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Mar 30 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

THE STATE,

RESPONDENT

V.

DEMETRIUS JOHN,

APPELLANT

APPELLATE CASE NO. 2024-002008

ANDERS BRIEF OF APPELLANT

GARY H JOHNSON

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The probation revocation court violated appellant’s liberty interest
and due process rights by imposing a lifetime electronic
monitoring burden on appellant without requiring a showing that
he was a danger of re-offending that posed a risk to the public.4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

<u>Anders v. California</u> , 386 U.S. 738 (1967).....	6, 8
<u>Hamilton v. Board of Trustees</u> , 282 S.C. 519, 319 S.E.2d 717 (Ct.App.1984).....	4
<u>In re Treatment & Care of Luckabaugh</u> , 351 S.C. 122, 568 S.E.2d 338 (2002).....	4
<u>Powell v. Keel</u> , 433 S.C. 457, 860 S.E.2d 344 (2021).....	5, 6
<u>State v. Dykes</u> , 403 S.C. 499, 744 S.E.2d 505 (2013).....	5, 7
<u>State v. Hornsby</u> , 326 S.C. 121, 125–26, 484 S.E.2d 869, 872 (1997).....	4, 5

Statutes

S.C. Code Ann. §16-15-410 (2014).....	2, 6
S.C. Code Ann. § 23-3-540 (2015).....	3, 5, 6

STATEMENT OF ISSUE ON APPEAL

Did the probation revocation court violate appellant's liberty interest and due process rights by imposing a lifetime electronic monitoring burden on appellant without requiring a showing that he was a danger of re-offending that posed a risk to the public?

STATEMENT OF THE CASE

Appellant was originally indicted by an Anderson County grand jury with two counts of sexual exploitation of a minor in violation of S.C. Code Ann. §16-15-410 (2014)¹ for possessing material that contained visual representations of minors engaged in sexual activity or appearing in a state of sexually explicit nudity. R. 12 – 16. Appellant entered a guilty plea and was sentenced to ten years' incarceration suspended on service of five years' probation on one offense (GS-2022-04-1160) along with a concurrent sentence for three years on the other offense. R. 12 – 16.

On November 1, 2024, appellant appeared before the Honorable Patrick C. Fant, III, for a probation revocation hearing concerning the sentence under GS-2022-04-1160. R. 1. Elizabeth Wiygul represented appellant and Agent Steven Parker appeared on behalf of the state. R. 1.

Due to concerns about appellant's competence, Judge Fant had ordered an evaluation and a copy of that report was provided during the hearing. Competency Evaluation. That evaluation concluded that:

While Mr. John does not meet diagnostic criteria for an Intellectual Disability, he has consistently exhibited impaired verbal intelligence scores. As such, a diagnosis of borderline intellectual functioning is offered at this time. This diagnosis is appropriate for individuals who require support due to borderline intelligence that do not meet to the clinical threshold of deficits required by an individual who meets criteria for an Intellectual Disability. Notably, this diagnosis does not negatively impact his competency to stand trial.

Competency Evaluation.

¹ Appellant's underlying convictions pre-date the 2025 amendments to of S.C. Code Ann. §16-15-410 (2014).

Despite the evidence of the ongoing need by appellant for support due to his borderline intellectual functioning, Judge Fant both revoked probation and ordered permanent monitoring under the provisions of S.C. Code Ann. § 23-3-540 (2015). R. 11. This appeal follows.

STANDARD OF REVIEW

When an act is challenged under the due process clause, this “Court only requires the act to be reasonably designed to accomplish its purposes, unless some fundamental right or suspect class is implicated.” State v. Hornsby, 326 S.C. 121, 125–26, 484 S.E.2d 869, 872 (1997). Legislation restricting or impairing a fundamental right “is subject to ‘strict scrutiny’ in determining its constitutionality.” Hamilton v. Board of Trustees, 282 S.C. 519, 523, 319 S.E.2d 717, 720 (Ct.App.1984). Legislation that does not infringe on fundamental rights is subject only to a rational basis test. 19 S.C. Juris. Constitutional Law § 74 (1993). Under either type of analysis, the one who attacks the law bears the burden of showing it is unconstitutional.

In re Treatment & Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002).

ARGUMENT

The probation revocation court violated appellant’s liberty interest and due process rights by imposing a lifetime electronic monitoring burden on appellant without requiring a showing that he was a danger of re-offending that posed a risk to the public.

The registration requirement of the provisions of S.C. Code Ann. § 23-3-540 implicates a liberty interest and due process. *See State v. Dykes*, 403 S.C. 499, 506, 744 S.E.2d 505, 509 (2013) (noting “the requirement of satellite monitoring places significant restraints on offenders that amount to a liberty interest.”). “When a fundamental right is not implicated, we require the law to be ‘reasonably designed to accomplish its purposes.’” *Powell v. Keel*, 433 S.C. 457, 465, 860 S.E.2d 344, 348 (2021) (*quoting State v. Hornsby*, 326 S.C. 121, 125–26, 484 S.E.2d 869, 872 (1997)). A lifetime registration requirement “without any opportunity for judicial review to assess the risk of re-offending is arbitrary and cannot be deemed rationally related to the General Assembly’s stated purpose of protecting the public from those with a high risk of re-offending.” *Powell*, 433 S.C. at 472, 860 S.E.2d at 351–52.

