

STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**  
JUN 04 2014  
**SC Court of Appeals**

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APPEAL FROM BEAUFORT COUNTY  
Court of General Session

The Honorable Carmen T. Mullen, Circuit Court Judge

---

Appellate Case Number 2013-002401

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The State,.....Respondent

v.

Tonja McAllister,.....Appellant

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AMENDED RECORD ON APPEAL

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James A. Brown, Jr.  
Attorney for Appellant

Law Offices of Jim Brown, P.A.  
1600 Burnside St, Suite 100  
P.O. Box 592  
Beaufort, South Carolina 29901  
(843) 470-0003

Matthew C. Buchanan  
Attorney for the Respondent

South Carolina Department of Probation,  
Parole and Pardon Services  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-343

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ARREST WARRANT

260686



STATE OF SOUTH CAROLINA

County/ Municipality of

PORT ROYAL

THE STATE

against

TONJA KERRIN MCALLISTER

Address: PORT ROYAL SC 29902

Sex: F Race: B Height: 5-5 Weight: 120

Date: SC Agency ORI#: SC0070300

Arresting Agency: PORT ROYAL POLICE

Arresting Officer: CPL. ANDREW MCCORMICK

Charge: BREACH OF TRUST OVER \$5000.00

Offense Code: 0421

Ordinance Sec. 16-13-0230(B)(3)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

be arrested and brought before me to be

held with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant TONJA KERRIN MCALLISTER

01-14-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

MES GRIMSLEY

P.O. BOX 9

PORT ROYAL, SC

29935

STATE OF SOUTH CAROLINA

County/ Municipality of

PORT ROYAL

AFFIDAVIT

Form Approved by S.C. Attorney General July 28, 1990 SCCA 818

Personally appeared before me the affiant DET. R. WEKENMANN who

being duly sworn deposes and says that defendant TONJA KERRIN MCALLISTER

did within this county and state on 08/02/2007 to 01/07/2008 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of PORT ROYAL

In the following particulars:

DESCRIPTION OF OFFENSE: 16-13-0230(B)(3) / BREACH OF TRUST OVER \$5000.00

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

DURING THE PERIOD OF AUGUST 2ND, 2007 - JANUARY 7TH, 2008 THE DEFENDANT TONJA KERRIN MCALLISTER WAS EMPLOYED AS A BOOKKEEPER BY CAPA, (CHILD ABUSE PREVENTION ASSOCIATION) LOCATED AT 714 14TH STREET IN THE TOWN OF PORT ROYAL, SC. AS AN EMPLOYEE THE DEFENDANT WAS ENTRUSTED WITH AND HAD ACCESS TO THE CAPA CHARITIES BB&T BANKING AND CHECKING ACCOUNTS. ON JANUARY 7TH, 2008 THE DEFENDANT'S SUPERVISOR (SUSAN CATO) DISCOVERED THAT THE DEFENDANT HAS BEEN ACCESSING THE ACCOUNT AND HAD ISSUED 48 CHECKS TO HERSELF AND HER FAMILY MEMBERS TOTALING \$16,072.41. THE CHECKS WERE CASHED AT VARIOUS LOCATION WITH THE PROCEEDS BENEFITING THE DEFENDANT AND HER FAMILY. SUSAN CATO HAS SUPPLIED BANKING RECORDS AS SUPPORTING EVIDENCE.

Signature of Affiant

Handwritten signature of affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

PORT ROYAL

Affiant's Address 1748 PARIS AVE PORT ROYAL SC 29935

Affiant's Telephone 343-986-2220

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 08/02/2007 defendant TONJA KERRIN MCALLISTER

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of PORT ROYAL) as set forth below:

DESCRIPTION OF OFFENSE: BREACH / BREACH OF TRUST WITH FRAUDULENT INTENT, VALUE \$5,000 OR MORE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 1-11-08

JAMES GRIMSLEY (L.S.)

