STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO GEORGETOWN COUNTY

COURT OF COMMON PLEAS

THE HONORABLE LARRY B. HYMAN, JR.

10-CP-22-1879

Stacy W. Howard — Petitioner,

v.

State of South Carolina — Respondent.

SUPPLEMENTAL APPENDIX

Stacy W. Howard

Allendale Corr. Inst.

Post Office Box 1151

Fairfax, S.C. 29827

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STACY WALTER HOWARD,

APPELLANT.

FINAL BRIEF OF APPELLANT

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

outweighs the probative value." (R. p. 148, lines 15-22, emphasis added). Counsel's editorial comments on the stupidity of the argument aside, appellant's objection was preserved for review. The trial judge indicated that he would limit the prejudicial effect by informing the jury that these charges were not to be used for the purpose of determining guilty or innocent but simply for determining credibility and believability of the defendant and for that reason only." (R. p. 149, lines 4-9). Indeed, the trial judge did tell the jury that that was the purpose for his admitting these prior convictions. (R. p. 165-166). However, this instruction does not alter the actual legal basis upon which the trial judge decided these convictions were admissible. In fact, the trial judge's ruling allowing in evidence prior ABHAN convictions for the stated purpose of showing the jury that appellant was capable of the type of violence charged in the instant ABHAN was error which prejudiced appellant before the jury and deprived him of a fair trial in violation of due process. Appellant's conviction should be vacated and a new trial ordered.

V. The trial judge erred as a matter of law in holding a hearing and revoking appellant's probation on the grounds that the instant conviction constituted a violation of the terms of his probationary terms without a warrant for such violation being issued or served on appellant.

Post-verdict, the judge informed the remaining jurors that he had been advised that there were two probation cases that are pending and that he would hear from probation. The judge indicated, "The department of probation's position is the defendant, as you heard Mr. Modica say, was on probation for two separate cases when this event for which he has just been convicted occurred." (R. p. 258, lines 2-5). The judge asked if there was anything further from probation for the record. Agent Brown responded indicating that appellant had eight years remaining on one sentence and four and a half

years remaining on the second sentence. The probation agent stated, "Obviously, the jury verdict on 07-GS-22-0129 would violate both of these cases; however, he had warrants pending for violation of these cases anyway. The agent did not indicate that those prior warrants had been served, only that they were "pending."

The agent then testified that he had two Williamsburg County warrants for probation violations. The agent detailed the alleged violations: a failure to report, failure to report that he had been arrested, and failure to follow the advice of his probation agent. (R. p. 259, lines 9-12). Counsel for appellant indicated, "Obviously, we absolutely concede that this conclusion violates both of the probations." (R. p. 260, lines 2-3). Counsel indicated that he had no objection to the jurisdiction or venue of the court to hear these probation violation hearings. (R. p. 260, lines 4-7). Counsel indicated that in response to the prior reasons stated, for example the failure to report, appellant actually was only three days late. Counsel indicated that he failed to report his arrest because he was in jail. Counsel suggested, "I think to consider this conviction as the violation rather than encumber ourselves with the dispute over whether or not this or that might constitute a violation. We concede that this conviction constitutes a violation of those reports, both of those charges of probation violation." (R. p. 260, lines 9-18). The probation agent joined counsel, indicating, "Your honor, probation would be willing to withdraw the two warrants issue a citation charging him only with the new conviction, and disregard the other charges." (R. p. 260, lines 20-22)

The trial judge asked if there was any objection to this procedure; counsel for appellant indicated that he had "none whatsoever." (R. p. 260, lines 20-25). The trial judge responded, "Well, the court will limit its consideration on probation violation only

then to this violation today for which he has been convicted today and that is a violation of both cases." (R. p. 261, lines 2-5). Prior to sentencing, the judge observed, "Now he had some other collateral issues of his own doings previously which would add to that, but the maximum penalty is ten years." Judge Baxley sentenced appellant to eight years imprisonment for the ABHAN conviction. Judge Baxley also ruled that by this conviction, appellant had violated the terms of his two terms of probation. Judge Baxley revoked appellant's first term of probation consecutively for an additional eight years. The judge revoked the second probation case consecutively for an additional four and a half years, for an aggregate of twenty and one half years incarceration.