Here, the probation revocation order places a lifetime monitoring condition with no finding or evidence that appellant posed a “high risk of re-offending.” *Dykes*, 403 S.C. at 508, 744 S.E.2d at 510. As our courts have made clear, lifetime monitoring and registration requirements are suspect and require a rational relation to protecting the public from the individualized risk associated by the accused. *See Powell*, 433 S.C. 457, 860 S.E.2d 344. By implication, any judicial review/decision impacting a lifetime registration/monitoring

requirement must be concerned with the risk to the public that the accused poses a danger of re-offending.²

Under the statutory scheme created by the Legislature, a violation of S.C. Code Ann. §16-15-410 may be a basis for ordering electronic monitoring as a condition of probation or the result of a hearing on revocation of probation. Under S.C. Code Ann. § 23-3-540(D), a “person who is required to register pursuant to this article for any other offense listed in subsection (G)³, and who violates a term of probation, parole, community supervision, or a community supervision program, *may be ordered by the court or agency with jurisdiction to be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.*” (emphasis added).

Had the probation revocation order merely required appellant to be subject to an active electronic monitoring device for the period appellant was subject to supervision, the order would have been within the sound discretion of the revocation judge. However, the probation revocation order adds a lifetime monitoring requirement without the prerequisite finding (either by legislative determination that as a class certain offenders fall within such requirement or by the probation revocation judge following an evidentiary hearing) that appellant posed a “high risk of re-offending” as contemplated in Powell. Id., 433 S.C. at 472, 860 S.E.2d at 351–52. Absent evidence supporting a finding that appellant posed such a risk to the public, the lifetime monitoring requirement imposed by the lower court violates appellant’s liberty interests and due

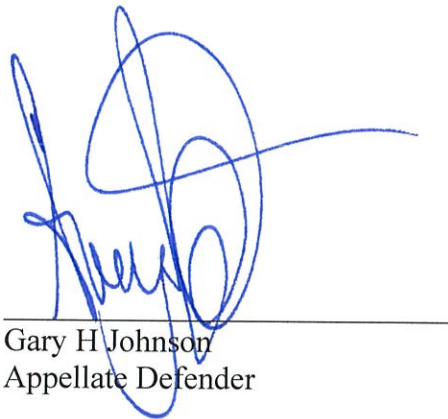
² Appellant’s counsel acknowledges the record lacks any argument that the imposition of a lifetime monitoring requirement was unconstitutional or in contravention of decisions of our appellate courts. Thus, this argument is being presented pursuant to Anders v. California, 386 U.S. 738 (1967).

³ Violations of S.C. Code Ann. §16-15-410 fall within the provisions of S.C. Code Ann. § 23-3-540(G).

process rights. *See Dykes*, 403 S.C. at 506, 744 S.E.2d at 509 (noting “the requirement of satellite monitoring places significant restraints on offenders that amount to a liberty interest.”).

CONCLUSION

Since the probation revocation order, as it relates to a “lifetime” electronic monitoring requirement, violates appellant’s liberty interests and due process, this Court should reverse that portion of the order and remand this matter to the lower court to either receive evidence supporting such a lifetime requirement or enter an appropriate order that allows for an appropriate review of appellant’s risk of reoffending and dangerousness.

A handwritten signature in blue ink, appearing to read 'Gary H. Johnson', is written over a horizontal line. The signature is stylized and somewhat illegible.

Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of March, 2026.

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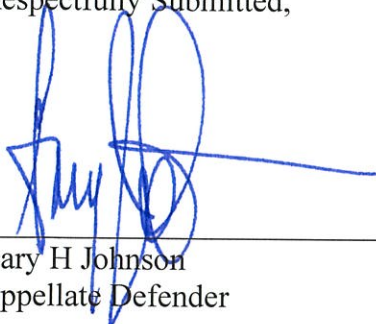
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Demetrius David John states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Patrick Cleburne Fant, III, which was held on Nov. 1, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Demetrius David John.

Respectfully Submitted,



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

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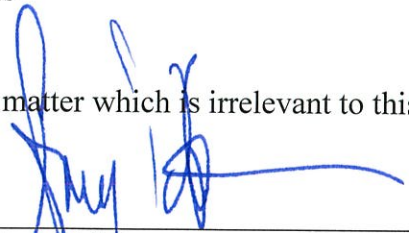
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Probation Revocation Hearing Transcript Dated November 1, 2024
- (2) Sentence sheets and Arrest Warrant
- (3) PPP Summary of Administrative Hearing
- (4) PPP Standard Conditions of Probation form
- (5) PPP Project Ceasefire for
- (6) PPP Standard Sex Offender Conditions form
- (7) PPP Computer/Internet Use Agreement for Sex Offenders form
- (8) PPP Information Regarding (Defendant's) Rights form
- (9) PPP Checklists for Magistrates and Municipal Judges
- (10) PPP Probation Arrest Warrants
- (11) Medical Evaluation

I certify that this designation contains no matter which is irrelevant to this appeal.



Gary H Johnson
Appellate Defender

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and 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."



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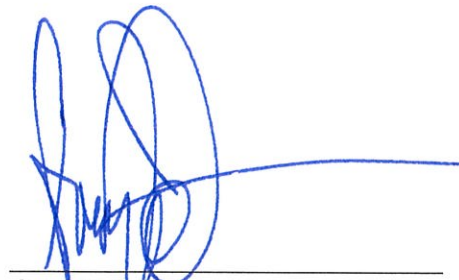
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APPELLATE CASE NO. 2024-002008

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter 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 Demetrius David John, #388461, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 30th day of March, 2026.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT