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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Calhoun County

Edgar W. Dickson, Circuit Court Judge

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MICHAEL T. MCKNIGHT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001789

---

APPENDIX

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Appellate Defender

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

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ATTORNEYS FOR RESPONDENT

INDEX

INDEX .....i

PROBATION VIOLATION HEARING TRANSCRIPT ..... 1

INDICTMENT 2007-GS-09-0042, SENTENCING SHEET ..... 10

VIOLATION REPORT AND ORDER REVOKING PROBATION (Nov. 29, 2011) ..... 13

NOTICE OF SEX OFFENDER REGISTRY AND STANDARD  
CONDITIONS OF PROBATION (April 2007)..... 17

YOA CONDITIONAL RELEASE (February 2010).....20

VIOLATION REPORT AND ORDER REVOKING PROBATION (January 2011).....22

NOTICE OF SEX OFFENDER ACCOUNTABILITY (April 2011) .....25

INDICTMENT 2011-GS-09-41 AND ORDER ADDING CONDITIONS .....28

APPLICATION FOR POST-CONVICTION RELIEF .....30

ARGUMENT IN SUPPORT OF PCR APPLICATION.....38

RETURN .....42

POST-CONVICTION RELIEF HEARING TRANSCRIPT .....47

ORDER OF DISMISSAL .....85

STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSIONS  
COUNTY OF CALHOUN )

State of South Carolina, )  
 )  
 ) PLAINTIFF, ) Probation Violation  
 ) 2007-GS-09-0042  
 )  
 ) -VS- ) HEARING  
 )  
 ) Michael McKnight, )  
 )  
 ) DEFENDANT. )  
 )

BEFORE THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

NOVEMBER 29, 2011

ST. MATTHEWS, SOUTH CAROLINA

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

Eric Reed, Esq.  
For the State

Martin R. Banks, Esq.  
For the Defendant

REMA K. GANTT THOMAS  
CIRCUIT COURT REPORTER

I N D E X

PAGE NO.

Exhibit List. . . . .	3
Sentence of the Court . . . . .	8
Court Reporter's Certification. . . . .	9

E X H I B I T S

THERE WERE NO EXHIBITS SUBMITTED AT THIS HEARING.



1 supervision on GPS monitoring for a prior offense.

2 And on or about September 22nd, Your  
3 Honor, as a result of that case, we learned that he  
4 had cut off his GPS tracking device. He then at  
5 time had absconded from this address which was the  
6 forwarded address on probation. And they attempted  
7 to contact him through his pagers, phone numbers,  
8 and his family members, and they could not locate  
9 him, Your Honor.

10 I then issued a warrant which charges he  
11 moved without permission from his residence. He  
12 failed to refrain from the use of illegal drugs. He  
13 tested positive for marijuana July 5, 2011. And he  
14 violated the state and local laws of South Carolina.

15 He was convicted of criminal domestic  
16 violence in St. Matthews Municipal Court on  
17 September 21, 2011. He was sentenced to \$500 or 30  
18 days in jail. He was additionally convicted of  
19 assault and battery, third degree, on that same date  
20 in Magistrate's Court, with the same sentence.

21 He failed to pay his supervision fees. He  
22 was \$90 in arrears. He failed to pay any more on  
23 his court-imposed surcharge of \$746.00. And those  
24 actions constitute failure to follow the advice and  
25 instruction of his agent.

1                   Your Honor, additionally, charges for  
2 violating the electronic monitoring statute under  
3 Jessie's law were issued for this case in NCIC.  
4 Through a lot of legwork and with the help of U.S.  
5 Marshals, he was apprehended in Philadelphia,  
6 Pennsylvania, on or about October the 15th.

7                   He was then extradited back here to South  
8 Carolina to stand before you today on this. He has  
9 had two prior violations on this, Your Honor, back  
10 in January of this year and July. And those stem  
11 from some similar type behaviors and some drug use.

12                   He did serve a six-month partial  
13 revocation in January, and then in July Judge Dixon  
14 continued the probation in order for him to go to  
15 anger management counseling and get his GED. And if  
16 he did that, we'd terminate his case, Your Honor.

17                   THE COURT: But he didn't do any of that,  
18 did he?

19                   MR. REED: He did go to one Mental Health  
20 Department appointment.

21                   THE COURT: Okay, all right.

22                   What can you tell me about him?

23                   MR. BANKS: Sir, he'll admit the three  
24 violations -- the marijuana, the cutting off the  
25 GPS, and changing his residence without notifying

1 his agent. He will fight to the death on that  
2 threatening the life of a public official charge.

3 THE COURT: He didn't mention that.

4 MR. BANKS: All right, I'm sorry.

5 THE COURT: Okay.

6 MR. BANKS: He did leave home. The people  
7 he had the argument with are not peace-loving  
8 people, and they got him into trouble. And I think  
9 they were threatening to continue to get him into  
10 trouble, so he had to leave.

11 And so he left the house the day after he  
12 had to plead guilty to those Magistrate Court level  
13 charges. And, again, I can't really -- he might be  
14 able to explain the Philadelphia part of this, the  
15 Pennsylvania part of this. But he was trying to  
16 look for work, tried to do the right thing.

17 At the time, you know, having a monitor on  
18 your leg is a little bit more of a target on your  
19 back and keeps you from getting a job even more than  
20 your record. So he simply wasn't able to pay any of  
21 the monies. And I don't believe that that was  
22 willful. I'm sure he'd like to address the Court.

23 THE COURT: Okay.

24 Yes, sir.

25 MR. MCKNIGHT: I'm saying I had no idea it

1 was wrong about cutting the bracelet off my leg. I  
2 man up to that, but I left the state because me and  
3 my sister got into it. I know I ain't had wanted to  
4 get locked back up, so I left the state. And I went  
5 to Philadelphia, to my uncle. He helped find me a  
6 job.

7 I was actually working up there doing some  
8 demolition jobs, and I was in the process of going  
9 to school up there. I left because this environment  
10 down here ain't for me. It's negativity. And  
11 everybody down here just stereotyped me. Even  
12 though I know it was wrong by me cutting the  
13 bracelet off my leg, I admit to that.

14 THE COURT: Okay. All right, thank you.  
15 Anything else -- from either side?

16 MR. REED: No, sir, Your Honor.

17 SENTENCE OF THE COURT

18 THE COURT: All right, I find that you are  
19 in willful violation of your probation, and I'll  
20 revoke five years and terminate.

21 MR. REED: Thank you, Your Honor.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON NOVEMBER 29, 2011, IN ST. MATTHEWS, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE TWENTY SECOND DAY OF AUGUST, 2012.

REMA K. GANTT THOMAS  
OFFICIAL COURT REPORTER  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 11/21/2013

DOCKET NO. 2007GS09-0042

The State of South Carolina

County of

CALHOUN

COURT OF GENERAL SESSIONS

April 16, 2007 TERM

THE STATE  
vs.

Michael Tyrell McKnight

Indictment for  
POSSESSION WITH INTENT TO  
DISTRIBUTE COCAINE

SC Code: 44-53-370(b)(2)  
CDR Code: 0186  
Class: FEL-F

WITNESSES

LT. ANDY HAYES

Arresting Agency:  
St. Matthews Police Dept.

ARREST WARRANT NUMBER

K190103  
Arrested: Dec 31, 2006

ACTION OF GRAND JURY

*Robert Hutto*

Foreperson of Grand Jury  
Date: April 13, 2007

VERDICT  
TRUE BILL  
Date 4-13-07

Foreperson of Petit Jury  
Date:

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

Defendant

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

Defendant

Witness:

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

FILED  
2007 APR 13 P 12:51  
KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY  
SOUTH CAROLINA

KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CALHOUN )

INDICTMENT  
2007GS09-0042

At a Court of General Sessions, convened on April 16, 2007 the Grand Jurors of Calhoun County present upon their oath:

**POSSESSION WITH INTENT TO DISTRIBUTE COCAINE**

That Michael Tyrell McKnight, did in Calhoun County, on or about December 31, 2006, possess with an attempt to distribute a quantity of cocaine, a schedule II controlled substance and as a result violated Section 44-53-375 (b)(1), 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.

  
Karen Fryar SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF Calhoun )  
 STATE VS. )  
Michael T McKnight )  
 AKA: )  
 Race: B Sex: M Age: )  
 DOB: [REDACTED] SS#: [REDACTED] )  
 Address: )  
 City, State, Zip )  
 DL# [REDACTED] SID# [REDACTED] )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-09-0042  
 A/W#: K-190103  
 Date of Offense: December 31, 2006  
 S.C. Code §: 44-53-370(b)(2)  
 CDR Code #: 011816  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEAS TO: Possession with intent to Distribute Cocaine in violation of § 44-53-370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 011816  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
 ATTEST: [Signature] Solicitor Michael McKnight Defendant Marvin Banks Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of 0 days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: YDA parole § 2007 GS09-40  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

ATTEST TRUE COPY

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms:  
 set by SCDPPPS \_\_\_\_\_

PTUP 40 days/hours Public Service Employment  
 Obtain GED  
 Attend Voc. Rehab. or Job Corp.  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol Testing \_\_\_\_\_  
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: NA on AA 1 week  
Antenna with will sign  
When released from SC Dept

Recipient: \_\_\_\_\_  
 \*Fine: \$ \_\_\_\_\_  
 \$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_  
 \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
 \$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
 \$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
 \$ 35.13 (Public Def/Prob) \$500 \$ 500.00  
 \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00  
 \$33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00  
 \$50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
 3% to County (if paid in installments) \$ 21.75  
 TOTAL \$ 746.75

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

Claudia St Pauling  
 Clerk of Court/ Deputy Clerk  
 Court Reporter: Robin Keil

PRESIDING JUDGE [Signature]  
 Judge Code: \_\_\_\_\_  
 Sentence Date: 4-16-07

## South Carolina Department of Probation, Parole and Pardon Services Violation Report

Offender's Name: **MICHAEL TYRELL MCKNIGHT**State of South Carolina, County of: **CALHOUN**SID#: **01563763**Warrant#: **W-09-11-0019**Date of Birth: [REDACTED]SCDC#: **Y305121****Indictment Numbers:****07-GS-09-00042****Offense and Offense Code:****183 - MDP, Narcotic drugs in Sch. I(b) & (c),  
LSD, and Sched. II (Cocaine)- 1st offense**Supervision Program: **Probation**Begin Date: **2/12/2010** End Date: **2/11/2013**Supervision Level: **Institutionalized**Sentencing Judge: **112 - Goodstein, Diane**Sentencing County: **CALHOUN**Sentencing Date: **4/16/2007**Location (Bold Response): **Jail**

*Pr. 5 years  
+ term*

**Sentence:**

10 years ss 6 months and 3 years probation. Concurrent to YOA Parole and 07-0040

\$10 K surety bond set 12-15-2010 Vio of Prob.

1-24-2011 Judge Edgar Dickson revoke 6 months with probation to resume upon release. EWR

7-26-2011 Judge Edgar Dickson: Continue probation. To complete Anger Management Counseling with CASA or Calhoun County Mental Health. To obtain GED as originally ordered, upon completion of Anger Management and GED, case will be considered for termination by Hon. Edgar Dickson. EWR

**Special Conditions:**

Fine - \$746.75; Other1 - probation to begin upon release from SCDC.; PSE - 40 hours PSE; RADT - ; SAC - NA or AA 2x per week.

**Current Address and Summary of Residence:**

[REDACTED]

Mr. McKnight was living in a rental home with his mother and grandmother located in the city of St. Matthews until he absconded to the State of Pennsylvania in September 2011.

**Reporting:**

GPS Tracking violator/probation

**Employment Records While Under Supervision:**

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Unemploy	6/1/2011 -		
	5/16/2006 - 3/17/2010	found employment	\$0.00
NORTH AMERICA CONTAINERS	3/17/2010 - 4/19/2010	injury on his hand	\$1,000.00
HUSQVARNA OUTDOOR PRODUCTS	11/22/2010 - 12/15/2010	Quit- too cold.	\$1,000.00
	4/20/2010 - 11/22/2010		
QUALITY MODEL SOUTH CAROLINA	4/19/2010 - 4/20/2010	It was temp; person replacing came back	\$1,300.00

Mr. McKnight has had two good job opportunities under this period of supervision. He walked away from his job at North American Container because using a carpenter's hammer was hurting his hand. He walked away from his job at Husqvarna Outdoor Products citing that it was too cold in the building where he was stationed.

**Financial Conditions:**

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due

South Carolina Department of Probation, Parole and Pardon Services  
Violation Report

Offender's Name: **MICHAEL TYRELL MCKNIGHT**

Fees						
GPS Active	\$59,520.00	\$60.00/W	\$40.00	6/6/2011	\$1,460.00	\$59,480.00
Regular Supervision	\$1,050.00	\$50.00/M	\$60.00	9/1/2011	\$190.00	\$990.00
Fines						
Surcharge	\$746.75	\$50.00/M	\$0.00		\$250.00	\$746.75

Prior Violation Dates	Prior Violations	Prior Violation Disposition
1/24/2011	Use of Marijuana 6-28-10 and 8-24-10, failed to attend ordered treatment; In possession of dangerous weapon- a brick- in attack on 12-7-10; failure to work despite 2 job opportunities; failure to pay fees.	Hon. Edgar Dickson- Partial revocation of 6 months. No time credited on this sentence' any new conviction to be viewed as a new violation of probation.
7/26/2011	New conviction for Assault and Battery 2nd in Calhoun General Sessions Court on 7-26-2011.	Hon. Edgar Dickson- Continue on Probation, to complete anger management counseling with CASA or Calhoun County Mental Health. To obtain GED as originally ordered. Upon completion of anger mangt. and GED, case will be considered for termination by Hon. Edgar Dickson.