Judge Code: CJ703

Judge's Address 700 PARIS AVE PORT ROYAL SC 29935

Judge's Telephone 843-986-2229

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

Case: 08-00133

BAIL set by

Judge                     

on                     

Type and Amount: 50,000 OK

Name of Surety:                     

**PRELIMINARY HEARING held by**

Judge                     

on                     

Defense Attorney:                     

Decision:                     

**DISPOSITION before**

Judge                     

on                     

by                     

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:                     

Sentence:                     

**JURORS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WITNESSES**

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

**CODEFENDANTS**

\_\_\_\_\_  
\_\_\_\_\_

2009 JAN 15 PM 2:53  
BEAUFORT COUNTY  
CLERK OF COURT  
BEAUFORT, S.C.

**WITNESSES**

CPL. Andrew McCormick

**ARREST WARRANT NUMBER**

1260686

**ACTION OF GRAND JURY**

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 29 2008

**VERDICT**

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS0700248

**The State of South Carolina**

County of Beaufort

COURT OF GENERAL SESSIONS

March Term 2008

THE STATE

vs.

Tonja McAllister

Indictment for

Breach / Breach of trust with fraudulent intent,  
value \$5,000 or more

SC Code: 16-13-0230(B)(3)

CDR Code:0421

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

Defendant

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.

*Tonja McAllister*



COUNTY OF Beaufort  
 STATE VS.  
Tonja Mcallister  
 AKA: \_\_\_\_\_  
 Race: B Sex: F Age: 43  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

INDICTMENT/CASE#: 2008GS0700248  
 A/W#: I260686  
 Date of Offense: 8/2/2007  
 S.C. Code § : 16-13-0230(B)(3)  
 CDR Code #: 0421

**SENTENCE SHEET**

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Breach / Breach of trust with fraudulent intent, value \$5,000 or more

in violation of § 16-13-0230(B)(3) of the S.C. Code of Laws, bearing CDR Code # 0421  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (Defendant initial)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:  
 \_\_\_\_\_  
 Norz, Francine Defendant Tonja Mcallister Attorney for Defendant \_\_\_\_\_ SC Bar# \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 3 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 5 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.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

**SPECIAL CONDITIONS:**

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
 Total: \$ 58,097.50 plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

PTUP X after 2 yrs.  
 \_\_\_\_\_ 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

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.90</u>
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5</u>
<b>TOTAL</b>		\$ <u>133.90</u>

Other: \_\_\_\_\_  
First \$8,000 paid in restituti-  
to be paid to CAPA  
is to go to

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

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

PRESIDING JUDGE C. Trull  
 Judge Code: 2 1 1 4 1 2  
 Sentence Date: 10-27-08

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Beaufort )

IN THE COURT OF GENERAL SESSIONS

Indictment No. 2008-GS-07-C24E

Probation/ Community Supervision  
Program (CSP) Violation  
Warrant/Citation # I260686

State of South Carolina. )  
 )  
v. )  
Tenja McAllister )  
 )  
Offender. )  
\_\_\_\_\_ )

NOTICE OF PROBATION /CSP VIOLATION  
HEARING AND ACKNOWLEDGMENT  
OF NOTICE

You are hereby directed to appear at a Probation/CSP Violation Hearing in General Sessions Court on October 24<sup>th</sup> at 9:00 (am / pm) in the Beaufort County Courthouse, Beaufort, South Carolina.

You may have an attorney represent you at this hearing. If you cannot afford an attorney and you desire the representation of the Beaufort County Public Defender, you must apply for an appointed attorney with that office. If you choose to appear at the hearing without an attorney, you may be required to represent yourself. You are hereby advised that there are dangers and disadvantages to self representation. An attorney may better understand courtroom procedure and may be better able to think of and present defenses to your violations. By appearing without an attorney you are acknowledging these dangers but are knowingly and voluntarily choosing to proceed without counsel.

At the violation hearing you will have an opportunity to speak, and you may present witnesses or documentary evidence on your behalf. If requested, you will also have an opportunity to confront and cross-examine any witnesses called to testify against you; however, the Department may elect to present affidavits of witnesses or police officers in lieu of testimony. State v. Pauling (Cl. App. 2006). It is your responsibility to have your witnesses and attorney present. If you are released on bond prior to your hearing date, you must report to the Probation Office immediately upon your release.

You are required to be present at your hearing as scheduled above. If you do not appear, a bench warrant or a failure to appear warrant will be issued for your arrest. Furthermore, the Court may choose to proceed with the hearing in your absence. This directive remains in effect until you are granted leave by the Court.

