

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
 State of South Carolina,)
 Plaintiff,)
 vs)
 Greg Jackson Floyd,)
 Defendant,)

IN THE COURT OF GENERAL SESSIONS
 THIRD JUDICIAL CIRCUIT
 2003-GS-14-0207

BEULAH ROBERTS
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 CLARENDON COUNTY, SC
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ORDER

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SC Court of Appeals

This matter was before the court on November 20, 2013 for hearing of the defendant's motion to be relieved from active electronic monitoring (GPS). Jack B. Swerling, Esquire, represents the defendant and Tommy Evans, Jr., Esquire represents the South Carolina Department of Probation, Parole and Pardon Services ("the Department"). For the reasons set forth herein, the motion is denied.

PROCEDURAL HISTORY

Mr. Floyd was convicted of lewd act on a minor on May 19, 2004 for an offense that occurred on June 21, 2003. He was sentenced to ten years in prison, provided upon the service of six years, the balance was suspended and he was to be on probation for five years. At that time, S.C. Code Section 23-3-540 did not require Mr. Floyd to be placed on GPS monitoring. However, he was required to register as a sex offender. Mr. Floyd was released from prison and began his probation on March 30, 2007. His probation ended March 29, 2012.

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On November 30, 2009, Mr. Floyd was arrested on another charge of lewd act on a minor. He was still on probation at the time. By Form 9 order dated January 11, 2010, the undersigned noted "no violations" at this time, but, upon motion of the Department, added as a condition of probation that Mr. Floyd "be placed on GPS monitoring pending adjudication of [the new lewd act charge]." The order noted the condition was based on community safety concerns.

On May 12, 2011, the Honorable Howard P. King found Mr. Floyd to be in violation of the GPS condition. There is no real dispute that the violation was a "positional violation"; it appears that Mr. Floyd was with his wife at a hotel but that he did not have clearance from the Department to be in that particular location. Judge King revoked ninety days, continued Mr. Floyd on probation, and ordered that the GPS condition remain in place as a condition of probation.

Mr. Floyd's probation ended March 29, 2012. The GPS violation was his only probation violation. On November 11, 2012, he was acquitted by a jury of the new lewd act charge. Mr. Floyd has remained on GPS monitoring. The Department contends that S.C. Code Section 23-3-540(B) (2005), adopted after Mr. Floyd's offense date of June 21, 2003, requires Mr. Floyd to be monitored.

DISCUSSION

Section 23-3-540 was amended in 2006 and the provisions of (B) are now found in 23-3-540(C). The pertinent language of both (B) and (C) is the same and provides that a person who was required to register as a sex offender after being convicted of lewd act on a minor (now known CSC with a minor, third degree) and "who violates a term of

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probation, parole, community supervision, or a community supervision program must be ordered by the court" to be placed on active GPS monitoring.

There is no dispute that Mr. Floyd violated a term of probation, as found by Judge King. The Department argues that GPS monitoring is therefore required, as the statute plainly requires such monitoring when an offender violates any condition of probation, no matter how slight or serious the violation. Mr. Floyd points to the fact that the condition he violated was a condition placed upon him by the court solely because he had been arrested on another lewd act charge, and claims that since he was acquitted of that charge, the GPS condition should be lifted. Mr. Floyd argues that the legislature could not have intended for GPS monitoring to be required in situations such as this. He further claims that since the probation to which the GPS condition was attached has expired, the GPS condition has also expired.

The court concludes that the motion to lift the GPS requirement must be denied. Sections 23-3-540(B) (2005) and 23-3-540(C) (2006), whichever applies here, both plainly state that a person who is required to register as a sex offender after having been convicted of lewd act on a minor and "who violates a term of probation" must be placed on active electronic monitoring. The statute does not distinguish between minor or serious violations. The statute does not provide an exception for instances where the condition violated was put in place by a court because of a new charge of which the probationer is eventually found not guilty. By its plain terms, the statute requires GPS monitoring because Mr. Floyd violated a term of probation.

Section 23-3-400 sets forth the legislature's intent in adopting the statutory scheme of which 23-3-540 is a part. While the factual and procedural history in this case

is certainly unusual, the fact remains that Mr. Floyd fits within the category of those offenders contemplated by 23-3-540. The court concludes that the legislature's intent is upheld by this ruling.

Mr. Floyd is of course free to petition the circuit court at the appropriate time pursuant to Section 23-3-540(H) for relief from the monitoring requirement. See State v Dykes, 403 S.C. 499, 744 S.E. 2d 505 (2013), in which our Supreme Court upheld the constitutionality of Section 23-3-540(C) (2006) but held unconstitutional the provision of subsection (H) denying the right of judicial review for those convicted of lewd act on a minor. This court will not undertake to determine at this time when the time period contemplated by subsection (H) began to run for Mr. Floyd.

AND IT IS SO ORDERED.



George C. James, Jr.
Judge, Third Judicial Circuit

Sumter, South Carolina

January 9, 2014