**Details of the Present Violation:**

Michael McKnight has changed his residence without the knowledge or consent of his supervising agent. On September 22, 2011 he cut off his GPS tracking device and left his last reported residence of [REDACTED] St. Matthews, SC. Per attempts to locate him through his assigned pager, reported telephone numbers and his immediate family have resulted in no contact with the probation office and his current whereabouts are unknown; Mr. McKnight has failed to refrain from the use of illegal drugs. He tested positive for marijuana use on July 5, 2011; Mr. McKnight has violated the state and local laws of South Carolina. He was convicted of Criminal Domestic Violence in St. Matthews Municipal Court on 9-21-11 and sentenced to \$500.00 or 30 days in jail, stp 30 days and he was convicted of Assault and Battery 3rd Degree on the same date and sentenced to \$500.00 or 30 days in jail, stp 30 days; Mr. McKnight has failed to pay his supervision fees by being 2 payments or \$90 in arrears; He has failed to pay any monies on his court imposed surcharge account by owing the balance of \$746.75; Such actions constitute his wilful failure to follow the advice and instructions of his supervising agent.

**Agent's Recommendation:**

Full Revocation.

**Agent's Justification:**

Mr. McKnight has shown by his behavior that he is a real threat to the general public. He has acquired numerous new convictions for assaultive behavior during recent months. He has failed to truly do anything to get the help prescribed by the Court and his Agent for his anger issues. He also has pending matters with the court for Assault and Threatening the life of a Public Official. Mr. McKnight is under supervision for Possession with Intent to Distribute Cocaine, yet he continues to use illegal drugs while under supervision. He is not paying his fees, yet he has posted large surety bonds on the same day the bonds were set. He has had two good job opportunities while under this period of supervision, yet he choose to walk away from them citing they conflicted with his personal comforts. He is under sentence to be monitored on GPS tracking, yet he choose to cut of his ankle unit and he fled the state. He was captured with the assistance of the U.S. Marshalls Service in Pennsylvania on October 15, 2011 and had to be transported back to South Carolina at an added expense to the tax payers. Mr. McKnight will not comply with efforts to supervise him in the community and must be shown such behavior is not acceptable and he will be held accountable for his actions.

**South Carolina Department of Probation, Parole and Pardon Services  
Violation Report**

Offender's Name: **MICHAEL TYRELL MCKNIGHT**

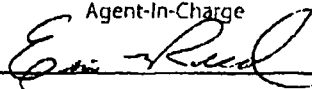
Note: Mr. McKnight is also under lifetime GPS monitoring as a convicted sex offender.

Eric W. Reed

Agent-In-Charge

Date: 11/29/2011

Supervisor's Signature



Date: 11/29/11

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Calhoun  
STATE VS.

INDICTMENT#:  
2007 -GS- 09 - 0042  
Probation CW#: W-09-11-0017

AKA: Michael T. McKnight  
Race: B Sex: M  
DOB: 11/26/1986  
SSN: 247-776 1001  
SID#: 01563763

Name of Original Offense: PWID Coraine 1st  
Original AWW#: K-190103  
Date of Original Offense: 12-31-2006  
Conviction S.C. Code §: 44-53-370 (B) (2)  
Conviction CDR Code #: 01-11-816  
Original Sentence: 10 yrs. ss. Calhoun. 3 yrs Prob.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 4/16/07 in the Court of General Sessions of Calhoun County; and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 1/24/11 + 7/26/11, as set forth in the attached warrant(s) or citation(s) dated 09/23/11. After hearing the evidence and being duly advised, in the (presence/absence) 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 by the affidavit)

2, 3, 6, 7, and 9 and all since 7/26/2011.

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 5 months/years, the remainder of the original sentence, and/or pay \$ XX.
- the suspended sentence be revoked and the above named defendant be required to serve \_\_\_\_\_ months/years of the original sentence and/or pay \$ \_\_\_\_\_; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order 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 active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

Additional Conditions ordered by the Court:

Credit for time served since 10-15-2011.

ATTEST TRUE COPY

- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant has previously served 1 months/years on this sentence. (split sentence time and/or prior partial revocation time)
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

Kenneth Hasty  
KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY

This 29 day of November, 2011  
St. Matthews SC

[Signature]  
Presiding Judge  
[Signature] 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

Witnessed by

Signed this 29 day of November, 2011 at St. Matthews SC

**Notice of Sex Offender Registry – South Carolina Department of Probation, Parole and Pardon Services**

Pursuant to Sections 23-3-400 through -530 of the Code of Laws of South Carolina, any person residing in this State\* who has been convicted of, adjudicated delinquent or, pled guilty or nolo contendere to an offense described below must register as a sex offender with the Sheriff's Office in each county where he resides, owns real property, or attends any public or private schools.\*\* The offenses set out below or similar offenses from other jurisdictions require registration as indicated.

Persons being released from the Department of Corrections at the completion of their sentence, to an early release program, to extended work release, to a community supervision program, or upon parole must register with the Sheriff's Office in their county of residence within 1 business day of release.

Persons sentenced to probation or new residents of the state who must be supervised by the Department of Probation, Parole and Pardon Services must register with the Sheriff's Office in their county of residence within 1 business day of sentencing or moving to the county.

A person required to register under this program shall be required to register annually for life. "Annually" means each year within thirty days after the anniversary date of the offender's last registration.

A person determined by a court to be a sexually violent predator is required to verify registration and be photographed every 90 days by the Sheriff's Office in the county in which he resides unless he is committed to the custody of the State, whereby verification is held in abeyance until his release.

A person required to register under this program who changes his address within the same county must send written notice of a change of address to the Sheriff within 10 days of establishing a new residence. A person who changes his address into another county in this State must both register with the Sheriff in the new county and send written notice of the change of address to the Sheriff in the new county and the previous county within 10 days of establishing a new residence. A person who changes his address to a new state must send written notice of a change of address to the Sheriff with whom the person last registered within 10 days of establishing a new residence.

A person required to register under this program who acquires real property or begins attending a public or private school must register in each county where the property or the school is located within 10 days of acquiring the property or attending the school.

A person required to register under this program and who is employed by, attends, is enrolled at, or carries on a vocation at any public or private school must provide written notice to the Sheriff within 10 days of each change in attendance, enrollment, employment, or vocational status.

A person required to register under this article is prohibited from living in campus student housing at a public institution of higher learning supported in whole or in part by the State.

Failure to register or provide notification as required, or willfully giving false information when registering, is punishable by:

- 1) mandatory 90 days imprisonment, no part of which shall be suspended, for a first offense.
- 2) mandatory 1 year imprisonment, no part of which shall be suspended, for a second offense.
- 3) mandatory 5 years imprisonment, 3 years of which shall not be suspended, for a third or subsequent offense.

16-3-615	Sexual Battery of a Spouse	16-15-342	Criminal solicitation of a minor
16-3-652	Criminal Sexual Conduct 1 <sup>st</sup> Degree	16-15-345	Unlawful to Disseminate Obscene Material to Any Person Under the Age of 18 Years
16-3-653	Criminal Sexual Conduct 2 <sup>nd</sup> Degree	16-15-355	Additional Penalty for Disseminating Obscene Material to any Minor 12 Years of Younger
16-3-654	Criminal Sexual Conduct 3 <sup>rd</sup> Degree	16-15-365	Exposure of private parts in a lewd and lascivious manner (Misdemeanor)****
16-3-655(A)	Criminal Sexual Conduct with Minors 1 <sup>st</sup> Degree	16-15-385	Dissemination of Obscene Materials to Minors is Unlawful
16-3-655(B)	Criminal Sexual Conduct with Minors 2 <sup>nd</sup> Degree (victim 11-14)***	16-15-387	Employing Person Under 18 to Appear in a Public Place in a State of Sexually Explicit Nudity
16-3-655(C)	Criminal Sexual Conduct with Minors 2 <sup>nd</sup> Degree (victim 14-18 and defendant is in position of authority or is older than the victim)***	16-15-395	Sexual Exploitation of a Minor 1 <sup>st</sup> Degree
16-3-656	Criminal Sexual Conduct: Assaults with Intent to Commit	16-15-405	Sexual Exploitation of a Minor 2 <sup>nd</sup> Degree
16-3-658	Criminal Sexual Conduct when the Victim is a Spouse	16-15-410	Sexual Exploitation of a Minor 3 <sup>rd</sup> Degree
16-3-810	Engaging a Child for Sexual Performance	16-15-415	Promoting Prostitution of a Minor
16-3-820	Producing, Directing, or Promoting Sexual Performance by a Child	16-15-425	Participating in the Prostitution of a Minor
16-3-910	Kidnapping of a person 18 years of age or older, unless the court finds it did not include a criminal sexual offense or an attempted criminal sexual offense	16-17-470	Peeping, voyeurism, or aggravated voyeurism
16-3-910	Kidnapping of a person under 18 years of age, except when committed by a parent	16-17-470(B)(1)	Sex/Voyeurism, violating place of privacy, views, photographs, records or films - 1 <sup>st</sup> offense
16-15-20	Incest	16-17-470(B)(2)	Sex/Voyeurism, violating place of privacy, views, photographs, records or films - 2 <sup>nd</sup> or sub.
16-15-120	Buggery	16-17-470(C)	Sex/Voyeurism aggravated, sells or distributes photograph, recording or film of person made in violation of section
16-15-130	Indecent Exposure (if ordered by the sentencing court)	44-53-370(f)	Administering, distributing, dispensing, delivering, or aiding, abetting, attempting or conspiring to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate (GHB) to an individual with the intent to commit a crime listed in Section 44-53-370(f), except petit larceny or grand larceny
16-15-140	Committing or Attempting Lewd Act Upon a Child Under Sixteen		
16-15-305	Disseminating, Procuring or Promoting Obscenity****		
16-15-315	Requiring receipt of obscene material as precondition of sale of other material (Misdemeanor)****		
16-15-325	Participation in preparation of obscene material prohibited****		
16-15-335	Unlawful to Hire, Employ, Use or Permit any Person Under 18 to do anything Defined in statutes as Obscene		

NOTE: All "attempts to commit" and "accessory before the fact of" any crime enumerated above would be required to register. Also, for any offense not listed, the presiding judge may order as a condition of sentencing that the person be included in the registry if good cause is shown by the Solicitor.

\* Any person who remains in South Carolina for a total of thirty days during a twelve month period is a resident.

\*\* A defendant found not guilty by reason of insanity for an applicable offense is not required to register unless and until the person is declared to no longer be insane or is ordered to register by the trial judge.

\*\*\* Unless the sentencing court makes a specific finding on the record that the offense resulted from consensual sexual conduct and the offender is 18 years of age or less, or the offender and the victim are both under 16 years of age.

\*\*\*\* When a minor is involved.

I, (Print Offender's name) Michael McKnight, understand that if I was convicted of any sex offense listed in section 23-3-430 of the Code of Laws of South Carolina, I must abide by the registry conditions set forth in Title 23, Chapter 3, Article 7. I have received notice of this requirement both orally and in writing

My Address will be:	Street <u>107 Church St.</u>	City <u>St. Matthew</u>	State <u>SC</u>	Zip <u>29135</u>	County <u>Calhoun</u>
Offender's Signature	<u>Michael McKnight</u>				SCDC #
Witness Signature	<u>Andrew P. J...</u>				SID #
					Date
					<u>4/16/07</u>

SC Department of Probation, Parole and Pardon Services  
Project Ceasefire

Offender Name: <u>Michael McKnight</u>	SID #:
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United States Criminal Code Title 18, Section 922 (g) states:

(g) It shall be unlawful for any person—

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) who is a fugitive from justice;
- (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) who, being an alien—
  - (A) is illegally or unlawfully in the United States; or
  - (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) who is subject to a court order that—
  - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
  - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
  - (C)
    - (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
    - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

United States Criminal Code Title 18, Section 924 (a) states:

- (2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

United States Criminal Code Title 18, Section 924 (c) states:

- (1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined not more than \$25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g). The maximum term of imprisonment under this section is life.

-----  
 - - I am aware that in view of the above law, I am disqualified from owning or having possession of any firearms, ammunition, or other weapons. I understand that if I have a firearm, ammunition, or other type of weapon that I have to disclose these to my agent this date.

- I do not own or have possession of a firearm, ammunition, or weapon.  
 There are no firearms or ammunition at my place of residence.  
 I currently have a firearm and/or ammunition and will disclose this to my agent today.

Michael McKnight  
 Offender signature / Date

\_\_\_\_\_  
 Probation/Parole Agent / Date

STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

IN THE COURT OF GENERAL SESSIONS

07 -GS- 07-0042

Count

STATE

-vs-

Michael McKnight

STANDARD CONDITIONS OF PROBATION

1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my sentencing or release, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.
2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere, at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, nor consume alcoholic beverages to excess, nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing for the violation of the conditions of my supervision.
4. I shall not possess or purchase any firearms or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or Local Law, and I shall immediately contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee and any other fees as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution or other payments, and the service of any period of incarceration.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agents.
11. I agree to pay restitution and a statutory collection fee payable to the Department of Probation, Parole, and Pardon Services as directed by Agents of the Department. (20% collection fee charged)

I hereby certify that this statement of Conditions has been read and explained to the Probationer listed above and he/she has agreed to them.

I hereby certify that the Conditions above have been explained fully to me and in agreement thereto, I attach my signature:

This 10<sup>th</sup> day of April, 2006 2007

X Michael McKnight  
Offender

Andrea C. Joffe  
Agent

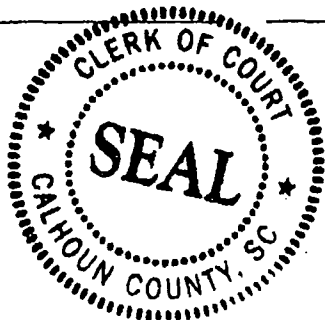
107 Church Street  
Offender's Address

P O BOX 44, ST. MATTHEWS, S C 29135  
Agent's Address

St. Matthews, SC 29135  
Offender's Address

(803) 874-2537  
Agent's Phone Number

(803) 874-2537  
Offender's Phone Number



ATTEST TRUE COPY

Kenneth Hasty  
KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY



South Carolina Department of Corrections  
Youthful Offender Conditional Release Certificate

TURBEVILLE (0571)

Know all men by these presents:

It having been made to appear to the South Carolina Department of Corrections, Division of Youthful Offender Services, that the offender mentioned below who was convicted of the offense(s) indicated below on said date(s) and in said county(ies) is eligible to be released, and that there is a reasonable probability that said prisoner WILL REMAIN AT LIBERTY WITHOUT VIOLATING THE LAWS, and it being the opinion of the Youthful Offender Conditional Release Board that the release of the prisoner is not incompatible with the welfare of society.

It is therefore ORDERED that the said prisoner be released effective on the date indicated below pending good behavior under supervision subject to the specific conditions of Release listed below until the expiration of the maximum sentence as indicated.

This release shall not prevent the delivery of the prisoner to authorities of the Federal Government or any state otherwise entitled to his or her custody.

In witness whereof, this Certificate bearing the approval of the South Carolina Department of Corrections is issued on the date below.

By Order of: Jan E. Ozmint, Director of SC Department of Corrections

By: Shaunita M. Grase  
Shaunita M. Grase, Coordinator, Community Release and Programs

Offender Name/SCDC#: MCKNIGHT, MICHAEL / Y00305121  
Release Effective Date: February 12, 2010  
Supervision Ending Date: August 13, 2010  
State Identification # (SID): 01563763

Offense(s)	Indictment #(s)	Conviction Date(s)	County of Conviction(s)	Expiration Date(s)	Restitution Ordered (\$)
LEWD ACT/CHILD UNDER 16	04GS090139	8/31/2004	CALHOUN	8/13/2010	

FEB 25 2010

CALHOUN COUNTY

CONDITIONS OF SUPERVISION

Additional Offenses or Notes Page 2

This Certificate shall not become operative until the following conditions are agreed to by the inmate. Violation of any of these conditions may result in the immediate removal from the program and disciplinary action taken.

1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the date of my release or not later than 8:30 AM on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.

Please report to the office in the County of: CALHOUN

Phone: (803) 874-2537

- 2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
- 3. I shall not use controlled substances, except when properly prescribed by a licensed physician, nor consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing.
- 4. I shall not possess or purchase any firearms, knives, or dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
- 5. I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
- 6. I shall not violate any Federal, State, or local laws and I shall contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
- 7. I shall pay a supervision fee as determined by the Department.
- 8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise be entitled to and agree to return to South Carolina when directed by my Agent, the court, or by a warrant.
- 9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
- 10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its' Agents.

ADDITIONAL CONDITIONS:

- 02 Intensive supervision for an indeterminate period not to exceed 6 months, as determined by the Department.
- 04 Must have no contact with the Victim and/or Victim's family for duration of supervision.
- 23 Release to SCDPPPS only ~ GPS Monitoring Hold.

I hereby certify that the conditions listed above have been read and explained fully to me and in agreement thereto, I attach my signature.

Michael Mcknight  
Offender Signature Address: 107 Church St, SAINT MATTHEWS, SC 29135, CALHOUN, USA

2/10/10  
Date Phone: (803) 874-3410

I hereby certify that this Statement of Conditions has been read and explained to the offender and he/she has agreed to them.  
Demond Davis  
Witness Signature

2/10/10  
Date



South Carolina Department of Corrections  
Youthful Offender Conditional Release Certificate  
Page 2

Offender Name/SCDC#: MCKNIGHT, MICHAEL / Y00305121  
Release Effective Date: February 12, 2010  
Supervision Ending Date: August 13, 2010  
State Identification # (SID): 01563763

Offense(s)	Indictment #(s)	Conviction Date(s)	County of Conviction(s)	Expiration Date(s)	Restitution Ordered (\$)
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**ADDITIONAL CONDITIONS:**

28 GPS Monitoring per Jessie's Law

31 Attend Sex Offender Counseling

**ADDITIONAL CONVICTIONS:**

*Agent*

South Carolina Department of Probation, Parole and Pardon Services  
Violation Report

Offender's Name: **MICHAEL TYRELL MCKNIGHT**  
State of South Carolina, County of: **CALHOUN**  
SID#: **01563763**

Warrant#: **W-09-10-0027**  
Date of Birth: **[REDACTED]**  
SCDC#: **Y305121**

**Indictment Numbers:**  
**07-GS-09-00042**

**Offense and Offense Code:**  
**183 - MDP, Narcotic drugs in Sch. I(b) & (c),  
LSD, and Sched. II (Cocaine)- 1st offense**

Supervision Program: **Probation**                      Begin Date: **2/12/2010**    End Date: **2/11/2013**  
Supervision Level: **High Supervision**  
  
Sentencing Judge: **112 - Goodstein, Diane**                      Sentencing County: **CALHOUN**  
Sentencing Date: **4/16/2007**  
Location (Bold Response): **Community**

**Sentence:**  
10 years ss 6 months and 3 years probation. Concurrent to YOA Parole and 07-GS-09-0040.

\$10 K surety bond set 12-15-2010 Vio of Prob.

**Special Conditions:**

Fine - \$746.75; Other1 - probation to begin upon release from SCDC.; PSE - 40 hours PSE; RADT - ; SAC - NA or AA 2x per week.

**Current Address and Summary of Residence:**

[REDACTED ADDRESS]

Mr. McKnight resides in a rental home with his mother and grandmother located in the city of St. Matthews.

**Reporting:**

Mr. McKnight has reported as directed.

**Employment Records While Under Supervision:**

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
	5/16/2006 - 3/17/2010	found employment	\$0.00
NORTH AMERICA CONTAINERS	3/17/2010 - 4/19/2010	injury on his hand	\$1,000.00
QUALITY MODEL SOUTH CAROLINA	4/19/2010 - 4/20/2010	It was temp; person replacing came back	\$1,300.00
	4/20/2010 - 11/22/2010		
HUSQVARNA OUTDOOR PRODUCTS	11/22/2010 - 12/15/2010	Quit- too cold.	\$1,000.00

Mr. McKnight has had two good job opportunities under this period of supervision. He walked away from his job at North American Container because using a carpenters hammer was hurting his hand. He walked away from his job at Husqvarna Outdoor Products citing that it was too cold in the building where he was stationed. *One stop GED*

**Financial Conditions:**

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Fees						
GPS Active	\$31,320.00	\$60.00/W	\$40.00	10/4/2010	\$1,340.00	\$31,280.00
Regular Supervision	\$1,500.00	\$50.00/M	\$170.00	1/18/2011	\$80.00	\$1,330.00

South Carolina Department of Probation, Parole and Pardon Services  
 Violation Report

Offender's Name: MICHAEL TYRELL MCKNIGHT

Fines						
Surcharge	\$746.75	\$50.00/M	\$0.00	\$550.00	\$746.75	

Mr. McKnight claims he has no monies yet he was able to post three separate surety bonds in the past 45 days on the same day the bonds were issued.

Prior Violation Dates	Prior Violations	Prior Violation Disposition

**Details of the Present Violation:**

Michael McKnight has failed to refrain from the use of illegal drugs. He tested positive for Marijuana on June 28, 2010 and again on August 24, 2010. Mr. McKnight was ordered in court to attend NA/AA group twice per week and has failed to do so;

There is probable cause to believe Mr. McKnight has violated the laws of South Carolina and has been in possession of a dangerous weapon. He was arrested December 14, 2010 for Attempted Murder and Malicious Injury to Personal Property. An incident report and Court documents show he used a brick to commit a violent assault on a family member and to inflict property damage to a vehicle on or about December 7, 2010;

He has failed to work diligently while under supervision. He has been employed twice during this period of supervision and quit his jobs citing his personal discomfort on the job as his reason to quit. Both jobs were deemed a good source of employment and beneficial to his rehabilitation;

He has failed to pay his supervision fees by being 3 payments or \$110.00 in arrears;

Such actions constitute his failure to follow the advice and instructions of his supervising agent.

**Agent's Recommendation:**

Revocation.

**Agent's Justification:**

Mr. McKnight has shown by his behavior that he is a threat to the general public. It should be noted that he is currently out on bond for two unrelated offenses for physical assaults upon others. The first occurred on 12-07-2010 and the second on 01-11-2011. Both incidents are still pending but there were officer observations and photos of physical injuries in both events to support the State concern for public safety issues. Mr. McKnight is under supervision for Selling drugs, yet he continues to use illegal drugs while under supervision. He is not paying his fees, yet he has posted large surety bonds on the same day the bonds were set. He has had two good job opportunities while under this period of supervision yet, he choose to walk away from them citing they conflicted with his personal comforts. A period of incarceration may serve as a punitive measure to show Mr. McKnight such behavior is not acceptable and he will be held accountable for his actions.

Note: Mr. McKnight is also under lifetime GPS monitoring as a convicted sex offender.

Eric W. Reed

Agent-In-Charge

Date: 1/21/2011

Supervisor's Signature

*Eric W. Reed*

Date:

*1/21/11*

*Judge Dickson + Martin Bonds,  
 1/24/11 15:02  
 N. J. Rev. 6 months based on  
 drug use.*

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Calhoun  
STATE VS.

INDICTMENT#: 07 -GS- 09 - 0042  
Probation CW#: W-09-10-0027

AKA: Michael T. McKnight  
Race: B Sex: M  
DOB: 11/26/86  
SSN: 247-77-1001  
SID#: 01563763

Name of Original Offense: Poss. w/Int Distribute Cocaine I!  
Original A/W#: K-190103  
Date of Original Offense: 12-31-2006  
Conviction S.C. Code §: 44-53-370 (B) (2)  
Conviction CDR Code#: 011B16  
Original Sentence: 10 yrs. ss. 6 mos. 3 yrs. prob.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 04/14/07 in the Court of General Sessions of Calhoun County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 12/15/10 as set forth in the attached warrant(s) or citation(s) dated 12/15/10. After hearing the evidence and being duly advised, in the (presence/absence) 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) 3, 4, 5, 7, 10 and spec. cond.

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve \_\_\_\_\_ months/years, the remainder of the original sentence, and/or pay \$ \_\_\_\_\_.
- the suspended sentence be revoked and the above named defendant be required to serve 6 months/years of the original sentence and/or pay \$ XX thereupon to be reinstated on probation, subject to the conditions set forth in the attached order 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 active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

Additional Conditions ordered by the Court: No time served on this revocation. Any new convictions will be viewed as new violations of probation.

ATTEST TRUE COPY

- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant has previously served 6 (months/years) on this sentence. (split sentence time and/or prior partial revocation time)
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

Renee Hasty  
KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY

This 24 day of January 2011  
St. Matthews SC

[Signature]  
Presiding Judge,  
[Signature] 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: [Signature]  
Signed this 24 day of January 2011 at St. Matthews SC

Witnessed by: [Signature]  
St. Matthews SC

**South Carolina Department of Probation, Parole and Pardon Services  
Notice of Sex Offender Accountability and Protection of Minors Act of 2006**

The Sex Offender Accountability and Protection of Minors Act of 2006 went into effect on July 1, 2006. The Act and Section 23-3-540 of the Code of Laws of South Carolina provide that:

(1) A person who is required to register as a sex offender for:

16-3-655(A)	Criminal Sexual Conduct with a Minor in the 1 <sup>st</sup> Degree
16-15-140	Committing or Attempting Lewd Act Upon a Child Under Sixteen
16-1-40*	Accessory Before the Fact of either offense above or
16-1-80*	Attempt to commit either offense above

\*The defendant must be punished the same as for the principal offense

and who violates a term of probation, parole, community supervision, or a community supervision program must be ordered by the court or agency with jurisdiction to be monitored by the Department with an active electronic monitoring device.

(2) A person who is required to register as a sex offender for:

16-3-655	Criminal Sexual Conduct with a Minor in the 2 <sup>nd</sup> Degree (unless the sentencing court makes a specific finding on the record that the offense resulted from consensual sexual conduct and the offender is 18 years of age or less, or the offender and the victim are both under 16 years of age)
16-3-656	Criminal Sexual Conduct: Assaults with Intent to Commit (when a minor is involved)
16-3-810	Engaging a Child for Sexual Performance
16-3-820	Producing, Directing, or Promoting Sexual Performance by a Child
16-3-910	Kidnapping of a person under 18 years of age, except when committed by a parent
16-15-305	Disseminating, Procuring or Promoting Obscenity (when a minor is involved)
16-15-315	Requiring receipt of obscene material as precondition of sale of other material (when a minor is involved) (Misdemeanor)
16-15-325	Participation in preparation of obscene material prohibited (when a minor is involved)
16-15-335	Unlawful to Hire, Employ, Use or Permit any Person Under 18 to do anything Defined in statutes as Obscene
16-15-342	Criminal solicitation of a minor
16-15-345	Unlawful to Disseminate Obscene Material to Any Person Under the Age of 18 Years
16-15-355	Additional Penalty for Disseminating Obscene Material to any Minor 12 Years of Younger
16-15-365	Exposure of private parts in a lewd and lascivious manner (when a minor is involved) (Misdemeanor)
16-15-385	Dissemination of Obscene Materials to Minors is Unlawful
16-15-387	Employing Person Under 18 to Appear in a Public Place in a State of Sexually Explicit Nudity
16-15-395	Sexual Exploitation of a Minor 1 <sup>st</sup> Degree
16-15-405	Sexual Exploitation of a Minor 2 <sup>nd</sup> Degree
16-15-410	Sexual Exploitation of a Minor 3 <sup>rd</sup> Degree
16-15-415	Promoting Prostitution of a Minor.
16-15-425	Participating in the Prostitution of a Minor
16-1-40*	Accessory Before the Fact of any of the offenses above
16-1-80*	Attempt to commit any of the offenses above or
23-3-430(D)	Any offense not listed but where the court orders as a condition of sentencing that the defendant be included in the sex offender registry for an offense involving a minor

\*The defendant must be punished the same as for the principal offense

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 with an active electronic monitoring device.

(3) "Active Electronic Monitoring Device" means a mechanism used in conjunction with a system that actively monitors and identifies a person's location and that timely reports or records that person's presence near or within a crime scene or prohibited area or the person's departure from a specified geographic location. The device currently used by the Department is a Global Positioning Satellite (GPS) system; however, this is subject to change based on changes in technology or equipment.

(4) If you have been ordered to be monitored by the Department with an active electronic monitoring device under

any provisions of this Act, you must be monitored for the duration of the time you are required to remain on the sex offender registry, even if your probation, parole, community supervision, or other community supervision program expires or otherwise ends. However, if you are being monitored for an offense listed in paragraph 2 above, ten years from the date you begin to be electronically monitored, you may petition the chief administrative judge of the general sessions court in the monitoring county for an order to be released from the requirements of this section. If the court denies the petition, you may re-file a new petition every five years from the date of that denial.

(5) If you have been ordered to be monitored by the Department with an active electronic monitoring device under any provisions of this Act you must follow instructions provided by the Department to maintain the device in working order. Incidental damage or defacement of the device must be reported to the Department within two hours. If you fail to comply with these reporting requirements you are guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

(6) If you have been ordered to be monitored by the Department with an active electronic monitoring device under any provisions of this Act, you must abide by any other terms and conditions set forth by the Department with regard to the device and the electronic monitoring program.

(7) If you have been ordered to be monitored by the Department with an active electronic monitoring device under any provisions of this Act, you must be charged for the cost of the active electronic monitoring device and the operation of the device for the duration of time you are required to be monitored. A delinquency of two months or more in making payments may operate as a violation of a term or condition of the electronic monitoring.

(8) If you have been ordered to be monitored by the Department with an active electronic monitoring device under any provisions of this Act and you intentionally remove, tamper with, deface, alter, damage, or destroy a device, you are guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

(9) If you are being monitored by the Department with an active electronic monitoring device pursuant to this Act after you have completed any term of incarceration and the maximum term of any probation, parole, or community supervision program, and a court determines you wilfully violated a term or condition of electronic monitoring, the court may revoke the electronic monitoring and impose a sentence of up to ten years for the violation, and you must be placed back on an active electronic monitoring device when released from incarceration.

**I have read, or had read to me, this "Notice of Sex Offender Accountability and Protection of Minors Act of 2006" and I understand its meaning. I was given an opportunity to ask questions about the information contained in this Notice and I have received a written copy for future reference.**

Offender's Signature	SCDC #305121
X Michael McKnight <i>Michael McKnight</i>	SID #1563763
Witness Signature <i>FIAA</i>	Date <u>4/19/11</u>

Original - Offender File

Copy - Offender

South Carolina Department of Probation, Parole and Pardon Services  
Global Positioning Satellite System Tracking Program

GPS Tracking Program Conditions

1. I will report in person to the South Carolina Department of Probation, Parole and Pardon Services office on the day of my sentencing or release and thereafter as instructed by the Department;
2. Upon sentencing or release I will reside at the following address:  
 Homeowner's Name: Teresa McKnight  
 Address: [REDACTED]  
 Telephone Number: [REDACTED]
3. I will not change my residence or employment without the prior notice to my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere, at any time.
4. I acknowledge that GPS Monitoring / Tracking requires cellular or landline telephone coverage and agree to install necessary equipment/service at my residence to meet this requirement, if directed by my Agent.
5. I will register as a sex offender as required by the Code of Laws of South Carolina and as described in the Department's *Notice of Sex Offender Registry*.
6. I will notify my Agent if I become homeless or unemployed.
7. I will not leave the State of South Carolina without the permission of my Agent.
8. I will immediately contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
9. I will abide by all schedules intended to meet GPS equipment operation and maintenance requirements as directed by my Agent. All schedule changes will be with the prior approval of my Agent.
10. I will comply with the GPS Monitoring / Tracking conditions as set forth in the GPS Monitoring Program - Participant Rules Acknowledgment and Agreement.
11. I will immediately respond to any system alerts or contacts by my Agent.
12. I will not enter areas that are defined to be off-limits (exclusion zones).
13. I will pay all fees related to GPS Monitoring.

I have read, or had read to me, the above conditions and I understand their meaning. I have received a copy of these conditions. I understand that these terms and conditions are being imposed by the South Carolina Department of Probation, Parole and Pardon Services pursuant to Section 23-3-540 (J) of the South Carolina Code, and that any willful violation of these terms and conditions is a felony and, upon conviction, may result in a sentence of up to ten (10) years imprisonment.

X Michael McKnight 4-19-11  
Offender Signature Date

F. A. B. 4-19-11  
Agent Signature Date

Michael McKnight Michael McKnight  
Offender Name (printed)

FRED A. BROWN  
Agent Name (printed)

1563763  
SID

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Calhoun

STATE

INDICTMENT/CASE# 2011-GS-09-41

Michael vs. McKnight

AW#: 6290302

AKA: \_\_\_\_\_

Date of Offense: 12-7-10

Race: B Sex: M Age: 24

S.C. Code §: 16-3-600

JOB: \_\_\_\_\_ SS#: \_\_\_\_\_

CDR Code #: 3413

Address: \_\_\_\_\_

SENTENCE SHEET

City, State, Zip: \_\_\_\_\_

JL# \_\_\_\_\_ SID# \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was

found guilty of Assault and Battery 2nd

In violation of § 16-3-600 of the S.C. Code of Laws, bearing CDR Code # 3413

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  \$17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, (def.'s initials)  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

Attorney for Plaintiff: 9517 Michael McKnight Defendant: \_\_\_\_\_ Attorney for Defendant: \_\_\_\_\_ SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, or a determinate term of 5 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years 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.

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 the State Department of Corrections. 3 MONTHS.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.  
Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling

Fine:		\$
14-1-206 (Assessments 107.5%)		\$
14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100
14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
14-1-242 (Law Enforce. Funding)	\$25	\$ 25
14-1-213 (Drug Court Surcharge)	\$150	\$
50-21-114 (BUI Breath Test Fee)	\$50	\$
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
% to County (if paid in installments)		\$
TOTAL		\$ 390

Random Drug/Alcohol Testing   
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: \_\_\_\_\_  
Court Reporter: \_\_\_\_\_

Presiding Judge: \_\_\_\_\_  
Judge Code: 2153  
Sentence Date: July 26, 2011

New Conviction - addressed 7/26/11

Created by the South Carolina Department of Probation, Parole and Pardon Services  
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Calhoun  
STATE VS.

INDICTMENT#:  
2007 GS-09-0042  
Probation C/W#s: CC-11-09-0008

AKA: Michael T. McKnight  
Race: B Sex: M  
DOB: [REDACTED]  
SSN: [REDACTED]  
SID#: 01563763

Name of Original Offense: PWID Cocaine 1st  
Original AWW#: K-190103  
Date of Original Offense: 12-31-2006  
Conviction S.C. Code §: 44-53-370 (B)(2)  
Conviction CDR Code#: 011816  
Original Sentence: 10 yrs. 55 mos. 3 yrs Prob

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 04/16/07 in the Court of General Sessions of Calhoun County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 1/24/2011, as set forth in the attached warrant(s) or citation(s) dated 7/26/11. After hearing the evidence and being duly advised, in the presence/absence 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)  
Condition 10

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve \_\_\_\_\_ months/years, the remainder of the original sentence, and/or pay \$ \_\_\_\_\_.
- the suspended sentence be revoked and the above named defendant be required to serve \_\_\_\_\_ months/years of the original sentence and/or pay \$ \_\_\_\_\_; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order 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 active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

Additional Conditions ordered by the Court: To complete Anger management counseling with CASA or Calhoun County, Mental Health. To obtain GED as originally ordered. Upon completion of Anger Management and GED, case will be considered for termination by Hon. Edger Dickson.

- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant has previously served 12 months/years on this sentence. (split sentence time and/or prior partial revocation time)
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

Kenneth Hasty  
KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY

This 26 day of July, 2011  
St. Matthews, SC

[Signature]  
Presiding Judge: Just 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: [Signature]

Witnessed by: [Signature]

Signed this 26 day of July, 2011 at St. Matthews SC

FORM 5

STATE OF SOUTH CAROLINA )

COUNTY OF CALHOUN )

Full name and prison number (if any) of Applicant. )

Michael Tyrell McKnight, 305121 )  
v. )

State of South Carolina )

2012-CP-09-00137  
IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
2012-09-11 11:33  
KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY  
SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland CI, PO Box 2039, SMU-147, Ridgeland, SC 29936
2. Name and location of Court which imposed sentence Court of General Sessions, St. Matthews, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2007-GS-09-0042, probation C/W #W-09-11-0019, PWID Cocaine 1st.
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Revocation of suspended sentence, Five Years, November 29, 2011
  - (b) \_\_\_\_\_

ATTEST TRUE COPY  
*Kenneth Hasty*  
KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Did not know that it was an available option.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Violation of applicant's Constitutional right to Due Process.
  - (b) Violation of Applicant's Constitutional right against ex-posto facto application of the law.
  - (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Applicant was subject to unconstitutional application of law. (See attached argument).
  - (b) Applicant was subject to ex-posto facto application of a statute. (See attached argument)
  - (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
  - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
  - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
  - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (b) the name and location of the Court in which each was filed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (c) the disposition thereof:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?  
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) **First Court available to raise collateral attack.**
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Martin R. Banks, Calhoun County Public Defender, St. Matthews, SC
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. (c)
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

Reverse and vacate probation revocation hearing, suspending sentence.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )  
 )  
County of CALHOUN )

VERIFICATION

I, \_\_\_\_\_, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Mc Knight

SWORN to and subscribed before me this 25  
day of June, 2012.

Virginia Robins (L.S.)  
Notary Public

My Commission Expires: May 20, 2021

KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY  
ST. MATTHEWS, SC

2012 JUL -9 A 11:38

FILED

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

2012-CP-09-00137

I, \_\_\_\_\_, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael McBright  
Applicant

SWORN or affirmed to and subscribed before me this

15<sup>th</sup> day of June, 2012

Maria Leppe  
Notary Public

My Commission Expires: My Commission Expires October 16, 2012

KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY  
ST. MATTHEWS, SC

2012 JUL - 9 A 11: 38

FILED



STATE OF SOUTH CAROLINA  
County of CALHOUN

) IN THE COURT OF COMMON PLEAS  
) FIRST JUDICIAL CIRCUIT  
)

Michael McKnight, 305121,  
Applicant,

) ~~2012-CP-09-00137~~  
)

-vs.-

State of South Carolina,  
Respondent.

) ARGUMENTS IN SUPPORT OF  
) POST-CONVICTION RELIEF APPLICATION  
)  
)

2012 JUN -9 A 11 38  
FILED  
KATH HAST  
CLERK OF COURT  
CALHOUN COUNTY  
SOUTH CAROLINA

The Applicant, Michael McKnight, 305121, a state prisoner, comes before this Honorable Court, pro-se, and offers the following Arguments to support his Application for Post-Conviction Relief, pursuant to S.C. Code of Law §17-27-45(A).

The Applicant wishes to further examine and concisely bring forth the PCR Application's Question Number 10. Herein the Applicant submits the following:

- A. Violation of Due Process Clause of the State's Constitution by the unconstitutional application of a State statute whereas it must be ordered by the Court.
- B. Violation of Ex-Posto Facto Clause by the unconstitutional implication of the order regarding GPS as it applies to the Applicant.

ARGUMENT

[A]. Applicant's right to Due Process as allowed in the State and federal Constitution was altered by the unconstitutional applications of State statutes.

The Applicant had been notified by Dept. of Probation, Parole, and Pardon Services on August 16, 2010, by Agent Eric W. Reed, that he was to wear a GPS Tracking monitor. The agent persuaded the Applicant, not to question the wearing of the device or risk not being released from prison at Turbeville CI.

The revocations hearings that were held in 2011 during the months of January, July, and November were based on the violation of probation for Possession with Intent to Distribute Cocaine 1st, in 2006. No where in the Form 9s being used to commit the Applicant, does it say the Applicant had to wear a GPS monitor.

This is also true regarding the initial Lewd Act Offense that occurred in 2004. The Honorable James Williams, Circuit Court Judge, did not state on the sentencing form nor in the transcript that the Applicant must wear a GPS monitor. But the November 29, 2011 Form 9 does state that one of the reasons for revocation of probation was a violation of the "Special Condition." The Appellant questions where this "special condition" arose. There is no filed Court Order that expresses the imposition of wearing a GPS monitor.

When the sentence as imposed by the sentencing judge is purportedly altered to reflect something other than the sentence imposed, the source of that alteration is immaterial whether it be the SCDPPPS's Administration or the operation of the South Carolina Law that works the alteration, the alteration is of not effect. Only the judgment of a Court, as expressed through the sentence imposed by a judge has the power to constrain a person's liberty, and that judgment includes only those terms expressly imposed. Early v. Murray, 451 F3d 75 (CA2, 2006); Jones v. Cunningham, 83 S.Ct. 373 (1963)

Clearly, the adoption of S.C. Code of Law §23-3-540 came after the Applicant's initial sentencing, and could violate the Constitutional the provisions of S.C. Const. Art. I, §4, and Art. I, §8, if allowed to influence the applicant's probation revocation proceeding. State v. Gaster, 564 SE2d 87 (SC 2002); Sanders v. SCDC, 665 SE2d 231 (SC App. 2008)

The GPS devise was not ordered by the Court nor could it had been in 2004, at the time of sentencing. Duncan v. State, 705 SE2d 489 (SC 2011). Any addition consequence to the Applicant's sentence violates his Due Process Rights, and as such is void. With that in mind, the probation revocation hearing needs to be reconvened and any special condition violations be removed from the equation and probation be re-instated.

