

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2013-002510

THE STATE,.....Respondent

v.

JOSEPH WRIGHT, JR.,.....Appellant

PETITION

S. Harrison Saunders, VI
Law Office of S. Harrison Saunders, VI, LLC
1720 Main Street, Suite 301
Columbia, South Carolina 29201
(803) 779-6333
Email: Harrison@hsaunderslaw.com

PETITIONER

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MAY 14 2014

SC Court of Appeals

Petitioner represented appellant in the lower court matter giving rise to the pending appeal. Petitioner was relieved as counsel for appellant in the lower court pursuant to a Consent Order. *See* Consent Order filed March 28, 2014. (Ex. A). Petitioner is holding \$5,000.00 in trust and seeks guidance from this Court as to the appropriate disposition of the funds.

This matter originally came before the lower court on September 6, 2013. The purpose of the hearing was to address an alleged probation violation. It was alleged through a probation citation that appellant failed to pay a remaining balance of restitution in the amount of \$43,468.66 owed to the victim, Homeowners Mortgage Enterprises, Inc. (“Homeowners”).

Prior to the hearing, appellant and Homeowners reached an agreement regarding the restitution. The agreement was stated on the record. Counsel for Homeowners prepared a proposed Order to be signed by the lower court and all parties. On October 2, 2013, after some revisions to the Order were completed, appellant indicated he would not sign the Order. Appellant took the position he was not properly advised before entering into the agreement with Homeowners and would not have entered into the agreement had he been properly advised. On October 3, 2013, Petitioner informed the Court in writing of appellant refusing to sign the Order and requested the Court hold a hearing to resolve the matter. On October 4, 2013, appellant provided petitioner with a check in the amount of \$5,000.00 to hold in trust until the dispute surrounding the agreement could be resolved. This \$5,000.00 check represented the initial payment due to Homeowners pursuant to the terms of agreement. It was anticipated that the lower court would either void the agreement or find the agreement valid. This ruling would dictate whether or not payment would be due and owing to Homeowners.

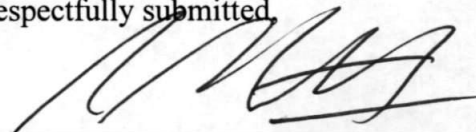
On October 29, 2013, petitioner and counsel for Homeowners met with the Court in chambers to discuss the status of the case. During this meeting in chambers and after hearing from petitioner, Judge Gibbons signed the Order. *See* Order filed November 20, 2013 (Ex. B).

He then instructed petitioner to pay Homeowners the \$5,000.00 from trust. A hearing was not held. Petitioner did not pay the \$5,000.00 to Homeowners as appellant expressed his intention to file an appeal of the Order. Petitioner reasoned that any payments due under the agreement would be stayed pending the outcome of the appeal. On November 6, 2013, appellant terminated petitioner as counsel. Appellant retained appellate counsel and the Notice of Appeal was filed on November 26, 2013.

Since that time, petitioner has sought guidance from the lower court as to the status of the funds held in trust. A hearing was scheduled for March 13, 2014. One issue to be addressed at the hearing was the status of the \$5,000.00 in trust. That hearing was cancelled pursuant to an Order of this Court confirming the lower court matter was automatically stayed. *See* Order filed March 12, 2014 (Ex. C). As that hearing was cancelled and the matter stayed pursuant to the Order, Petitioner is still in possession of the \$5,000.00. Appellant has requested the money be returned to him. Petitioner has not returned the money to appellant due to the lower court's directive on October 29, 2013.

Based on the foregoing, Petitioner respectfully requests the Court allow the return of the \$5,000.00 to appellant. In the alternative, petitioner requests the Court instruct petitioner as to the appropriate disposition of these funds.

Respectfully submitted,



S. Harrison Saunders, VI
Law Office of S. Harrison Saunders, VI, LLC
1720 Main Street, Suite 301
Columbia, South Carolina 29201
(803) 779-6333

PETITIONER

FILED
OFFICE OF CLERK
OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER)

2014 MAR 28 AM 8:51

DOCKET NO. 2003-GS-4-5502

The State of South Carolina,

CLERK OF COURT
LANCASTER, SC

PROBATION C/W #S: C-29-13-0025

CONSENT ORDER

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MAY 14 2014

SC Court of Appeals

vs.

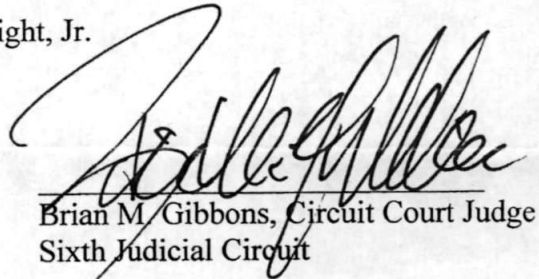
Joseph Wright, Jr.,

Defendant.

Now comes counsel for the defendant, by and with the consent of the defendant, for an Order relieving him as counsel. On October 29, 2013, the Court signed an Order in this case addressing a probation matter. This Order was filed on November 20, 2013. On November 6, 2013, the defendant, via email, terminated the attorney client relationship with counsel. The defendant has since retained Hemphill P. Pride, II, Esquire to act solely as appellate counsel. On November 26, 2013, a Notice of Intent to Appeal the Court's Order was filed with the South Carolina Court of Appeals. The appeal remains pending.

Based on the foregoing, it is Ordered that S. Harrison Saunders, VI, Esquire is hereby relieved as Counsel for the defendant, Joseph Wright, Jr.

AND IT IS SO ORDERED.



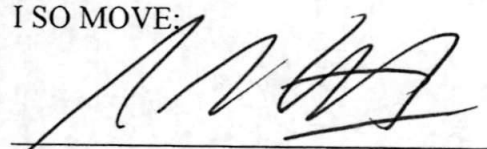
Brian M. Gibbons, Circuit Court Judge
Sixth Judicial Circuit

Lancaster, South Carolina

~~January~~ 3/19 2014

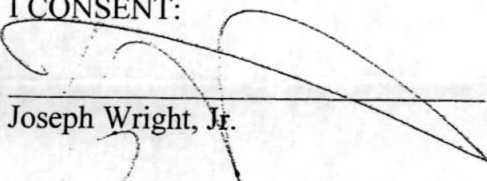
EXHIBIT A

I SO MOVE:



S. Harrison Saunders, VI

I CONSENT:



Joseph Wright, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF GENERAL SESSIONS
2003-GS-40-5502
PROBATION C/W #S C-29-13-0025

STATE OF SOUTH CAROLINA

v.

JOSEPH WRIGHT, JR.

ORDER

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SC Court of Appeals

This matter came before the court for a probation violation hearing. In attendance were Teresa H. Oliver (Agent in Charge for the South Carolina Department of Probation, Parole, and Pardon Services), Joseph Wright, Jr. (individually), Harrison Saunders, Esq. (attorney for Mr. Wright), and Robert P. Wood (attorney for Homeowners Mortgage Enterprises, Inc. (the victim)).

At the hearing and under oath, Mr. Wright admitted he was in willful civil contempt of previous orders in this case requiring him to pay Homeowners Mortgage restitution. And the Court finds that Mr. Wright is in fact in willful civil contempt for violating previous restitution orders in this case. The court orders Mr. Wright to serve six months in the Lancaster County Detention Center for his contempt of court. Mr. Wright admits he is within the jurisdiction of this court and that he has been and remains able to pay the restitution ordered by this court.

At the request of Homeowners Mortgage, and with the consent of Mr. Wright and his counsel, and with the approval of the Court, Mr. Wright's period of incarceration shall not commence unless and until Homeowners' Mortgage Enterprises (through the company or through its counsel) has filed with this Court (a) an affidavit averring that Mr. Wright has failed to meet one of the following two payment schedules and (b) a motion and rule to show cause why Mr. Wright should not be incarcerated immediately. The payment schedules are as follows:

CLERK OF COURT
&
CLERK OF COURT
2013 NOV 20 AM 11:13
RICHLAND COUNTY
FILED

PC
EXHIBIT B

Schedule A		
	Date	Payment Due
	October 1, 2013	\$5,000
	November 1, 2013	1,500
	December 2, 2013	1,500
	January 2, 2014	1,500
	February 5, 2014 and the fifth day of each month thereafter until Mr. Wright has paid the sum of \$38,500 after September 6, 2013.	1,500/month

Schedule B		
	Date	Payment Due
	October 1, 2013	\$5,000
	November 1, 2013	1,000
	December 2, 2013	5,000
	January 2, 2014	1,500
	February 5, 2014, and the fifth day of each month thereafter until Mr. Wright has paid the sum of \$36,000 to Homeowners Mortgage after September 6, 2014.	1,500

All payments shall be made to Rogers Townsend & Thomas, PC, and shall be delivered in the care of Sheri McClendon, 220 Executive Center Drive, Columbia, SC 29210.

Mr. Wright shall notify Ms. McClendon in writing at the address above within 30 days of any change of his residence address.

Upon receipt of the amounts due on whichever of the two payment schedules Mr. Wright elects to follow, Homeowners Mortgage shall mark all judgments it has against Mr. Wright fully paid and satisfied.

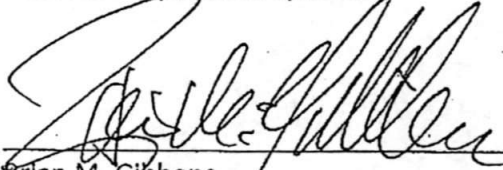
Rogers Townsend & Thomas, PC is authorized to deal directly with Mr. Wright in person, over the telephone, or in writing (including email) with respect to any payments or his

performance of this agreement. The firm shall copy Mr. Saunders on any written communications with Mr. Wright.

The undersigned shall retain jurisdiction of this case.

Mr. Wright's probation is terminated effective September 6, 2013.

AND IT IS SO ORDERED.



Brian M. Gibbons
Circuit Court Judge

Chester, South Carolina
September __, 2013

~~WE CONSENT:~~

~~_____
Joseph Wright~~

~~Address:

_____~~

~~Telephone No.:
_____~~

~~_____
S. Harrison Saunders VI
1720 Main Street, Ste. 301
Columbia, SC 29201-2850
(803) 779-6333~~

~~_____
Robert P. Wood
Rogers Townsend & Thomas, PC
220 Executive Center Drive (29210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900~~

The South Carolina Court of Appeals

The State, Respondent,

v.

Joseph Wright, Jr., Appellant.

Appellate Case No. 2013-002510

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ORDER

Appellant has filed a petition for a writ of supersedeas from an order arising from a case in the Court of General Sessions. However, the order on appeal purports to hold the defendant in civil contempt, and thus is a civil matter subject to the stay and supersedeas provisions of Rule 241, SCACR. In part, the order holds the defendant in civil contempt, which is not subject to an automatic stay pending the outcome of an appeal. *See Matter of Decker*, 322 S.C. 212, 214, 471 S.E.2d 459, 461 (1995) (noting an order holding a person in civil contempt is not automatically stayed by the taking of an appeal). However, the order also creates a mechanism by which the court has the power to resolve a civil dispute between Appellant and the victim the Court of General Sessions would not otherwise have. *See* S.C. Code Ann. § 24-21-440 (2007) ("The period of probation or suspension of a sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended *within the above limit.*" (emphasis added)). This appeal challenges the validity of the underlying order in this respect. Thus, with regard to the mechanism by which the court has the power to resolve a civil dispute between the parties, the underlying order is automatically stayed. *See* Rule 241(a), SCACR ("As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision."). Because a determination of whether Appellant has violated the underlying order is a "matter affected by the appeal," any proceeding making such a determination is automatically stayed. *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) (noting the lower court's power to proceed is determined by whether the issue sought to be litigated

EXHIBIT C

in the lower court during the appeal is "a matter affected by the appeal"). Because the automatic stay leaves the lower court no power to proceed until the appeal is resolved, there is no need to impose a supersedeas.

C.J.
FOR THE COURT

Columbia, South Carolina

cc:

The Honorable Brian M. Gibbons
Jeff Hammond, Clerk of Court
Hemphill P. Pride, II, Esquire
Robert Michael Dudek, Esquire
Matthew C. Buchanan, Esquire

FILED
3/12/14

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2013-002510

THE STATE,.....Respondent

v.

JOSEPH WRIGHT, JR.,.....Appellant

CERTIFICATE OF SERVICE

I, Kayla Sharpe, do hereby certify that I served the above **Petition** in the above-captioned matter via U.S. Postal Service with proper postage affixed thereto on the following parties on the 14th day of May at the addresses listed below:


The Honorable Daniel E. Johnson
Fifth Judicial Circuit Solicitors Office
Richland County Judicial Center
P.O. Box 192
Columbia, South Carolina 29201

Robert P. Wood, Esquire
Rogers Townsend and Thomas, PC
P.O. Box 100200
Columbia, South Carolina 29202

Hemphill P. Pride, II, Esquire
1401 Gregg Street
Columbia, South Carolina 29201

Matthew C. Buchanan, Esquire
SC Department of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

Joseph Wright, Jr.
1192 Craig Avenue
Lancaster, South Carolina 29720


Kayla Sharpe

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MAY 14 2014

Columbia, South Carolina

SC Court of Appeals

LAW OFFICE OF
S. HARRISON SAUNDERS, VI, LLC

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HARRISON@HSAUNDERSLAW.COM

TELEPHONE: (803) 779-6333
FACSIMILE: (803) 799-4059

May 14, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: State of South Carolina vs. Joseph Wright, Jr.
Appellate Case #: 2013-002510


Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of the Petition in the above referenced matter for filing with your office.

By copy of this letter, I am serving The Honorable Daniel E. Johnson, Robert P. Wood, Esquire, Hemphill P. Pride, II, Esquire, Matthew C. Buchanan, Esquire, and Joseph Wright, Jr. with a copy of same.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,



S. Harrison Saunders, VI

SHS,VI:krs
Enclosures

cc: The Honorable Daniel E. Johnson (w/enclosures)
Robert P. Wood, Esquire (w/enclosures)
Hemphill P. Pride, II, Esquire (w/enclosures)
Matthew C. Buchanan, Esquire (w/enclosures)
Joseph Wright, Jr. (w/enclosures)

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