This directive has been read to me and I have been provided with a copy. I was also given an opportunity to ask questions about this directive before it was signed.

10/24/2008  
Date

Tenja McAllister  
Offender's Signature  
Nicole J. [Signature]  
Agent's Signature

State of South Carolina  
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY  
Governor



KELA E. THOMAS  
Director

SCDPPPS  
PO Box 66  
Hampton, SC 29924  
Telephone: (803) 914-2274  
Facsimile: (803) 943-7120

October 15, 2013

CAPA  
P.O. Box 531  
Beaufort, SC 29901  
Attention: Susan Cato, Director

RE: Probation Violation Hearing

Offender: Tonja McAllister  
Offense: Breach of Trust  
Date of Sentence: October 27, 2008  
Indictment #: 08-GS-07-00248

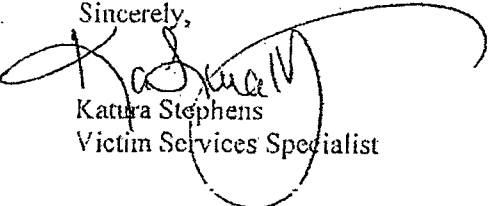
To Whom It May Concern:

Please be advised that the above named offender is scheduled for a violation hearing. This hearing is scheduled for October 24, 2013 @9:00 AM. The location of the hearing is Beaufort County Courthouse General Sessions, 100 Ribaut Road, Beaufort SC, 29902.

You are welcome to attend this hearing, or you may submit a written statement to this office if you prefer not to attend. You are under no legal obligation to respond in any manner and may totally disregard this notice if you desire. However, if you elect to attend the hearing or wish to be notified of the outcome if you are unable to attend, please call me at 803-914-2274. If I am unavailable, leave a message and I will return your call.

It is necessary for you to notify us in writing of any future changes of address and phone number if you wish continued notification of impending actions in this case. If you have any questions or concerns regarding this case, feel free to call me at 803-914-2274 or write to me at the above address. Thank you for your interest in this matter.

Sincerely,

  
Katura Stephens  
Victim Services Specialist

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF GENERAL SESSIONS  
FOURTEENTH JUDICIAL CIRCUIT

2008 GS-7-248

The State of South Carolina, )

AFFIDAVIT OF INDIGENCY

vs. )

Tony Kevin McAllister )

Defendant. )

I HEREBY SWEAR AND ATTEST that I have been incarcerated in the Beaufort County Detention center for ten (10) days or longer. As a result of indigency, I request appointed counsel.

Tonya McAllister by Jessica Lane  
Signature of Affiant by Attorney for Affiant

Appt. in Court 10/24/2013  
By Judge Mueller

Dated: 10/24/, 2013  
Beaufort, South Carolina

SWORN to and subscribed before me  
this 24<sup>th</sup> day of Oct, 2013.

L. Anderson D. Perry  
Notary Public for South Carolina  
My Commission Expires: 1/27/2013

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
State of South Carolina )  
Plaintiff, )  
-vs- )  
Tonja Kerrin Mcallister )  
 Defendant  Juvenile. )

IN THE COURT OF GENERAL SESSIONS  
14th JUDICIAL CIRCUIT  
CASE NO.: I260686 - 2008GS0700248  
APPOINTMENT OF COUNSEL  
(Select one.)

ORDER  
 AMENDED ORDER

Offense(s): Breach / Breach of trust with fraudulent intent, value \$5,000 or more

It appears that the above named person is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- the public defender now represents another person involved herein and that a conflict would arise if that office represents the above-named individual.
- the public defender has indicated a possible conflict of interest or other good cause warranting the appointment of counsel based on:
- the public defender or court-appointed counsel has indicated that the named individual has now retained private counsel and is no longer entitled to appointed counsel.
- court-appointed counsel has claimed an exemption or has demonstrated good cause pursuant to Rule 608 warranting the appointment of new counsel based on:
- court-appointed counsel has obtained substitute counsel named below pursuant to Rule 608(h)(2); only the member who originally received the appointment and who sought substitute counsel shall receive credit for the appointment.