[B]. Applicant's right to not have an Ex-Posto Facto statute applied against him was Constitutionally violated by the unconstitutional implication of the probation hearing's order regarding future GPS Monitoring as it applies to the Applicant.

Because S.C. Code of Law §17-27-20(a)(1 & 6), allows for "collateral attack upon any ground of alleged error heretofore available under any common law, statutory ..., proceed under this chapter to secure relief," Applicant

seeks declaratory and injunctive relief on the basis that application of S.C. Code of Law §23-3-540, Act No. 141, §8 of 2005, allows subsection (B) to allow probation violators to be placed under a system of active electronic monitoring if offender has been convicted of an offense listed in subsection (C), and its progeny which violate the Ex Post Facto Clause of the U.S. Constitution and S.C. Constitution Article I, §4, as it applies to the Applicant.

A law is ex-post facto if, inter alia, it increases the punishment for crime previously committed, Collins v. Youngblood, 497 U.S. 37, 42, 110 S.Ct. 2715 (1990), or imposes additional punishment to that then prescribed. Weaver v. Graham, 450 U.S. 24, 28, 101 S.Ct. 960, 964 (1981).

Let's be clear, a law violates the Ex-Post Facto Clause when it is retrospective -- i.e., when it applies to events predating its enactment -- and it disadvantages those to whom it applies. Lance v. Mathis, 117 S.Ct. 891, 896 (1997).

The latter condition is satisfied by any provision "which punishes as a crime an act previously committed, which was innocent when done, which makes more burdensome the punishment for a crime, after its commission[;] or which deprives one charged with crime of any defense available according to law at the time when the act was committed." Beazell v. Ohio, 269 U.S. 167, 169, 46 S.Ct. 68 (1925). This is a question of law.

Pertinent to this matter is that S.C. Code of Law §23-3-540 was enacted in 2005, and totally revised through an Amendment in 2008. Because its application upon Applicant is clearly retrospective it violates the Ex Post Facto Clause as defined above by precedent, that interprets the Constitution through the Judicial Branch.

Based upon the above established precedent, the idea of applying §23-3-540 upon the Applicant, when it was not an available statute at the time of the initial plea hearing, violates EX Post Facto, and is Constitutionally deficient. As such the Court should convene a hearing to answer both the declaratory and injunctive relief question, then Grant relief to the Applicant, specified on Line 19 of the PCR Application.

CONCLUSION

Justice Thomas said in Bradshaw v. Stumpf, 125 S.Ct. 2398, 2405 (2005), "The Bill of Rights guarantees vigorous adversarial testing of guilt and innocence and conviction only by proof beyond a reasonable doubt." Therefore, a defect in the integrity of the procedure has occurred, as a matter of fact and law, based on the above precedent and arguments. The Applicant has proved his grounds for relief, and relief should be granted forthwith, or an evidentiary hearing held, and then the matter vacated for its Due Process violations.

THIS THE APPLICANT HUMBL Y PRAYS!

This 15<sup>th</sup> day of June, 2012.

Respectfully Submitted;

Michael McKnight

Michael McKnight, 305121

Applicant, Pro-se

RCI, PO Box 2039, SMU-147

Ridgeland, SC 29936

Marie D. Lejus, Notary  
 Commission Expires  
 My Commission Expires October 16, 2012  
 6/15/2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CALHOUN	)	FOR THE FIRST JUDICIAL CIRCUIT
Michael Tyrell McKnight, 305121,	)	2012-CP-09-00137
	)	
Applicant,	)	<b>RETURN</b>
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
<hr/>		

The Respondent, making its Return to the application for post conviction relief filed July 9, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. The Applicant was indicted during the April 2007 term of the Calhoun County Grand Jury for Possession with Intent to Distribute Cocaine (2007-GS-09-0042). Martin R. Banks, Esquire, represented him. On April 16, 2007, the Applicant pled guilty as indicted to Possession with Intent to Distribute Cocaine before the Honorable Diane S. Goodstein. Judge Goodstein sentenced Applicant to ten years imprisonment suspended upon the service of six months imprisonment followed by three years of probation. The sentence was to be served concurrently to Applicant's YOA parole for a previous 2004 charge and a six month sentence for a charge of Manufacture, Distribution, etc. of Cocaine Base – 1<sup>st</sup> (2007-GS-09-040). Judge Goodstein also ordered the Applicant to perform forty hours of public service employment, obtain a GED, attend substance abuse counseling and be subject to random drug/alcohol testing. The Applicant did not appeal his conviction and sentence.

An arrest warrant was issued for the Applicant on December 15, 2010 for violating conditions of his probation by using marijuana on two separate occasions, failing to attend ordered treatment, possessing a dangerous weapon, failing to work and failing to pay fees. Martin R. Banks, Esquire, represented him at the violation hearing. On January 24, 2011, the Honorable Edgar W. Dickson partially revoked the Applicant's probation, requiring him to serve six months of his original sentence. Judge Dickson also instructed that any new convictions would be viewed as a new violation of probation.

A probation citation was issued on July 26, 2011 following Applicant's subsequent conviction for Assault and Battery – Second Degree (2011-GS-09-0041). Applicant was represented by Martin R. Banks, Esquire, for both the probation violation and the Assault and Battery charge. Judge Dickson ordered that Applicant continue with his probation and completed anger management counseling with CASA or Calhoun County Mental Health. Upon completion of his GED and anger management counseling, Judge Dickson would consider the case for termination.

A third and final probation citation was issued on September 23, 2011 for cutting off his GPS tracking device,<sup>1</sup> failing to refrain from drug use, absconding from his address, failing to pay supervision fees and additional convictions in Magistrate's Court. Martin R. Banks, Esquire, represented him for his probation revocation hearing. The Honorable R. Ferrell Cothran, Jr., revoked Applicant's suspended sentence and sentenced him to serve the remaining five years of his sentence.

Attached herewith and incorporated herein are the records of the Calhoun County Clerk of Court regarding the subject convictions, the Applicant's probation records, the Applicant's

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<sup>1</sup> Applicant was ordered to wear a GPS tracking device as a condition of a prior charge for Lewd Act, Committing or Attempting Lewd Act Upon Child under 16 (2004-GS-09-0139).

records from the South Carolina Department of Corrections and the probation revocation transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:<sup>2</sup>

1. "Violation of applicant's Constitutional right to Due Process."
  - a. "Applicant's right to Due Process as allowed in the State and federal Constitution was altered by the unconstitutional applications of State statutes."
2. "Violation of Applicant's Constitutional right against ex-posto (sic) facto application of law."
  - a. "Applicant's right to have an Ex-Posto (sic) Facto statute applied against him was Constitutionally violated by the unconstitutional implication of the probation hearing's ordered regarding future GPS monitoring as it applies to the Applicant."

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional

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<sup>2</sup> Applicant is only challenging Probation Revocation Hearing.

violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

#### IV.

Applicant alleges he is being held in custody unlawfully based on a "[v]iolation of ex-posto [sic] facto clause by the unconstitutional implication of order regarding GPS as it applies to the Applicant." Aside from the matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). A credit-related claim or challenge to other conditions of confinement does not fall into that category. Id. Furthermore, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). Ex post facto claims are also not cognizable in PCR. Id. Pursuant to Rule 12(b)(6), SCRCP, this Court should summarily dismiss this allegation because it does not state a claim for which relief may be granted.

## VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

## VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

By: Megan E. Harrigan  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

February 21, 2013

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CALHOUN

CIRCUIT COURT  
2012-CP-09-00137

3

4

5 MICHAEL T. McKNIGHT,  
Applicant,

6

-vs-

TRANSCRIPT OF RECORD

7

8 STATE OF SOUTH CAROLINA,  
Respondent.

9

Post Conviction Relief Hearing

10

Heard on Monday, May 20, 2013

11

Orangeburg, South Carolina

12

13 BEFORE:

THE HONORABLE EDGAR W. DICKSON

14

15

16 APPEARANCES:

17 Counsel on Behalf of the Applicant:  
Daniel Gourley, Esq.

18

19 Counsel on Behalf of the Respondent, State of SC:  
Earnest D. O'Neil, Esq.

20

21

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Cheri L. Young, RPR  
Circuit Court Reporter  
P O Box 5232  
Aiken, SC 29803-5232

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EXAMINATION INDEX

MICHAEL T. MCKNIGHT

DIRECT BY MR. O'NEIL	6
CROSS BY MR. GOURLEY	17
REDIRECT BY MR. O'NEIL	20
RE CROSS BY MR. GOURLEY	20

MARTIN R. BANKS

DIRECT BY MR. O'NEIL	21
CROSS BY MR. GOURLEY	30
REDIRECT BY MR. O'NEIL	36
RE CROSS BY MR. GOURLEY	36

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 ON MONDAY, MAY 20, 2013 AT 10:36 A.M.:

2 THE COURT: Mr. Gourley?

3 MR. GOURLEY: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. GOURLEY: Your Honor, the next case is Michael  
6 McKnight versus the State of South Carolina, Docket Number  
7 2012-CP-09-00137.

8 Mr. McKnight is presently confined in the South  
9 Carolina Department of Corrections pursuant to orders of  
10 commitment of the Calhoun County Clerk of Court.

11 Mr. McKnight was indicted during the 2007 April term of  
12 the Calhoun County Grand Jury for possession with intent  
13 to distribute cocaine, 2007-GS-09-00042.

14 Mr. McKnight was represented by Martin Banks, Esquire.  
15 On April 16th, 2007, Mr. McKnight pled guilty as indicted  
16 to possession with intent to distribute cocaine.

17 Mr. McKnight was sentenced by the Honorable Diane S.  
18 Goodstein to a sentence of 10 years imprisonment suspended  
19 upon the service of six months imprisonment followed by  
20 three years probation. The sentences to be served  
21 concurrently to Mr. McKnight's YOA parole for a previous  
22 2004 charge under a six-month sentence for a charge of  
23 manufacturing and distribution of cocaine first, 2007-GS-  
24 02-040.

25 Judge Goodstein also ordered Mr. McKnight to perform

1 40 hours of public service, obtain his GED, attend  
2 substance abuse counseling, and be subject to random  
3 drug/alcohol testing.

4 Mr. McKnight did not appeal his conviction or  
5 sentence. Mr. McKnight has had three separate probation  
6 revocations, the third of which is the basis for  
7 Mr. McKnight's claims today.

8 On September 23rd, 2011, a probation citation was  
9 issued was failing to refrain from drug use, absconding  
10 from his address, failing to pay supervision fees, and  
11 additional convictions in magistrate's court.

12 Mr. McKnight was represented by Martin R. Banks,  
13 Esquire. The Honorable R. Ferrell Cothran, Jr. revoked  
14 McKnight's suspended sentence -- or, I apologize. Revoked  
15 Mr. McKnight's suspended sentence and sentenced him to  
16 serve the remaining five years of his sentence.

17 Mr. McKnight filed a timely application for post  
18 conviction relief on July 9th, 2012, alleging that he's  
19 being held in custody unlawfully based on a violation of  
20 due process and a violation of ex post facto.

21 The State made its return on February 21st, 2013. The  
22 Applicant is represented by Earnest O'Neil.

23 THE COURT: Mr. O'Neil?

24 MR. O'NEIL: Yes, Your Honor.

25 THE COURT: Yes, sir.

MICHAEL McKNIGHT - DIRECT

1 MR. O'NEIL: At this time I call Mr. McKnight to the  
2 stand.

3 THE COURT: Mr. McKnight.

4 MICHAEL T. McKNIGHT, having been duly sworn, was  
5 examined and testified as follows:

6 THE COURT: And, Mr. McKnight, if you'd sit down and  
7 get comfortable. Let me ask you something. Where is your  
8 family from?

9 THE APPLICANT: Saint Matthews, South Carolina, sir.

10 THE COURT: Your whole family is from there, and not  
11 from over in Williamsburg County and like that?

12 THE APPLICANT: No, sir.

13 THE COURT: Okay. All right. Mr. O'Neil, your  
14 witness.

15 MR. O'NEIL: Thank you, Your Honor. May it please the  
16 Court.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. O'NEIL:

20 Q. Michael, where are you currently incarcerated at?

21 A. Right now Kershaw Correction Institution, sir.

22 Q. And back in 2011, you had a probation violation?

23 A. Yes, sir.

24 Q. Okay. And to your understanding, what was the grounds  
25 that the State alleged for your violation of probation at

MICHAEL McKNIGHT - DIRECT

1 that point?

2 A. Me removing the GPS bracelet from off my leg and  
3 fleeing the state. Went to Philadelphia, Pennsylvania.

4 Q. And let's talk about this GPS device.

5 MR. GOURLEY: Your Honor, the State would object. The  
6 GPS violation was put on him in 2010 which is outside the  
7 statute of limitations.

8 According to the record, the citation issued was for  
9 moving without permission, failing to refrain from the use  
10 of illegal drugs and violating state and local laws of  
11 South Carolina.

12 The GPS is outside the statute of limitations and  
13 anything about the GPS would be outside the statute of  
14 limitations.

15 THE COURT: Okay. I understand your objection but I  
16 do -- I will note that when he was before Judge Cothran he  
17 said, he admitted to three things; the marijuana, cutting  
18 the GPS, and essentially leaving for Pennsylvania. Is  
19 that correct?

