATTEST: [Signature] Solicitor SC Bar # [Signature] Defendant [Signature] Attorney for Defendant SC Bar #

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

for a determinate term of 1 days/months/years Time Served [] Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$2,100 provided that upon the service of 50 days/months/years Time Served and or payment of \$1,100; plus costs and assessments as applicable*; the balance is suspended with probation for 13

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:

[X] 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.

[] 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.

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."

RECEIVED
Mar 05 2025
SC Court of Appeals

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

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

ATTORNEY FOR APPELLANT

This 5th day of March, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

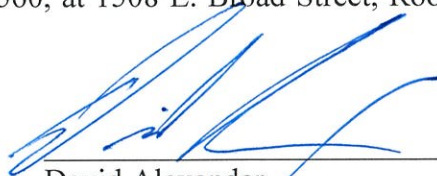
NICHOLAS JOHN CAPUTO,

APPELLANT

APPELLATE CASE NO. 2024-000966

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 Matthew C. Buchanan, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Nicholas John Caputo, #394560, at 1508 E. Broad Street, Room 225, Statesville, NC 28625, this 5th day of March, 2025.



David Alexander
Deputy Chief Attorney for Capital Appeals

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

ATTORNEY FOR APPELLANT