X Appointed By Judge Carmen T. Mullen

Therefore, it is ordered that Jessica Saxton Esquire hereby is appointed as (Select only one.)

counsel  lead counsel (if capital PCR case)

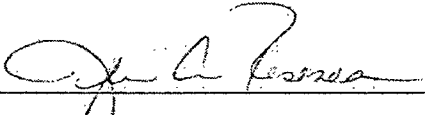
for the above-named person. Counsel previously appointed is/are hereby relieved as counsel.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED

October 24, 2013

  
\_\_\_\_\_  
 Circuit Judge  Clerk of Court

Plaintiff Attorney:

Solicitor	

Defendant Attorney:

Jessica Saxton	
PO Box 525	
Beaufort, SC 29901	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at [www.sccid.sc.gov](http://www.sccid.sc.gov), and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

# Financial PROBATION CITATION

Indictment Number: 08-GS-07-00248

Citation #: C-07-13-0023

SOUTH CAROLINA  V.  TONJA MCALLISTER	COUNTY: BEAUFORT
	SID # 01765061
	SCDC #

TO: TONJA MCALLISTER

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

Place Beaufort County Court of General Sessions	Room 1, 2 or 3
Date and Time 10/24/2013 9:00 AM	

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

**Violations Charged**  
The above named defendant has failed to comply with the Court's probation order and the defendant's agreement to pay a fine, restitution and supervision fees.

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 on 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.

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.

BEAUFORT, South Carolina

Probation and Parole Agent	Agent #
Nicole Albany	0234

Date 10/15/2013

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 South Carolina Dept. of Probation - Parole, Pardon Services	Date and Time 10-15-13 @
Serving Officer's Signature <i>[Signature]</i>	

Sworn to and subscribed before me this 15 day of Oct. 2013

*[Signature]*  
Signature of Notary Public

My Commission Expires April 25, 2022

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of BEAUFORT

Personally appeared before me, Nicole Albany, who first being duly sworn, deposes and says that TONJA MCALLISTER did within this county and State on the 15 day of October, 2013, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

The above named defendant has failed to comply with the Court's probation order and the defendant's agreement to pay a fine, restitution and supervision fees.

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:

The above named defendant agreed in writing, as a part of his/her probation agreement, to pay a fine, restitution and supervision fees. The defendant has not complied with his/her written agreement. As of the date of this affidavit, the defendant's arrearage and unpaid balance on the agreed payment schedule is as follows:

	<i>Fine</i>	<i>Restitution</i>	<i>Supervision Fees</i>	<i>DNA Fees</i>
Arrearage	\$0.00	\$2,480.00	\$0.00	\$0.00
Unpaid Balance	\$133.90	\$41,809.14	\$0.00	\$250.00

The matter needs to be reviewed by the court pursuant to Section 24-21-430. The defendant should be required to show the Court why he/she has not kept his/her probation agreement to pay. The Court should determine whether or not the defendant has willfully violated the condition to pay fines, and/or restitution and whether or not the condition to pay fines, restitution should be modified.

Sworn to and subscribed before me this 15 day of October, 2013

*Nicole J. Albany*  
Affiant

*[Signature]*  
Signature of Notary Public

My Commission Expires: 15 Jan 2020

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

Offender's Name: **TONJA MCALLISTER**  
 State of South Carolina, County of: **BEAUFORT**  
 SID#: **01765061**

Warrant#: **C-07-13-0023**  
 Date of Birth:  
 SCDC#:

**Offense and Offense Code:**  
**421 - Breach of trust with fraudulent intent,**  
**value \$5,000 or more (no longer used)(see**  
**3424)**

**Indictment Numbers:**  
**08-GS-07-00248**

Begin Date: **10/27/2008** End Date: **10/26/2013**

Supervision Program: **Probation**  
 Supervision Level: **Standard Supervision**  
 Sentencing Judge: **142 - Mullen, Carmen**  
 Sentencing Date: **10/27/2008**  
 Location (Bold Response): **Community**

Sentencing County: **BEAUFORT**

**Sentence:**

3 years suspended to 5 years probation

**Special Conditions:**

-DACOR in the amount of \$58,097.50 - plus and additional 20% fee added=\$69,717.00  
 -PTUP

**Current Address and Summary of Residence:**

**Reporting:**

Offender reported as instructed.

**Employment Records While Under Supervision:**

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
CARUSTAR RECYCLING CENTER	9/4/2012 -		\$1,600.00
HEALTH SERVICES	7/16/2008 - 6/8/2010	Laid Off	\$2,400.00
UNEMPLOYMENT BENEFITS	9/21/2010 - 2/1/2012	Empolymnt	\$1,304.00
HEALTH CARE PRODUCTS, LLC.	2/1/2012 - 9/4/2012	Employment @ Carustar	\$800.00

Offender is currently employed at Carustar Recyling Center. She has been employed since September 2012.

**Financial Conditions:**

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Fees						
DNA Fee	\$250.00	\$250.00/Y	\$0.00		\$0.00	\$250.00
Fines						
Court Ordered Fines	\$133.90	\$10.00/M	\$0.00		\$0.00	\$133.90
Restitutions						
Dept. Admin. Ct. Ordered Rf	\$58,884.14	\$505.00/M	\$17,075.00	6/24/2013	\$2,480.00	\$41,809.14

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

Offender's Name: **TONJA MCALLISTER**

Offender is in arrears on Restitution, last paying \$400 June 2013.

Prior Violation Dates	Prior Violations	Prior Violation Disposition
3/12/2013	Failed to pay monetary obligations. Failed to follow the advice and instruction of her agent.	1182: Offender is in arrears on her restitution account. Her restitution account will be restructured to begin on 4-1-2013.
7/5/2012	Failure to pay restitution.	1182: In arrears on court ordered restitution \$2850. Offender's last payment was \$150 on 4-30-2012. Restructure restitution acct. to begin on 8/14/12. If offender does comply case will be forward to G/S.
8/26/2010	Tonja McAllister is in violation of Probation as ordered in Cause#s 2008-GS-07-00248 by the Honorable Judge Mullen of the Beaufort County Court of General Sessions. In violation of Condition#s: 10 and 11.	Per Judge Mullen, continue case- Pay \$500.00 per month on Restitution, Do not miss any payments, failure to pay, bring back before the courts, revocation in full.
10/29/2009	Tonja McAllister is in violation on his Probation as ordered in Cause#s 2008-GS-07-00248 by the Honorable Judge Mullen of the Beaufort County Court of General Sessions. In violation of Condition#s: 7, 10 and 11.	Per Judge Mullen, pay \$750.00 a month to Restitution beg. 11/15/2009 for 5 months. Waive 20% to SCPPPS. Waive all supervision fees and fines. PTUP.

**Details of the Present Violation:**

The above named defendant has failed to comply with the Court's probation order and the defendant's agreement to pay a fine, restitution and supervision fees. The above named defendant agreed in writing, as a part of his/her probation agreement, to pay a fine, restitution and supervision fees. The defendant has not complied with his/her written agreement. As of the date of this affidavit, the defendant's arrearage and unpaid balance on the agreed payment schedule is as follows:

Arrearage Fine: \$0.00, Arrearage Restitution: \$2,480.00, Arrearage Supervision Fees: \$0.00, Unpaid Balance Fine: \$133.90, Unpaid Balance Restitution: \$41,809.14, Unpaid Balance Supervision Fees: \$0.00.

**Agent's Recommendation:**

Judicial Review

**Agent's Justification:**

Ms. McCallister case closes on 10-26-13 and she still owes restitution.

Nicole J. Albany

Supervisor's Signature

*[Handwritten Signature]*  
Agent

Date: 10/22/2013

Date: 10/22/13

*Revoke 2 yrs & terminate w/ CJ*

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Beaufort  
STATE VS.

Indictment Number: 2008 -GS- 07 - 248  
Probation C/W#s: C-07-13-0023

Tonia McAllister PM 4:53  
AKA: \_\_\_\_\_  
Race: Blk Sex: Female  
DOB: \_\_\_\_\_  
SSN: \_\_\_\_\_  
SID#: 01765061

Name of Original Offense: BOT w/ Fraud Intent  
Original A/W#: I 260686  
Date of Original Offense: 8-2-2007  
Conviction S.C. Code §: 16-13-0230(B)(3)  
Conviction CDR Code #: 0141211  
Original Sentence: 3yrs Susp. 5yrs Probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 10/27/2008 in the Court of General Sessions of Beaufort County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 10-29-09 and 8-26-10, as set forth in the attached warrant(s) or citation(s) dated 7-9-10 and 10-20-09. 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)

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 2 months/years the remainder of the original sentence, and/or pay \$ CJ.
- 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).