20 MR. GOURLEY: Yes, Your Honor.

21 THE COURT: At that point.

22 MR. GOURLEY: Yes, Your Honor.

23 THE COURT: I'm going to let him go into it. I'll  
24 note your objection on the record.

25 Mr. O'Neil, you can continue questioning, please, sir.

MICHAEL McKNIGHT - DIRECT

- 1 BY MR. O'NEIL:
- 2 Q. Now, let's talk about this GPS. Okay? One of the  
3 main bases of your application is that you didn't feel as  
4 though you were ever supposed to be on the GPS monitoring;  
5 correct?
- 6 A. Yes, sir.
- 7 Q. You didn't feel like your attorney, Mr. Banks, didn't  
8 (verbatim) object to the GPS being a part of the violation  
9 back in 2011?
- 10 A. Yes, sir. Correct.
- 11 Q. Okay. And let's talk about how the GPS got on you to  
12 start with. Okay?
- 13 A. Yes.
- 14 Q. What was your first conviction related to any sort of  
15 GPS monitoring?
- 16 A. Lewd act upon a minor which was back in the year 2004.
- 17 Q. So you got convicted of a lewd act in 2004?
- 18 A. Yes, sir.
- 19 Q. Do you remember what your sentence was in 2004 for  
20 that?
- 21 A. A YOA. Sentenced to a youthful offender, YOA, one to  
22 six years, not to exceed six years.
- 23 Q. You got an active YOA sentence back in 2004 for the  
24 lewd act?
- 25 A. Yeah.

MICHAEL McKNIGHT - DIRECT

1 Q. In 2004, were you required to have any sort of GPS  
2 monitoring back then?

3 A. No, sir.

4 Q. That wasn't part of your original sentence at all?

5 A. No, sir. Which is about to do it again.

6 Q. So you wound up getting incarcerated on the active YOA  
7 sentence for the lewd act?

8 A. Yeah. Back in 2007, cocaine first offense.

9 Q. And that's back before the year 2007. When did you  
10 get released from the lewd act charge from the Department  
11 of Corrections?

12 A. 2006. May the 15th, 2006.

13 Q. So you get out of the Department of Corrections May  
14 15th, 2006, for the lewd act. Are you on some sort of  
15 supervision at that point here?

16 A. Yeah. At one point in time they had me placed, some  
17 electronic monitor, electronic monitoring bracelet. It  
18 was for 90 days. They said for to modify my behavior or  
19 something like that.

20 Q. But did you have any sort of GPS requirement?

21 A. No, sir. It wasn't -- no, sir. They ain't never  
22 advised me of nothing. Telling me anything about no  
23 bracelet, GPS bracelet. They never did let me know about  
24 that, notify me nothing about that. They didn't notice it  
25 until after the fact. After I got locked up, I got

MICHAEL McKNIGHT - DIRECT

1 violated on my sentence, on my Y.

2 Q. So in May of 2006 you come out on YOA parole?

3 A. Yes, sir.

4 Q. You come out on YOA parole, don't have any sort of GPS  
5 requirements at that point?

6 A. No, I ain't had no GPS.

7 Q. You eventually get arrested again for the possession  
8 with intent to distribute cocaine in December 2006;  
9 correct?

10 A. Yes, sir.

11 Q. And at that point, are you still under YOA parole?

12 A. Yes, sir.

13 Q. At some point here, do you get the YOA parole violated  
14 again?

15 A. Yes, sir.

16 Q. In 2007?

17 A. February. February 16th, 2007.

18 Q. Okay. At that point they violate your YOA parole?

19 A. Yes, sir.

20 Q. Now do they, do they address the PWID cocaine charge  
21 at that time?

22 A. At my parole, at my parole hearing.

23 Q. When was that?

24 A. February 16th, 2007.

25 Q. Okay.

MICHAEL McKNIGHT - DIRECT

1 A. It was me, Mr. Eric Reed, the parole hearing, the  
2 parole hearing officer.

3 Q. And who was Eric Reed?

4 A. The head Calhoun County Probation, Parole, Pardon  
5 Service agent.

6 Q. So how does -- what sentence did you wind up getting  
7 for your cocaine, distribution charge on cocaine --  
8 possession with intent to distribute charge?

9 A. They gave me 10 years. Ms. Goldstein (sic), she give  
10 me 10 years suspended, three years probation, six months  
11 to run concurrent with my YOA, \$746 fine and 48 hours  
12 community service. Forty hours of community service, I  
13 mean.

14 Q. At that time did anybody mention anything about GPS  
15 tracking?

16 A. No. They ain't -- they still never mentioned nothing  
17 about no GPS until after I went back on my YOA. I was  
18 already back down the road at SCDC. And I heard about the  
19 GPS, like, my last year I left. And they said something  
20 about the GPS bracelet.

21 Q. Let's make sure we're clear on this. So you get your  
22 suspended sentence for the PWID cocaine and that would  
23 have been in April of 2007? April 16th, 2007?

24 A. Yeah, yeah. April 16, 2007.

25 Q. When is the first time after that anybody notifies you

MICHAEL MCKNIGHT - DIRECT

1 about the GPS tracking requirement?

2 A. They ain't never did state. I ain't never heard it.  
3 Like I told you, they ain't never confront me stating  
4 anything about no GPS bracelet until I have to get out,  
5 right before I had got out I heard something about it,  
6 like 2009. I got out February of 2010.

7 Q. So --

8 A. February 12th.

9 Q. So the first time you heard about the GPS requirement  
10 was February of 2010?

11 A. Yeah. Right, before I got it. They said like,  
12 Mr. McKnight, you're going to have to wear the bracelet or  
13 do upon this lewd act and they had like thrown me off.

14 Q. And what was your understanding as to why you had to  
15 wear the bracelet at that point?

16 A. My understanding?

17 Q. Yes, sir.

18 A. Actually during that time in moment I didn't really  
19 understand it because they said it was placed back to  
20 doing on this lewd act from 2004. And I was like, it was  
21 impossible. It wasn't by the law that I supposed to wear  
22 this bracelet.

23 So it had me thrown -- it had me confused. They had  
24 me discombobulated because I was like how could this  
25 possibly happen to me. Anybody stay in the federal law,

MICHAEL McKNIGHT - DIRECT

1 they ain't never did state that I had to wear this  
2 regardless of the fact it wasn't a violation. It didn't  
3 make no sense.

4 Q. And, so you wound up having a bracelet on in February  
5 of 2010. And let's fast forward to November of 2011.  
6 That's when Mr. Banks represented you for the third time  
7 on your probation?

8 A. You're absolutely right; yes, sir.

9 Q. For your probation violation?

10 A. Yeah.

11 Q. At that time, were you still on your YOA parole?

12 A. No, sir. I was on the suspended sentence on the  
13 probation due to the cocaine first offense.

14 Q. When did your YOA parole expire?

15 A. February, February the 16th, I think. February 16 or  
16 February -- I don't actually, I don't know. Oh, no,  
17 August 16, or August the 15th, 2010. I don't exactly  
18 require (sic). It's in my file but I don't exactly  
19 require the times.

20 Q. Sometime in August 2010 --

21 A. Yeah.

22 Q. -- your YOA parole had expired?

23 A. Yeah.

24 Q. And your YOA parole was discharged, the sentence you  
25 got for the lewd act?

MICHAEL MCKNIGHT - DIRECT

1 A. Yes, sir.

2 Q. So we fast forward to November of 2011, the case we're  
3 here for today.

4 A. Yes, sir.

5 Q. Part of the violation was that you cut off the GPS  
6 monitoring that you had?

7 A. Yes, sir.

8 Q. Did -- to your knowledge, did your -- at that time  
9 Mr. Banks was your attorney; correct?

10 A. Yes, sir.

11 Q. And he knew you had the YOA back in 2006?

12 A. Absolutely, yeah.

13 Q. He knew you had the ankle, the GPS monitoring from  
14 2010?

15 A. I, I don't know. I don't recall. I doubt it. I  
16 don't recall that. I figure he didn't know until after  
17 the fact because when he represented me in 2007 on this  
18 cocaine first offense, the judge didn't never state  
19 nothing about no bracelet. That wasn't no grounds that  
20 they stated that I had, Mr. McKnight had to wear a GPS  
21 bracelet. I didn't know nothing like that until after the  
22 fact.

23 Q. But before you had -- before you went before the judge  
24 that day, Mr. Banks knew you had the GPS violation at that  
25 point?

MICHAEL MCKNIGHT - DIRECT

1 A. In 2011?

2 Q. 2011, yeah.

3 A. I'm assuming. I'm assuming he did. I'm assuming that  
4 he know because he, he was my attorney which, you know,  
5 that's what his job, supposed to represent me and defend  
6 me.

7 Q. Did you have a chance to read over your transcript of  
8 your probation violation?

9 A. I didn't get my transcripts until after the fact.

10 Q. Yeah.

11 A. I didn't know nothing about it until after the fact.

12 Q. But did you have a chance to look at it since you've  
13 been incarcerated, you looked at your probation --

14 A. Yeah, I read it. I looked over it a couple times.

15 Q. Do you remember Mr. Banks, your attorney, talking  
16 somewhat about the GPS issue?

17 A. Yeah. He stated something about the GPS, that it  
18 wasn't, like, it wasn't a hinder -- it was a burden.

19 Q. Yeah.

20 A. But he ain't never did advise me nothing about no GPS  
21 before that, that I woulda had to wear it.

22 Q. It's your position that Mr. Banks should have objected  
23 to the GPS tracking being a part of your violation?

24 A. Absolutely.

25 Q. You feel he failed to represent you in that regard

MICHAEL MCKNIGHT - DIRECT

1 when he didn't make that objection?

2 A. Yes, sir.

3 Q. Do you feel that, and let me -- correct me if I'm  
4 wrong. You feel as though he should have said something  
5 as to you not having to be on the GPS to start with and  
6 that shouldn't have been a part of your violation?

7 A. Yes, sir.

8 Q. Okay. What are you asking this Court to do today now  
9 as relates to your probation violation of 2011?

10 A. I'm asking them for relief of this, of this bracelet.  
11 That this bracelet be removed upon me, that my probation  
12 hearing be reinstated because that's what caused me being  
13 incarcerated. And it violate my, the state and the  
14 federal law unconstitution which then when I caught my  
15 case they didn't never stated that I supposed to wear  
16 that. And they violated my rights.

17 Not only that, it hindered me. It was a burden placed  
18 upon me. It hindered me from getting a job. Not only  
19 that, it hindered me from being a man to my family and  
20 helping my, my baby mama with my son. And it took me out  
21 of my son life.

22 I mean, I couldn't say what the future would have  
23 bring. God knows I can't say what it would have bring,  
24 but I'm the one that's speaking right now on what it did  
25 to me. It caused mentally and physically harm to me.

MICHAEL McKNIGHT - CROSS

1 Q. And what sentence did you wind up getting for your  
2 probation violation?

3 A. They give me, I had nine years left because I did two,  
4 two, six-months sentence off the 10. They offered the  
5 nine. They gave me five years which I've been  
6 incarcerated since then. October 15th, 2011, I done did  
7 19 months, sir.

8 Q. So basically what you're asking this Court for is a  
9 new probation hearing without the GPS monitoring being a  
10 part of that hearing?

11 A. Yes, sir.

12 Q. Anything else you want to tell the Court about why you  
13 feel as though you're entitled to a post conviction  
14 relief?

15 A. No, sir. That's all I have to say.

16 MR. O'NEIL: Okay. Answer any questions that the  
17 Assistant Attorney General has for you. Okay?

18 CROSS-EXAMINATION

19 BY MR. GOURLEY:

20 Q. Mr. McKnight?

21 A. Yes, sir.

22 Q. You admitted to cutting off the GPS tracking device;  
23 did you not?

24 A. Yes, sir.

25 Q. You also admitted to smoking marijuana?

MICHAEL McKNIGHT - CROSS

1 A. Yes, sir.

2 Q. You also admitted to absconding to Philadelphia?

3 A. Yes, sir.

4 Q. So your probation violation wasn't solely based on a  
5 GPS tracking device, cutting that off; was it?

6 A. That's -- I mean, that's what they said. They stated  
7 that's what the concern was, the GPS, because if it wasn't  
8 never for me cutting the GPS off my leg, I would have  
9 never got a violation on that. The cause of that was me  
10 cutting the GPS off my leg.

11 Q. You wouldn't have got violated for smoking marijuana  
12 and failing the drug test? Wouldn't that be a violation  
13 of your parole?

14 A. I done already had failed the drug test. And my PO  
15 didn't never state nothing about me -- the reason why I  
16 went back to court was because of the GPS. That's why I'm  
17 locked up, because of the GPS.

18 I can't say -- like I told you, I can't say what the  
19 future would have bring with this, right, would I ever got  
20 locked up. The only thing I can just only speak on right  
21 now by the bracelet being put on my leg, if the bracelet  
22 wasn't placed upon my leg, I don't know what would have  
23 happened.

24 Q. Right. But, Mr. McKnight, you understand that part of  
25 your citation, including the bracelet cutting off your

MICHAEL McKNIGHT - CROSS

1 leg, is the fact that you smoked marijuana, absconded to  
2 Philadelphia, and you failed to report a change of  
3 address?

4 A. Yeah, because I cut the bracelet off my leg. That's  
5 why I fled to Philadelphia.

6 Q. But you understand that that is a part of your  
7 probation violation?

8 A. Yes, sir. Yes, sir. Yes, sir.

9 Q. And it wasn't the sole reason that you were there  
10 today?

11 A. Yes, sir.

12 Q. Or, you were there for your third probation violation?

13 A. Yes, sir.

14 Q. And you admitted to doing that; did you not?

15 A. Yes, sir.

16 Q. Mr. Banks mitigated that fact; did he not? He  
17 explained that the reasons why you were going to  
18 Philadelphia was to find work. He explained the fact that  
19 you were having trouble getting work, that you were having  
20 issues with family?

21 A. Yeah. He stated that. That was in my transcript;  
22 yes, sir.

23 Q. Okay. Beg the Court's indulgence. (Pause.)

24 MR. GOURLEY: No further questions.

25 THE COURT: Anything on redirect?

## MICHAEL MCKNIGHT - RE CROSS

1 MR. O'NEIL: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. O'NEIL:

4 Q. Mr. McKnight, I just want to clear up one issue. You  
5 say you had previous failed drug tests while on probation?

6 A. Yes, sir.

7 Q. Did those previous failed drug tests result in you  
8 having a court case, the case entered in court or in-house  
9 violation?