The judge's ruling constitutes legal error where it is absolutely clear that the trial judge violated appellant's probation on the basis of the instant ABHAN conviction and not based on any pre-existing pending warrant. Obviously, in the eager rush of cooperation between the trial judge, the probation agent, and counsel for appellant, the thing forgotten was the probation violation warrant which was apparently neither issued nor served upon appellant. South Carolina Code Ann. § 24-21-450 to 460 (1989 & Supp.1998) and South Carolina case law require a warrant to be issued and that the probationer be served with the warrant in order to revoke probation. Both the issuance of a warrant and the arrest of the probationer pursuant to that warrant must occur before probation can be revoked. Martin v. State,338 S.C. 401, 526 S.E.2d 713 (S.C.,2000). The statutes contemplate both the issuance of a warrant and the arrest of the probationer pursuant to that warrant before probation can be revoked. In Sanders v. MacDougall, 244 S.C. 160, 163-64, 135 S.E.2d 836, 837 (1964), the Supreme Court held that probation revocation "can be done only by a court of competent jurisdiction before which the

defendant has been taken on a warrant charging a violation of the conditions of probation." If a warrant has not been issued, the trial court lacks subject matter jurisdiction to revoke probation and any attempted revocation is a nullity. State v. Felder,313 S.C. 55, 56, 437 S.E.2d 42, 43 (S.C.,1993); State v. Richburg, 304 S.C. 162, 403 S.E.2d 315 (1991).

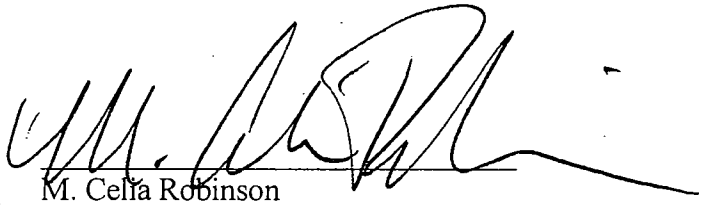
The trial judge erred as a matter of law in holding a probation revocation hearing and revoking probation without appellant's first being served with a probation violation warrant. The ordered revocations of appellant's probation must be vacated.

(6)

CONCLUSION

For all the forgoing reasons, appellant's conviction should be overturned and a new trial granted. In addition, the ordered revocations of appellant's probation must be vacated.

Respectfully submitted,



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

This 6th day of June, 2008.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
The Honorable J. Michael Baxley, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

STACY WALTER HOWARD,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

Post Office Box 1688
Georgetown, SC 29442
843-546-3751

ATTORNEYS FOR RESPONDENT

Furthermore, taken in context, it is apparent from the court's reasoning and instructions to the jury that the court understood, and intended, that the convictions would be admissible only on the issue of impeaching credibility. (See also p. 286, line 9- p. 287, line 18, for the court's post-trial explanation to the jury about the limited use of prior convictions). Therefore, clearly, the judge inadvertently misspoke when he stated the convictions were probative on "whether the defendant may be capable of such an event," and his obvious misstatement does not mean that he applied the wrong legal standard, and does not affect the validity of his determination, where the convictions were in fact admitted for the proper purpose and the jury was twice instructed properly as to the limited purpose of the prior convictions. Accordingly, where the trial court considered the appropriate factors and ruled that the prior ABHAN convictions were more probative than prejudicial, the trial court did not abuse its discretion, and its ruling should be upheld.[3]

5. The trial judge properly permitted Appellant to submit to judgment and sentencing on violations of his two probationary sentences, where Appellant agreed that the instant conviction was a probation violation, and where he consented on the record to jurisdiction and venue.

After Appellant's post-trial motions were denied, the court commenced the sentencing proceeding at the request of Appellant's counsel. (R. p. 281, line 14 – p. 282, line 14). After Appellant's prior record was fully stated by the solicitor, and the prior plea offer was placed upon the record (eight years concurrent to any sentences imposed for probation violations), the court heard from Appellant's probation officer, who was sworn-in by the clerk. (See R. p. 288, line 8 - p. 289, line 12). He noted that the jury verdict in the instant case would violate both of Appellant's probation cases, but that Appellant also had warrants pending in both cases. (R. p.

[3] Respondent would also note that Appellant was fully advised prior to his testimony regarding the admissibility of these convictions, and he nonetheless chose to testify. (See R. p. 179, lines 10-14).

288, lines 21-23). Appellant's counsel was then given an opportunity to speak on the behalf of Appellant with regard to sentence. (R. p. 289, line 24 – p. 293, line 16).

Counsel first addressed the two probation matters, stating that "obviously, we absolutely concede that this conclusion (sic?) violates both of the probations." (R. p. 290, lines 1-3). In response to the court's question, counsel also stated that Appellant would have no objection to the "jurisdiction or venue of this court today to hear these probation violations hearings." (R. p. 290, lines 4-7). However, he stated that because Appellant conceded that "this conviction constitutes a violation of those reports, both of those charges of probation violation," that it would be easier to disregard the disputed prior alleged violations (for which warrants were pending) and only consider this conviction as the violation. (R. p. 290, lines 9-18). In response, probation agreed to withdraw the prior two warrants and "issue a citation charging him only with the new conviction, and disregard the other charges." Appellant's counsel then indicated that was what they were hoping would occur. (R. p. 290, line 24 – p. 291, line 1).

The court agreed to "limit its consideration on probation violation only then to this violation today for which he has been convicted today and that is a violation of both cases." (R. p. 291, lines 2-5). The court then gave Appellant's counsel the opportunity to speak in mitigation for Appellant, which he did, asking the court to consider the prior plea offer for concurrent sentencing, and requesting that the court be as lenient as possible given all the circumstances. (See R. p. 291, line 6 – p. 293, line 16). He encouraged the court to consider running everything concurrently, due to the nature, timing, and juxtaposition of the charges; however, if the court could not see fit to do that, he alternatively requested that at least the probation violations each run concurrently to the sentence for the instant ABHAN. (R. p. 293, lines 2-16). The Appellant was given the opportunity to speak in his own behalf, and he pleaded with the court for mercy. (R. p. 293, line 21 – p. 294, line 1). After the court explained its

reasoning regarding the sentence it would impose, the court levied an eight-year sentence regarding the instant conviction, and revoked eight years, consecutive, on the first probation case (December 2004 conviction from Williamsburg County), and four and a half years, consecutive, on the second probation case (April 2004 conviction from Georgetown County). (See R. p. 295, line 24 – p. 296, line 8).

Appellant argues on appeal that it was error for the court to hold a hearing and revoke probation where a warrant for the violation had not been issued or served. However, where Appellant, rather than objecting to this below, expressly *consented* to this procedure, this issue cannot be preserved for appellate review. See State v. Lee, 350 S.C. 125, 129-130, 564 S.E.2d 372, 374-75 (Ct. App. 2002) (issue of revocation of probation "may not be preserved for review" where particular argument not raised to the circuit court). Furthermore, the cases upon which Appellant relies are distinguishable and, importantly, are pre-State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). For example, Martin v. State, 338 S.C. 401, 526 S.E.2d 713 (2000), is clearly distinguishable because the probationer was not under arrest and not present at the challenged revocation hearing; also the basis for the probation violation was not a conviction. Martin, at 402-403, 526 S.E.2d at 714. In any event, Martin held that the probationer could in fact waive his right to an actual hearing on the probation revocation. Id. at 405-406, 526 S.E.2d at 715-16. Sanders v. MacDougall, 244 S.C. 160, 135 S.E.2d 836 (1964), is also distinguishable because it dealt with revocation of parole.

State v. Richburg, 304 S.C. 162, 403 S.E.2d 315 (1991), held that even where the appellant expressly waived the statutory warrant requirements, the court lacked subject matter jurisdiction to revoke appellant's probation; however, State v. Felder, 313 S.C. 55, 437 S.E.2d 42 (1993), later held that the "citation and affidavit" in lieu of a warrant, as set forth in S.C. Code Ann. § 24-21-300, could satisfy the "warrant requirement" of S.C. Code Ann. § 24-21-450. In

this case, the placing of the probation agent under oath, and his subsequent testimony regarding the conviction as a violation, served as the functional equivalent of the formal issuance of a citation and affidavit. (See R. p. 288, line 24 – p. 289, line 4; p. 290, lines 20-22). Unlike these older cases, the Appellant here had notice of the hearing, was present at the hearing, conceded to the violation in both cases, and consented to jurisdiction and venue for both the Georgetown and Williamsburg matters.

In any event, these cases all were decided well before the opinion in State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Gentry held that the sufficiency of an indictment and the subject matter jurisdiction of a circuit court are two separate issues. Gentry, at 101-102, 610 S.E.2d at 499. Presentment of an indictment, or waiver of presentment, is not necessary to confer subject matter jurisdiction. Id. at 102, 610 S.E.2d at 499. A challenge to the indictment, which is a notice document only, must be timely made or it is deemed waived. Id. Our Supreme Court also clarified that "subject matter jurisdiction" is the power of a court to decide cases of the general class to which the proceedings belong. Id. at 100, 610 S.E.2d at 498. "Circuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 101, 610 S.E.2d at 499; see also S.C. Const, Art. V, § 11.

Obviously, probation matters are "criminal matters." See S.C. Code Ann. §§ 24-21-410; -430. Furthermore, in cases of probation violations, a warrant serves the same purpose as does the indictment in a regular criminal case - to put the defendant upon notice of the charges. Accordingly, Gentry applies fully to probation revocation cases, meaning that an arrest warrant's issuance and/or service upon a probationer has nothing to do with the "subject matter jurisdiction" of a court of general sessions, and, accordingly, the lack of an appropriate warrant must be challenged at the appropriate time or be deemed waived. See Johnson v. South Carolina Dept. of Probation, Pardon, and Parole Services, 372 S.C. 279, 286, 641 S.E.2d 895, 898 n.2

(2007) ("Because this case does not involve probation revocation, we express no opinion as to the effect of this Court's holdings in Gentry and Dove v. Gold Kist, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994), may have on the continued validity of prior pronouncements that an arrest warrant affects a court's subject matter jurisdiction.").

Here, not only did Appellant fail to timely *challenge* the lack of an arrest warrant in the proceedings below, he expressly *consented* to the procedure on the record. Where Appellant, who was present before the court with his counsel, expressly consented to jurisdiction and venue in both probation matters, and where he conceded that the instant conviction violated both probationary sentences, and where the only disputed alleged violations were withdrawn, clearly the hearing of all three matters was proper. The probation violation involved, namely, a conviction for violation of state law, occurred in the court's presence, and is the most obvious and patent violation possible. See S.C. Code Ann. § 24-21-430 (1) ("The probationer shall refrain from refrain from the violations of any state or federal penal laws."). Certainly, it is a defendant's right to have everything taken up at once, and it is potentially to his benefit in the form of possible concurrent sentencing. It is also in the interest of judicial economy, when all necessary parties are already present, for several matters involving the same defendant to be taken up together. Where all the formal requirements could have clearly been met at that time, i.e., a citation or warrant could have been immediately issued and served upon Appellant, and he then could have been arrested immediately on the probation violations based upon his conviction that day, it would be illogical to not permit him to simply waive the formal requirements and proceed with the hearings. See S.C. Code Ann. §§ 24-21-450 & -460. Accordingly, the trial court did not err in holding a hearing on the two probation cases, and its orders of revocation should be upheld.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and all sentences, including the sentences on the two probation violations, should be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

CHRISTINA J. CATOE
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

March 21, 2008

(14)

13

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
The Honorable J. Michael Baxley, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

STACY WALTER HOWARD,

APPELLANT.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

The Respondent **AGREES** that the following should be included in the Record on Appeal:

(1) True-Billed Indictment; and
(2) Trial Transcript, pages 1-9; 27-28; 42; and 45-296.

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

By: _____
CHRISTINA J. CATOE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

March 21, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STACY WALTER HOWARD,

APPELLANT

PETITION FOR REHEARING

On July 1, 2009, this Court issued an opinion reversing in part and remanding and affirming in part petitioner's conviction for ABHAN and the revocation of his probation. State v. Howard, Op. No. 4579 (S.C. Ct. App., filed July 1, 2009). Pursuant to Rule 221(a), SCACR, petitioner seeks rehearing. Petitioner respectfully submits that the Court may have misapprehended or overlooked his arguments that the trial judge erred reversibly in denying his motion for mistrial made in response to the State's witness's testimony attacking appellant's character; in denying his motion for recusal; in wrongly admonishing appellant for offering relevant and admissible testimony in his defense and in excluding defense evidence; in allowing admission in evidence, over objection on the grounds of relevance, the stun gun and pepper spray found in appellant's pockets and in admitting his prior convictions into evidence.

First, counsel for appellant argued that the trial judge erred in refusing to grant the defense motion for mistrial, made in response to the attacks on petitioner's character. Counsel's argument consisted of three pages in the Brief of Appellant wherein she described how the improper testimony was persistently sought and wrongly presented in evidence by the prosecutor. On brief, counsel quoted and cited trial counsel's arguments indicating the legal basis for the mistrial motion and arguing that the motion for mistrial was necessitated by repeated character attacks, including counsel's argument that "he was forced to object to the line of questioning and to ask the court to declare a mistrial on the grounds that Lisa Powell's testimony had portrayed appellant as a drug dealer and a man capable of murder. The Initial Brief quoted trial counsel argument, "I think we have reached the point where my client can't get a fair trial from a jury and we have not completed the first witness yet. (R. p. 52, lines 1-17; p. 53, lines 19-20; p. 54, lines 11)."

The Brief of Appellant referenced trial counsel's argument that a mistrial was warranted by the numerous attacks on appellant's character and that a fair trial would not be possible given the damage done. On brief, petitioner concluded, "The judge erred in refusing the motion for a mistrial where such was a manifest necessity in light of the extremely damaging and highly unfairly prejudicial comments made by Lisa Powell." (Brief of Appellant, p. 7).

The granting of the motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way. State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (S.C.App.,1999). The test is whether the mistrial was dictated by manifest necessity. State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983); State v. Simmons, 352 S.C. 342, 354, 573 S.E.2d 856, 862

(S.C.App.,2002). Among the factors to be considered are the character of the testimony, the circumstances under which it was offered, the nature of the case, and the other testimony in the case. Patterson, supra; State v. Creech, 314 S.C. 76, 82, 441 S.E.2d 635, 638 (S.C.App.1994).

On brief, counsel argued that the circumstances under which the evidence was offered favored mistrial, explaining that the improper evidence was deliberately elicited by the State. The brief described the defense objections and explained the unfair prejudice to the accused which denied him his right to a fair trial and necessitated the granting of a mistrial as a "manifest necessity." However, on brief, counsel inadvertently failed to include a citation to the well established body of law relevant to a motion for mistrial, now included above. Therefore, the Opinion indicates that the Court declined to address the mistrial argument on the grounds that the issue had been abandoned on appeal. The Opinion indicates, "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." Glasscock, Inc. v. U.S. Fidelity & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001).

Counsel for petitioner would ask the Court to reconsider its decision to find the issue abandoned on appeal. As the Glasscock Court noted, "South Carolina law clearly states that *short, conclusory* statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." (emphasis added). The Glasscock opinion noted that an issue was properly deemed abandoned on appeal where raised as an issue on appeal but not at all argued; where only conclusory, one sentence, argument was made; and where the argument presented was insufficient to raise the

argument before the court for review. In the interest of fairness to the petitioner, counsel for petitioner would ask the Court to reconsider its finding that the mistrial issue was insufficiently presented for review and, in fact, abandoned on appeal where the extensive argument presented was substantive and not conclusory, where the argument presented was based on the familiar law and legal procedure followed in mistrial situations, and where the argument tracked the standard legal analysis applied to the issue of whether a mistrial motion was erroneously denied, but was missing only case cites.

Second, petitioner argued that the trial judge erred in refusing his motion to recuse. The Court's opinion indicates, "There is no evidence the trial judge had any personal bias toward Howard. The alleged bias in this case stems from a previous judicial proceeding where the trial judge was obligated to handle Howard's contempt. Accordingly, the trial judge had no proper basis to recuse himself and did not abuse his discretion in declining to recuse himself from the trial." Petitioner would ask the Court to reconsider this finding in light of his argument that the judge's prior experience with petitioner, although born out of a prior judicial proceeding, resulted in a lasting personal bias based on the judge's prior encounter with this petitioner. Petitioner would ask the Court to reconsider its finding that there was no evidence of the trial judge's personal bias in light of petitioner's argument that the judge's rulings and record statements exemplified a personal bias against this petitioner and in light of his argument that that bias effected the judge's rulings at trial. Petitioner argued that the trial judge erred in refusing to recuse himself from the trial of this case and erred in interfering with the presentation of a defense, all in violation of the appellant's rights to present a defense, to due process of law, and to a fair trial before an impartial judge.

The opinion indicates that petitioner's objection to admission of the stun gun and pepper spray was not preserved for review. Petitioner would ask the Court to reconsider this finding in light of his arguments at trial and on appeal that the fact that appellant carries defensive weapons did not make the likelihood that he slapped the victim and broke her nose any more or less probable and in light of petitioner's argument that even had this evidence had any relevance, it should have been excluded under Rule 403, SCRE.

Finally, the Court's opinion agreed with petitioner's argument that the trial judge failed to conduct the proper balancing test before admitting petitioner's prior convictions. At trial and on appeal, petitioner argued that the trial judge erred in admitting his prior convictions against him as a matter of law where the unfairly prejudicial effect substantially outweighed any probative value. Petitioner argued that the trial judge applied the wrong standard and erred in admitting his prior convictions as a matter of law as exemplified by the trial judge's specific indication that the evidence was admitted for the improper purpose of proving to the jury that he had the character of a person capable of committing ABHAN.

The Court's opinion indicates that petitioner did not object to the trial judge's statement explaining the erroneous basis for his ruling so that the error in admitting the convictions for that improper purpose was not preserved for review. Petitioner would ask the Court to revisit this finding in light of his argument at trial that his prior convictions were improperly admitted against him, made on the basis that admission of the prior and that any probative value was outweighed by the unfairly prejudicial result to the accused.

CONCLUSION

For all the forgoing reasons, petitioner requests the Court reconsider its opinion.

Respectfully submitted,

July 15, 2009

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

(22)

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

July 28, 2009

Stacy Walter Howard, #191458
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw, SC 29067-8069

Re: Your case

Dear Mr. Howard:

Enclosed please find a copy of the S.C. Court of Appeals' decision in your case. If you want to pursue your case, you can elect to go into post-conviction relief. However, it should be done **by July 1, 2010** due to a statute of limitations which has been enacted on PCRs.

Feel free to contact me if you have any questions.

Sincerely,

M. Celia Robinson

M. Celia Robinson
Appellate Defender

MCR/lec

Enclosure

(23)

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
The Honorable J. Michael Baxley, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

STACY WALTER HOWARD,

APPELLANT.

SECOND SUPPLEMENTAL RECORD ON APPEAL

M. CELIA ROBINSON, ESQUIRE
S.C. Office of Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211
Telephone: 803-734-1330
Facsimile: 803-734-1397

ATTORNEY FOR PETITIONER

HENRY DARGAN MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

CHRISTINA J. CATOE
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737
Facsimile: (803) 734-4113

ATTORNEYS FOR RESPONDENT

(24)

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Issued by the South Carolina Department of Probation, Parole and Pardon Services 2007 912

STATE OF SOUTH CAROLINA

County of GEORGETOWN

STATE VS.

STACEY WALTER HOWARD

AKA:

Race: W Sex: M

DOB: 06/30/74

SSN: [redacted]

SID#: [redacted]

IN THE CO...T OF GENERAL SESSIONS

INDICTMENTS:

03-GS-22-246

C/W#: G-22-07-18

Name of Original Offense: ASSAULT OF A HIGH & AGGRAVATED NATURE

Conviction S.C. Code §: Common Law

Conviction CDR Code #: 0 1 0 1 9

Date of Original Offense: SEPT 11, 2001

Original Sentence: 5 YRS SS 5½ months & 2 Y. PROB

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 04/22/04 in the Court of General Sessions of GEORGETOWN County as set forth in the attached warrant or citation dated 02/28/07. 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 condition as provided in the affidavit) 6 & 10

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 $__________.

☐ 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.

☐ Additional Conditions ordered by the Court:

TIME SERVED SATISFIES FINANCIAL OBLIGATIONS. ALL SENTENCES FROM 2/28/07 ARE CONSECUTIVE. THIS SENTENCE CONSECUTIVE TO GS CONVICTION FOR ABHAN TODAY. A TOTAL OF 20½ YR.

FILED 2007 MAR GEORGETOWN COUNTY, S.C. CLERK OF COURT

☐ 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 5½ months/years on this sentence. (split sentence time and/or prior partial revocation time)

This 28th day of FEBRUARY 2007

GEORGETOWN, SC.

Presiding Judge

FIFTEENTH 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 _____ day of __________, _____, at __________, SC
Day Month Year City

Form 9 (Stock) Revision: B Revision Date: 03-24-2003

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

STATE OF SOUTH CAROLINA
County of GEORGETOWN
STATE VS.
SIDLEY WALTER HOWARD

AKA:

Race: W Sex: M

DOB: 06/30/74

SS#: [redacted]

SID#: [redacted]

IN THE COURT OF GENERAL SESSIONS
INDICTMENT#: 04 GS 45 : 131
CIW#: C-22-07-18
Name of Original Offense: ARSON
Conviction S.C. Code §: COMMON LAW
Conviction CDR Code #: 0 1 0 1 1 3
Date of Original Offense: MARCH 9, 2003
Original Sentence: 10 YRS SS 2 YRS & 2 YRS PROB

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 12/06/04 in Court of General Sessions of Williamsburg County as set forth in the attached warrant or citation da 02/28/07. 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 condition as provided the attached) 6 & 10

Therefore, IT IS ORDERED that:

☑ the suspended sentence be revoked and the above named defendant be required to serve 10 months/years, 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 original sentence and/or pay $_____; thereupon to be reinstated on probation, subject to the conditions 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 conditio 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.

☑ Additional Conditions ordered by the Court:
CONSECUTIVE TO 03-GS-22-246 & 07-GS-22-0129
TIME SERVED SATISFIES FINANCIAL OBLIGATIONS

☐ 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 2 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

This 28th day of FEBRUARY 2007

GEORGETOWN SC.

Presiding Judge

FIFTEENTH Judicial Circu

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 dee 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 a part of the original sentence imposed.

This is to certify that I have read, or have had read to me, this order and the conditions set out therein. I agree to comply with such conditions and the conditio 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 _____ day of _____, _____, at _____, SC
Day Month Year City

(27)

03-GS-22-240
04-GS-22-131

PROBATION CITATION

No. C-22-07-18

SOUTH CAROLINA	COUNTY: Georgetown	
V.	SCDC #	SID #
STACEY WALTER HOWARD	191458	540181

TO: STACEY WALTER HOWARD

YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below.

Place	Room PROBATION OFFICE
GEORGETOWN COUNTY COURTHOUSE	Date and Time TBD

YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below:

Violations Charged

VIOLATION OF PROBATION PURSUANT TO SECTION 24-21-450

YOU ARE HEREBY NOTIFIED that you have the rights listed below.

List of Rights:

You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear in your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.

2007 MAR -1 P 3:53 CLERK OF COURT GEORGETOWN, S.C.

IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.

Georgetown , South Carolina	Probation and Parole Agent
Date FEB 28, 2007	BOBBY JONES Agent # 815

A copy of the citation was served by the undersigned and given to the individual named therein at the time, date, and place indicated below.

Place	Date and Time 2/28/07 1430
Georgetown County Probation Office	Serving Officer's Signature

Sworn to and subscribed before me this 28th day of February, 2007

Signature of Notary Public

My Commission Expires May 8, 2009

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(28)

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of Georgetown

Personally appeared before me, BOBBY JONES, who first being duly sworn, deposes and says that STACEY WAYNE HOWARD did within this County and State on the 28th day of February, 2007, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

PROBATION VIOLATION CONCURRENT TO SECTION 24-21-430 IN THAT THE DEFENDANT HAS VIOLATED THE CONDITIONS OF HIS/HER PROBATION SENTENCE IMPOSED BY JUDGE THOMAS AT THE APRIL 22, 2004, TERM OF GENERAL SESSIONS COURT, HOLDEN IN GEORGETOWN COUNTY, GEORGETOWN, S.C. And the Probation Sentence Imposed by Judge Newman May 6 Dec. 6, 2004 Term of General Sessions Court Holden in Williamsburg County, Kingstree, S.C.

The Affiant states that there is probable cause to believe the defendant named committed the violations set forth and that such probable cause is based on the following facts:

Defendant has failed to follow the advice and instructions of the supervising agent by being convicted of Arson on Indictment 07-GS-22-0125 and Receiving a Sentence of Eight Years Consecutive to a Full Revocation of his current cases.

Sworn to and subscribed before me this 28th day of February, 2007

Richard J. Lobree
Signature of Notary Public

My Commission Expires: May 28, 2007

Bobby Jones
Affiant

(29)

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
The Honorable J. Michael Baxley, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

STACY WALTER HOWARD,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that the proposed **Second Supplemental Record on Appeal** complies with Rule 210(g), SCACR, and is in compliance with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers**.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

Christina J. Catoe

CHRISTINA J. CATOE
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737
ATTORNEYS FOR RESPONDENT

March 9, 2009