Financial Obligations: Order satisfies:  Department fees (arrearage) Civil judgment:  Department fees  
 Fines and other fees (arrearage/balance)  Fines and other fees  
 Restitution (and 20%) (arrearage/balance)  Restitution (and 20%)

Additional Conditions ordered by the Court:  
Revoke 2yrs with CJ.

- 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 \_\_\_\_\_ 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.

This 24th day of October, 2013, at Beaufort, SC

[Signature]  
Presiding Judge 14th 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 24th day of October, 2013, at \_\_\_\_\_, SC

Witnessed by [Signature]  
\_\_\_\_\_ City

STATE OF SOUTH CAROLINA  
14TH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT  
COURT OF GENERAL SESSIONS  
CASE NO. 2008-GS-07-00248

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

OCTOBER 24, 2013

TRANSCRIPT OF PROBATION

REVOCATION HEARING

BEAUFORT, SOUTH CAROLINA

TONJA MCALLISTER

DEFENDANT

---

B E F O R E :

HON. CARMEN T. MULLEN, JUDGE.

COPY

WANDA H. ROWE, CVR-M  
OFFICIAL COURT REPORTER

A P P E A R A N C E S

ON BEHALF OF THE STATE:

Probation Agent Nicole Albany  
Beaufort County Probation  
Office  
Beaufort, South Carolina 29902

ON BEHALF OF DEFENDANT:

Hon. Jessica Saxon  
Beaufort County Public  
Defenders Office  
1905 Duke Street  
Beaufort, South Carolina 29902

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No exhibits were admitted.

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BEGINNING 1:27 P.M.

BY THE COURT:

THE COURT: I am reading it, Ms. Albany.

AGENT ALBANY: And the victims are present, your Honor.

THE COURT: All right, Ms. Saxon, how are we going to get her caught up quickly?

MS. SAXON: It's my understanding that she is now employed again. She has a full-time job.

THE COURT: Her arrearage is \$2,030.00. How do I get that paid?

MS. SAXON: She thinks she can pay it off over the course of a couple months.

THE COURT: Okay. But again, there is still going to be continuing restitution that she has to make on a monthly basis.

MS. SAXON: Right.

THE COURT: So tell me, are you going to be able to pay the arrearage that you owe and the current amount?

AGENT ALBANY: Your Honor, her case closes on the 24th.

THE COURT: Okay.

AGENT ALBANY: I mean the 26th.

MS. SAXON: Sixth.

AGENT ALBANY: I'm sorry. Of this month.

1 THE COURT: Okay. And we can't extend it?

2 AGENT ALBANY: No, she's already been on it five  
3 years.

4 THE COURT: And the victims in this case?

5 AGENT ALBANY: Ms. Susan.

6 THE COURT: Okay. Yes, ma'am. What's your all's  
7 position?

8 MS. SUSAN CATO: Well, I'm disappointed that  
9 probation can't be extended, because she does owe this  
10 obligation.

11 THE COURT: Clearly.

12 MS. SUSAN CATO: And her effort to pay has been  
13 very diminished since 2011, when she made regular  
14 payments, although they were, you know, not what she was  
15 supposed to make. But this year, she's only made six  
16 payments, and it's been several months with no payments  
17 at all. So, you know, she owes the money. She stole  
18 the money. So, it's just misfortunate that she hasn't  
19 been able to pay it, but that doesn't diminish the fact  
20 that she still owes the money.

21 THE COURT: Understood.

22 AGENT ALBANY: Your Honor, we tried to work with  
23 her. She recently just got a job, September of last  
24 year, and she's been making the payments as she can,  
25 even though she did get behind on the payments. We do

1 realize that she still owes. So, that's why we brought  
2 it before you, so you can make a decision as to what we  
3 need to do with her. Because she reported; she did  
4 everything else; it was just the monetary obligation.

5 MS. SAXON: I mean it was definitely -- obviously,  
6 it was a lot. We talked about the best course of  
7 action. We don't really know which one is -- we can  
8 convert it to a civil judgment, if you would be okay  
9 doing that, and let that court handle it from there.

10 THE COURT: And she is until April. Is that  
11 correct? When is she -- oh, end of this month.

12 AGENT ALBANY: Yes, ma'am, the 26th.

13 MS. SAXON: The 26th, on Saturday.

14 THE COURT: I guess, Ms. McAllister, we can -- I  
15 mean, the truth is, I know we're can revoke the three  
16 years right now and just send you to prison. I mean, I  
17 assume you don't have any way of coming up with any  
18 substantial amount of money right now. Is that correct?

19 DEFENDANT MCALLISTER: Yes, ma'am.

20 THE COURT: Ms. Saxon, let me do this. Let me just  
21 -- give me a little bit of time and let me think about  
22 this.

23 MS. SAXON: Certainly.

24 THE COURT: Let me just think about this. If you  
25 don't mind, are you working? Do you work every day?

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DEFENDANT MCALLISTER: Yes, ma'am.

THE COURT: I certainly don't want you missing any more work.

MS. MCALLISTER: No.

THE COURT: Come back tomorrow morning. I'm trying to figure out what, in the world I can do with her. And actually, if you all will just sit tight, I might be able to come up with something between now and the next few minutes. I'm trying very hard. I don't want to make you all come back. I don't want to make you come back, if I don't have to, if I can figure out someday and something to do.

MS. SAXON: No, it's okay to come back. We can step down for a few minutes.

THE COURT: Yes. Yes.

MS. SAXON: And maybe between the three of us, we can come up with something.

THE COURT: Yes. Possibly.

MS. SAXON: Okay.

AGENT ALBANY: Well, I still have one more case to present in front of you.

MS. SAXON: And you can do that.

THE COURT: Just take a seat, you all, and let me see. Okay, let me see.

END FIRST PORTION OF HEARING 1:32 P.M.

1 CONTINUE HEARING 1:57 P.M.

2 THE COURT: All right. I have to say that,  
3 unfortunately, based on all the probation violations  
4 that I've been seeing today and monetary problems, it  
5 goes back to my original thought, which is, when you  
6 have people that owe these great amounts of money, that  
7 we know people have to be able to pay back, and we  
8 should just put them in prison on the front end. You  
9 know, I mean, unfortunately, you know, again, that's all  
10 I can do. I can't extend your probation. I understand  
11 that you went without work, but again, you have only  
12 paid 17,000 out of about 50 that you owe.

13 Again, I can tell you, the only thing I can do is  
14 revoke you. Since you've paid roughly a third, you've  
15 got three years hanging over your head, I'm going to  
16 revoke you two years, and I'm going to terminate your  
17 case, and reduce everything to a civil judgment.  
18 There's nothing else I can do. Okay? Thank you.

19 MS. SAXON: Thank you, your Honor.

20 AGENT ALBANY: Thank you, your Honor.

21 THE COURT: I do find you violated your probation.

22 AGENT ALBANY: Your Honor, that --

23 THE COURT: I will say this, Ms. Saxon, if, for any  
24 reason, money falls from the sky, and she is able to pay  
25 off the balance of it, she can, obviously, get out. But

1 again, I think if that could happen, she would have done  
2 it, so. Okay?

3 OFF-THE-RECORD DISCUSSION

4 RELATED TO ANOTHER CASE.

5 THE COURT: Okay. All right. Thank you, ladies,  
6 for being here.

7 MS. SUSAN CATO: Can you explain to me what just  
8 happened.

9 THE COURT: I just put her in prison for two years.

10 MS. SUSAN CATO: Thank you.

11 THE COURT: There's nothing else I can do. Again,  
12 I can't get money out of her. I don't have the power to  
13 extend it. If I could, I would. I wish I could put her  
14 on probation for the next 20 years, because I would love  
15 to get you paid back, but unfortunately, --

16 MS. SUSAN CATO: I understand.

17 THE COURT: My hands are tied, so.

18 MS. SUSAN CATO: Thank you.

END 2:00 P.M.

CERTIFICATE OF REPORTER

OCTOBER 24, 2013 TRANSCRIPT OF PROBATION

REVOCATION HEARING

STATE OF SOUTH CAROLINA

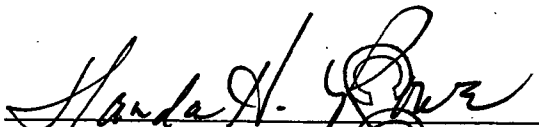
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 24, 2013 Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date in the case of State versus Tonja McAllister, Beaufort County, South Carolina, Court of General Sessions, Case Number 2008-GS-07-00248; that no exhibits were admitted.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature December 22, 2013.