10 A. In-house violation with my probation officer.

11 Q. Okay. So you felt as though this, the GPS being an  
12 issue, I guess, warrant for your case being put forth to  
13 court as opposed to an in-house violation?

14 A. Absolutely right, sir.

15 MR. O'NEIL: That's all I have, Your Honor.

16 THE COURT: Thank you, sir. Anything on recross?

17 MR. GOURLEY: Yes, Your Honor.

18 RE CROSS-EXAMINATION

19 BY MR. GOURLEY:

20 Q. Mr. McKnight, did you ever leave to Philadelphia while  
21 you were on probation?

22 A. Yes, sir.

23 Q. Prior to your first trip to Philadelphia?

24 A. Yeah. That's my first time.

25 Q. That was your first and only time --

MARTIN R BANKS - DIRECT

1 A. Yeah.

2 Q. -- fleeing to Philadelphia?

3 A. Yeah. When I cut the bracelet off.

4 MR. GOURLEY: Thank you, Mr. McKnight. No further  
5 questions, Your Honor.

6 THE COURT: Thank you, sir. You may step down.

7 Mr. O'Neil, if you'd call your next witness.

8 MR. O'NEIL: Thank you, Your Honor. The Applicant  
9 calls Martin Banks.

10 MARTIN R. BANKS, having been duly sworn, was examined  
11 and testified as follows:

12 THE COURT: Mr. Banks, I appreciate you dressing up  
13 for court.

14 DIRECT EXAMINATION

15 BY MR. O'NEIL:

16 Q. Mr. Banks, when's the first time that you represented  
17 Mr. McKnight?

18 A. I guess back on the lewd act case. It may have  
19 been -- I may have had him in juvenile court prior to  
20 that. In fact, I probably did.

21 Q. Okay. But you represented him on the lewd act in  
22 2004?

23 A. Definitely.

24 Q. And as part of the plea in 2004 for the lewd act, was  
25 Mr. McKnight required to wear a GPS?

MARTIN R BANKS - DIRECT

1 A. No.

2 Q. In fact, that law hadn't been passed --

3 A. That's exactly right.

4 Q. -- at that point yet.

5 Did you advise Mr. McKnight about the possibility of  
6 any sort of GPS monitoring in the future?

7 A. Never came up. Never. I don't think anybody would  
8 have thought about that.

9 Q. You didn't anticipate that?

10 A. No.

11 Q. Okay. When -- did you represent Mr. McKnight when he  
12 got his YOA parole violated in May of 2006?

13 A. Yes.

14 Q. At that point, did the Court order Mr. McKnight to  
15 wear any sort of GPS tracking?

16 A. No.

17 Q. At that point, had the law relating to GPS tracking  
18 been passed at that point?

19 A. I don't think so. I think it came later.

20 Q. Had it not come in effect at that point; did it?

21 A. Right.

22 Q. May of 2006? In December of 2006, Mr. McKnight got  
23 arrested for possession with intent to distribute cocaine?

24 A. Uh-huh.

25 Q. Did you represent Mr. McKnight on that charge?

MARTIN R BANKS - DIRECT

1 A. I believe I did.

2 Q. Okay. Did you represent him at his parole, YOA parole  
3 violation in 2007, I guess, at that point?

4 A. Well, I didn't represent him at the administrative  
5 hearing. I never get notice of all of that. And there's  
6 a lot of things that happen. They have administrative  
7 hearings prior to them coming to me and facing the circuit  
8 judge.

9 So there may have been some things that happened at an  
10 administrative hearing that I don't know about, but I had  
11 him in circuit court.

12 Q. And that would have been April of 2007?

13 A. Yeah, I believe so.

14 Q. And at that time Mr. McKnight pled guilty to the  
15 possession with intent to distribute cocaine?

16 A. That's right.

17 Q. And he received a suspended sentence at that point?

18 A. That's right.

19 Q. And a small sentence as well?

20 A. Time served, I think it was. It might have been a  
21 little more.

22 Q. But whatever it was, it was concurrent to whatever he,  
23 his parole violation was for the YOA?

24 A. It was; uh-huh.

25 Q. At that point to your knowledge, was Mr. McKnight

MARTIN R BANKS - DIRECT

1 required to wear any sort of GPS tracking?

2 A. I don't recall that he was; no.

3 Q. Do you know whether or not at that point the GPS law  
4 was in effect then?

5 A. I don't think it was.

6 Q. Okay. This was in April 2007?

7 A. I think that's right.

8 Q. Okay. Do you know when that GPS law came into effect  
9 here?

10 A. I can't recall the time. I think it was shortly  
11 after.

12 Q. Okay. In any regard here, you represented  
13 Mr. McKnight in February -- in November 2011, when he  
14 received his third, I guess, parole violation?

15 A. I did.

16 Q. Okay. At what point did you realize Mr. McKnight was  
17 wearing a GPS tracker?

18 A. Well, the citation said that he cut off the GPS  
19 monitor. And I was, like, a GPS. I thought they meant,  
20 you know, the other kind.

21 Q. Electronic monitoring?

22 A. Yeah. I thought it was a home detention monitor, but  
23 it said GPS monitor. And those reports are mistaken quite  
24 a bit.

25 So I called up the agent and talked to Eric Reed. And

MARTIN R BANKS - DIRECT

1 he said, no, you know, the law has been applied  
2 retroactively to this violation now that it's triggered  
3 and now he's on GPS. I was -- it was the first time that  
4 ever crossed my mind.

5 And, and I'll be honest with you, Mr. Reed wasn't  
6 happy about it either because it costs them a lot more  
7 work and money and so forth. He was not happy about it.

8 And I believe shortly after that there was a case that  
9 came, went up through the system and -- the state system,  
10 and I believe the Supreme Court decided it. And again, it  
11 was sometime after this because we were all looking  
12 forward to this case maybe overturning situations like  
13 this. And the case didn't overturn the case, the case  
14 endorsed it.

15 Q. So at the time Mr. McKnight's probation charge was  
16 pending here, there was pending litigation in the Court of  
17 Appeals or the Supreme Court relating to the same issue  
18 Mr. McKnight had?

19 A. I don't know if it was the exact same time but it was,  
20 if it wasn't concurrent it was shortly after.

21 Q. Okay. And do you know what particular statute the  
22 State was relying on in their violation that required  
23 Mr. McKnight to wear the GPS monitoring?

24 A. I can't recall.

25 Q. Okay. Was it -- forgive me if I'm wrong. I'm

MARTIN R BANKS - DIRECT

1 assuming it was 23-5 -- 23-3-540, the electronic  
2 monitoring statute?  
3 A. If you say so.  
4 Q. Okay. But did you ever research the validity of  
5 whether or not Mr. McKnight should actually be wearing the  
6 actual GPS monitor?  
7 A. Did I research the validity of it?  
8 Q. Yes. Did you research whether or not --  
9 A. You mean, prior to the hearing, his third violation?  
10 Q. Yes.  
11 A. No. No, I didn't do any research.  
12 Q. Okay. Did you look at the statute to verify that that  
13 statute actually correctly applied to Mr. McKnight?  
14 A. I remember looking at the statute but I didn't -- the  
15 only research, you know, the only thing that -- I read the  
16 statute. I talked to Eric Reed. And, again, he had  
17 extensive experience with it at that point. And looked  
18 like it applied -- to me, I thought it applied.  
19 Q. Okay. So at the time Mr. McKnight had the hearing you  
20 never objected to the GPS tracking being placed on him at  
21 that point?  
22 A. I don't know that that's a fair statement. I think I  
23 put forth his complaint about how the burden of the GPS  
24 monitoring affected him. I think I put forth that, you  
25 know, we'd like to not have it. But I believe the State

MARTIN R BANKS - DIRECT

1 law was clear, and the case law was up in the air at that  
2 point.

3 Q. And I just want to make sure because, I mean, there's  
4 quite a distinction between mitigating the GPS unit and  
5 objecting to the GPS being a condition of his probation.  
6 I want to make sure the record's clear on this.

7 You in effect tried to mitigate the fact that he had  
8 cut the GPS monitor off?

9 A. Yeah.

10 Q. But you never objected to the GPS monitoring being a  
11 valid term of his probation?

12 A. I filed an appeal on his behalf.

13 Q. Yes, sir.

14 A. I think that -- I don't know what the status of his  
15 appeal is, but it may have been taken care of when that  
16 case came down.

17 Q. Yeah. And you filed an appeal but in order for the  
18 appeal, the issue to be preserved on appeal there needs to  
19 be some sort of objection at the hearing part of the  
20 proceedings.

21 A. I think that, that the groundwork laid at that hearing  
22 was enough to appeal the issue.

23 Q. But you --

24 A. I just don't think the state law's going to change and  
25 the case law's not going to change. I don't think he can

MARTIN R BANKS - DIRECT

1 get the relief he's wanting right now in this venue. He  
2 needs to go forward with his appeal.

3 Q. Yes, sir. And of course in order to have a PCR you  
4 first got to have your appeal exhausted; correct?

5 A. Yeah. Again, I don't know what the status is.

6 Q. But in any event, in any regard here, you agree that  
7 you didn't formally object to the GPS monitoring being  
8 placed as a condition of his probation?

9 A. I think I -- I think what I did in that hearing was  
10 objection enough, yes.

11 Q. You feel as though what you did was sufficient?

12 A. Sufficient.

13 Q. Okay. But you would admit that you didn't lodge a  
14 formal objection to the GPS monitoring?

15 A. I filed an appeal.

16 Q. Well, I guess during this hearing you didn't lodge a  
17 formal objection to the GPS?

18 A. I think if you -- I mean, if you want to read the  
19 transcript, I believe that I complained about the GPS.

20 Q. Yes, sir.

21 A. It wasn't like somebody made a statement in court and  
22 I objected. I was objecting to the GPS in the summation  
23 of what we were saying.

24 Q. And I read the transcript. And I agree with what you  
25 did. But I'm just trying to make sure the record is

1 clear. The words, you object to the GPS being a part of  
2 his, considered during his probation violation was never  
3 said by you?

4 A. I didn't use the word objection.

5 MR. O'NEIL: Okay. That's all I have, Your Honor.

6 THE COURT: Okay. All right.

7 MR. SPENCER: Your Honor, for the record my name is  
8 David Spencer with the Attorney General's Office. I'm  
9 here with Mr. Gourley today.

10 Something came up that neither Mr. Gourley nor I would  
11 be aware of because our office wouldn't have handled it,  
12 but there's some reference to an appeal from the probation  
13 revocation. And the question I have is whether that  
14 appeal is still pending or not.

15 MR. O'NEIL: I understand that it's not. That's my  
16 understanding.

17 MR. SPENCER: There was nothing in the application  
18 about an appeal of anything, so that's why we wouldn't  
19 have known about it and DPPPS would have handled it.

20 THE APPLICANT: Here's the notice.

21 MR. SPENCER: I saw the notice, too. And I didn't see  
22 the disposition. So before we kept going, I wanted to  
23 make sure we were validly here.

24 THE COURT: Well, hopefully as far as y'all all know,  
25 as far as, Mr. O'Neil, you are not aware of that appeal

MARTIN R BANKS - CROSS

1 still proceeding?

2 MR. O'NEIL: My understanding is the appeal has been  
3 denied. And I want to check with my client, but that's my  
4 understanding.

5 THE COURT: Okay. If you'll check.

6 (Applicant and Mr. O'Neil conferring.)

7 MR. O'NEIL: Yeah, my client about a month ago sent me  
8 paperwork indicating that his appeal had been denied.

9 THE COURT: Okay.

10 THE WITNESS: That's what I would expect because I  
11 think the facts in his case were almost exactly the facts  
12 in that case that came down, I think.

13 THE COURT: All right.

14 MR. SPENCER: Thank you for letting me jump in.

15 THE COURT: That's okay.

16 MR. SPENCER: Sorry about that.

17 THE COURT: Mr. Spencer, are you going cross-examine?

18 MR. SPENCER: No, no. I'll let Mr. Gourley handle  
19 that.

20 THE COURT: Y'all did not slap hands, but I'll let him  
21 do it anyway. Mr. Gourley?

22 CROSS-EXAMINATION

23 BY MR. GOURLEY:

24 Q. Mr. Banks, how long have you been practicing law?

25 A. Almost 21 years.

## MARTIN R BANKS - CROSS

1 Q. And how much of that has been criminal law?

2 A. I'd say 35 percent.

3 Q. Okay. And how many probation revocations have you  
4 handled?

5 A. Oh, golly; several hundred.

6 Q. Okay. And you represented the Applicant at all three  
7 of his probation revocations; correct?

8 A. Yes.

9 Q. And you recall the Applicant's third probation  
10 revocation?

11 A. Yeah.

12 Q. And can you explain a little bit about the facts  
13 surrounding it, what exactly his citation was?

14 A. If you want me to characterize it, it was a bad case.  
15 He absconded out of state. He almost violated about all  
16 the major ones including testing positive. You know, he  
17 cut off the device which, again, I understand his  
18 objection to the device. I sympathize with him, but that  
19 was a bad move. A very bad move.

20 I would categorize it as a pretty bad hearing. I  
21 mean, it just wasn't going to go well for us. And it  
22 didn't go well for us.

23 What else what were you looking for? I might have  
24 gotten off track.

25 Q. That's essentially it. Just the fact of what exactly

## MARTIN R BANKS - CROSS

1 his citations were in addition to cutting off the GPS  
2 tracking device.

3 A. I can go through the list of what his...

4 Q. Okay.

5 A. Tested positive. He absconded. Cut the device off.  
6 He had prior -- he had either a conviction or two in  
7 magistrate's court all during this. This was his third  
8 violation which, you know, that in itself was probably  
9 going to not do well for him.

10 Those are the major things.

11 Q. Okay. And, Mr. O'Neil pointed out that at the time of  
12 his lewd act with a minor there was no GPS law?

13 A. There wasn't.

14 Q. The 2007 cocaine first, distribution of cocaine, there  
15 was no GPS law?

16 A. Nope.

17 Q. And it's your understanding that there was nothing  
18 that you could inform Mr. --

19 A. There was nothing to say. I had nothing -- there was  
20 nothing I could say.

21 Q. Okay. And did you have any basis for an objection for  
22 the GPS?

23 A. I think the state law was clear.

24 Q. And you felt there was nothing to object to?

25 A. Not by those standards, no.

MARTIN R BANKS - CROSS

1 Q. And in your opinion did you do the best that you  
2 could --

3 A. Absolutely.

4 Q. -- in mitigating the evidence and explaining  
5 Mr. White's (sic) issues with his GPS tracking?

6 A. I did. In fact, I wrote a letter. He wrote me a  
7 letter and I wrote him a letter back dated December 2nd,  
8 2011.

9 And I told him I'd like to inform you that I got the  
10 solicitor to completely dismiss some other charge. It was  
11 a threatening the life of a public official, I believe.

12 Q. Right.

13 A. Got him to dismiss that charge and reminded him he  
14 didn't plead guilty to that, he never even indicted him on  
15 the violation of the electronic monitoring charge. He  
16 could have, you know. He could have added another charge  
17 but he didn't do it.

18 I said, all we did was admit to some of the probation  
19 violation charges. We didn't admit to all of them. In  
20 fact, you know, we -- I pointed out the ones that we just  
21 couldn't, couldn't --

22 Q. Right.

23 A. -- overcome and couldn't deny. If all you, if all you  
24 are complaining about is that you should not be made aware  
25 of the tracking device, I said, I can't help you at this

MARTIN R BANKS - CROSS

1 stage. He wanted, you know, he wanted more help after  
2 that. I said, that issue cannot be addressed in the  
3 motions that are available to me at this point in time.

4 And, like, a motion for reconsideration or whatever.

5 Q. Right.

6 A. And then I sent him his discovery and told him we  
7 would have to order his transcripts. That's basically  
8 where we stand today.

9 MR. GOURLEY: Beg the Court's indulgence. (Pause.)

10 THE COURT: All right.

11 MR. GOURLEY: No further questions, Your Honor,

12 THE COURT: Thank you, sir. All right. Anything on -  
13 - any questions, Mr. O'Neil?

14 MR. O'NEIL: One -- beg the Court's indulgence, Your  
15 Honor.

16 (Applicant conferring with Mr. O'Neil.)

17 THE COURT: Sure. Take your time. I'm going to ask  
18 him a question while you're doing that.

19 MR. O'NEIL: Yes, sir.

20 THE COURT: If you don't mind. Mr. Banks, he was  
21 facing a 10-year revocation on this; wasn't he?

22 THE WITNESS: Uh-huh. He got five.

23 THE COURT: Thank you, sir. All right. Mr. O'Neil?

24 MR. O'NEIL: Briefly.

25

## MARTIN R BANKS - REDIRECT

## REDIRECT EXAMINATION

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BY MR. O'NEIL:

Q. Mr. Banks, you attempted to mitigate some of Mr. McKnight's admitted violation of his probation; correct?

A. Yeah.

Q. And the reason why you do that is because you know every little bit of violation that you can trim off essentially helps him in the long run?

A. This was a tough one, though. Yeah, that's true.

Q. Every little bit that you chip off --

A. Sure.

Q. -- would help him in the number that he may get on the violation?

A. True.

Q. So if he never had the GPS violation at all here, that would have helped him to some extent in your opinion, in your years of experience?

A. I think that's speculation. It's possible. Third violation was his biggest, you know, one of the biggest things. And it was no avoiding that. I couldn't even argue. It's the third one.

Q. But in your experience the least amount of violation you could have from the judge would be the best for you as a defendant?

1 A. I'm sorry?

2 Q. In your experience here, the least things you violate  
3 on probation would be the best for you in front of the  
4 judge? It would be better if you got lesser things that  
5 you were violating.

6 A. Yeah. This was a bad case.

7 Q. Than more?

8 A. Uh-huh.

9 MR. O'NEIL: That's all I have, Your Honor.

10 THE COURT: Thank you, sir. Anything on recross?

11 MR. GOURLEY: Yes.

12 RE-CROSS-EXAMINATION

13 BY MR. GOURLEY:

14 Q. Mr. Banks, Mr. McKnight admitted to cutting off the  
15 GPS?

16 A. He did.

17 MR. GOURLEY: No further questions, Your Honor.

18 THE COURT: All right. Thank you, Mr. Banks. You may  
19 step down.

20 THE WITNESS: Thank you.

21 THE COURT: Mr. O'Neil?

22 MR. O'NEIL: Your Honor, I don't have anything  
23 further. I do have a copy of Mr. McKnight's appeal,  
24 dismissal. Can I make a copy of that if the Court wants  
25 to see that? I'll give a copy to the State as well.

1 THE COURT: Mr. Richardson, do you mind copying?  
2 Mr. Richardson will make copies. If you don't mind. If  
3 you would, run -- let's see, one for them and one for me.  
4 Okay. Thank you, sir.

5 THE BAILIFF: Yes, sir.

6 MR. O'NEIL: That's all the Applicant has, Your Honor.

7 THE COURT: Thank you, sir. All right.

8 I will review the transcript. I will get you my  
9 decision shortly. Do we have Mr. O'Neil's e-mail address?

10 THE LAW CLERK: It's in the bar book.

11 THE COURT: I'll send out the decision shortly.

12 MR. GOURLEY: Thank you, Your Honor.

13 MR. O'NEIL: Thank you, Your Honor.

14 THE COURT: That's it for today, Mr. Gourley?

15 MR. GOURLEY: Yes, sir.

16 END OF CASE: 11:12 A.M.

17 \* \* \* \*

18 CERTIFICATE OF REPORTER

19 STATE OF SOUTH CAROLINA )

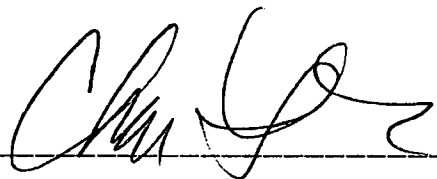
20 COUNTY OF AIKEN )

21 I, Cheri L. Young, Registered Professional Reporter  
22 and Official Court Reporter for the State of South  
23 Carolina, Second Circuit-At Large, do hereby certify that  
24 the foregoing proceedings were written stenographically by  
25 me using computer-aided translation; further, that the

1 foregoing is a true, accurate and complete record, to the  
2 best of my skill and ability, of all the proceedings had  
3 and evidence introduced in the hearing of the captioned  
4 case, relative to appeal, in the Court of Common Pleas for  
5 Orangeburg County, on the 20th day of May, 2013.

6 I do further certify that I am neither of kin,  
7 counsel, nor interest to any party hereto.

8 I have hereunder set my hand this 8th day of November,  
9 2013.

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12 Cheri L. Young, RPR  
13 Official Court Reporter  
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STATE OF SOUTH CAROLINA ) FILED IN THE COURT OF COMMON PLEAS  
COUNTY OF CALHOUN ) FOR THE FIRST JUDICIAL CIRCUIT

Michael T. McKnight., #305121, ) 2013 JUL 10 P 12:16 Case No. 2012-CP-09-0137

Applicant, ) KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY  
SOUTH CAROLINA

v. )

ORDER OF DISMISSAL

State of South Carolina, )  
Respondent. )

This matter comes before the Court by way of an application for post-conviction relief filed July 9, 2012. The Respondent made its Return on February 21, 2013. An evidentiary hearing into the matter was convened on May 20, 2013, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Earnest D. O'Neil, Esquire. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. The Applicant was indicted at the April 2007 term of the Calhoun County Grand Jury for Possession with Intent to Distribute Cocaine (2007-GS-09-0042). Applicant pled guilty before the Honorable Diane S. Goodstein. Judge Goodstein sentenced Applicant to ten years imprisonment suspended upon the service of six months imprisonment followed by three years of probation. The sentence was to be served concurrently to Applicant's YOA parole for a previous 2004 charge and a six month sentence for a charge of Manufacture, Distribution, etc. of Cocaine Base-1<sup>st</sup> (2007-GS-09-040). The Applicant did not appeal his conviction or sentence.

An arrest warrant was issued for the Applicant on December 15, 2010 for violating conditions of his probation by using marijuana on two separate occasions, failing to attend ordered treatment, possessing a dangerous weapon, failing to work, and failing to pay fees. Martin R. Banks, Esquire, represented him at the violation hearing. On January 24, 2011, the Honorable Edgar W. Dickson partially revoked the Applicant's probation, requiring him to serve six months of his original sentence. Judge Dickson also instructed Applicant that any new convictions would be viewed as a new violation of probation.

A probation citation was issued on July 26, 2011 following Applicant's subsequent conviction for Assault and Battery – Second Degree (2011-GS-09-0041). Applicant was represented by Martin R. Banks, Esquire, for both the probation violation and the Assault and Battery charge. Judge Dickson ordered that Applicant continue with his probation and complete anger management counseling with CASA or Calhoun County Mental Health. Upon completion of his GED and anger management counseling, Judge Dickson would consider the case for termination.

A third and final probation citation was issued on September 23, 2011 for cutting off his GPS tracking device,<sup>1</sup> failing to refrain from drug use, absconding from his address, failing to pay supervision fees and additional convictions in Magistrate's Court. Martin R. Banks, Esquire, represented him for his probation revocation hearing. The Honorable R. Ferrell Cothran, Jr., revoked Applicant's suspended sentence and sentenced him to serve the remaining five years of his sentence.

<sup>1</sup> Applicant was ordered to wear a GPS tracking device as a condition of a prior charge for Lewd Act, Committing or Attempting Lewd Act Upon Child under 16 (2004-GS-09-0139).

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. "Violation of applicant's Constitutional right to Due Process."
  - a. "Applicant's right to Due Process as allowed in the State and federal Constitution was altered by the unconstitutional applications of State statutes."
2. "Violation of Applicant's Constitutional right against ex-posto (sic) facto application of law."
  - a. "Applicant's right to have an Ex-Posto (sic) Facto statute applied against him was Constitutionally violated by the unconstitutional implication of the probation hearing's ordered regarding future GPS monitoring as it applies to the Applicant."

In his application, Applicant only challenges the propriety of his third probation revocation in front of the Honorable Judge R. Ferrell Cothran, Jr.

#### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Martin R. Banks, Esquire (Counsel). This Court also had before it a copy of Applicant's guilty plea transcript, the records of the Dorchester County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified his parole was violated in 2011 for cutting of his GPS tracking device and fleeing to Philadelphia. Applicant testified counsel was ineffective for failing to object to him being subject to the GPS tracking device. Applicant further testified he was convicted for lewd act on a minor in 2004 and received a YOA sentence and was subject to electronic monitoring for thirty days. Applicant testified he was released in 2006 and was never advised of any GPS tracking requirements. Applicant testified he was convicted for Possession With Intent to Distribute Cocaine in 2007 and violated his Parole.

Applicant testified he was sentenced to ten years suspended upon the service of 3 years imprisonment. Applicant testified he was not advised of the GPS tracking device until 2009. Applicant testified that in November 2011 he violated his parole for cutting off his GPS tracking device and fleeing to Philadelphia.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified he represented Applicant in his 2004 conviction for lewd act with a minor. Counsel testified that in 2004 he did not advise Applicant that he would be required to wear a GPS tracking device. Counsel testified he represented Applicant in his 2007 PWID Cocaine conviction and he did not advise Applicant that he would be required to wear a GPS tracking device. Counsel testified that the law requiring Applicant to wear a GPS tracking device was not in effect at the time of Applicant's guilty plea. Counsel testified he would have no way of knowing that Applicant would be required to wear a GPS tracking device as a result of his guilty plea. Counsel further testified he represented Applicant at his 2011 Parole hearing and Applicant was cited for cutting off his GPS tracking device and absconding to Philadelphia. Counsel testified he reviewed the validity of the GPS tracking statute. Counsel testified that the law applies retroactively. Counsel further testified he spoke with Eric Reed, Applicants Parole Officer, regarding the validity of the GPS tracking device. Counsel testified that he had no grounds to object to the GPS tracking device. Counsel further testified he filed an Appeal on Applicant's behalf.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### *Ineffective Assistance of Counsel*

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the

Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

*Counsel was ineffective for failing to object to GPS tracking device*

This Court finds Applicant's allegation that he was denied effective assistance of counsel due to Counsel's failure to object to the validity of the GPS tracking device is without merit. This Court further finds that nothing in Counsel's representation fell below any reasonable professional standard. Counsel testified that he did not advise Applicant that he may be potentially required to wear a GPS monitor as a result of his guilty plea because the statute so requiring was not in effect at the time of the Applicant's plea. See Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) (attorney is not required to be clairvoyant or anticipate changes in the law which were not in existence at time of trial), *overruled on other grounds by* Brightman v. State, 336 S.C. 347, 520 S.E.2d 614 (1999).

This Court further finds Counsel thoroughly investigated the validity of the law and correctly found that the law applies retroactively. Additionally, this Court finds Counsel's testimony that there was no basis for an objection in light of the case law established at the time of Applicant's probation revocation to be correct. This Court holds that Applicant has failed to meet his burden of proof in regards to this allegation, which must be denied and dismissed with prejudice.

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Counsel testified that he did not believe that Applicant had a meritorious ground on which an appeal could be sought and that Applicant never requested an appeal be filed. This Court finds that Counsel's performance was reasonable and effective. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

#### ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27<sup>th</sup> day of June, 2013.



EDGAR W. DICKSON  
Presiding Judge  
First Judicial Circuit

Orangeburg, South Carolina