  
Wanda H. Rowe, CVR (M)  
Official Court Reporter

<p style="text-align: center;">\$</p> <p><b>\$2,030.00- 4:10</b></p> <hr/> <p style="text-align: center;">1</p> <p>14TH- 1:3 17,000- 8:12 1905- 2:22 1:27- 4:1 1:32- 7:25 1:57- 8:1</p> <hr/> <p style="text-align: center;">2</p> <p>20- 9:14 2008GS0700248- 1:6 10:14 2011- 5:13 2013- 1:19 10:2,10,22 22- 10:22 24- 1:19 10:2,10 24TH- 4:21 26TH- 4:23 6:12,13 29902- 2:13,23 2:00- 9:19</p> <hr/> <p style="text-align: center;">5</p> <p>50- 8:12</p>	<p style="text-align: center;">B</p> <p><b>BACK-</b> 7:5,10,11,13 8:5,7 9:15 <b>BALANCE-</b> 8:25 <b>BASED-</b> 8:3 <b>BASIS-</b> 4:16 <b>BEAUFORT-</b> 1:4,25 2:11,13,20,23 10:6,13 <b>BEHIND-</b> 5:25 <b>BIT-</b> 6:21 <b>BROUGHT-</b> 6:1</p> <hr/> <p style="text-align: center;">C</p> <p><b>CAN-</b> 4:12 5:24 6:2,7,14,15 7:6,11,13,17,22 8:10,13,18,25 9:7,11 <b>CAN'T-</b> 5:1,9 8:10 9:12 <b>CAPTION1-</b> 3:6 <b>CARMEN-</b> 1:37 <b>CAROLINA-</b> 1:2,11,25 2:13,23 10:5,9,13 <b>CASE-</b> 1:6 4:20 5:4 7:20 8:17 9:4 10:12,14 <b>CATO-</b> 5:8,12 9:7,10,16,18 <b>CAUGHT-</b> 4:7 <b>CERTAINLY-</b> 6:23 7:2 <b>CERTIFICATE-</b> 3:20 10:1 <b>CERTIFIED-</b> 10:19 <b>CERTIFY-</b> 10:9,16 <b>CIRCUIT-</b> 1:3 <b>CIVIL-</b> 6:8 8:17 <b>CLOSES-</b> 4:20 <b>COME-</b> 7:5,8,10,13,17 <b>COMING-</b> 6:17 <b>COMPLETE-</b> 10:11,20 <b>CONTINUE-</b> 8:1 <b>CONTINUING-</b> 4:15 <b>CONVERT-</b> 6:8 <b>COPY-</b> 10:18 <b>COUNSEL-</b> 10:17 <b>COUNTY-</b> 1:4 2:11,20 10:6,13 <b>COUPLE-</b> 4:13</p>	<p><b>COURSE-</b> 4:13 6:6 4:2,3,6,10,14,18, 22 <b>COURT-</b> 1:5,46 5:1,4,6,11,21 6:9,10,14,20,24 7:2,5,15,18,23 8:2,21,23 9:5,9,11,17 10:8,13,26 <b>COURT4-</b> 3:12 <b>CURRENT-</b> 4:19 <b>CVRM-</b> 1:45 10:8,25</p> <hr/> <p style="text-align: center;">D</p> <p><b>DATE-</b> 10:12 <b>DAY-</b> 6:25 <b>DECEMBER-</b> 10:22 <b>DECISION-</b> 6:2 <b>DEFENDANT-</b> 1:30 2:17 6:19 7:1 <b>DEFENDERS-</b> 2:21 <b>DEFINITELY-</b> 6:5 <b>DIMINISH-</b> 5:19 <b>DIMINISHED-</b> 5:13 <b>DISAPPOINTED-</b> 5:8 <b>DOESN'T-</b> 5:19 <b>DON'T-</b> 6:7,17,25 7:2,9,10,11 9:12 <b>DUKE-</b> 2:22</p>	<p><b>GET-</b> 4:7,11 5:25 8:25 9:12,15 <b>GIVE-</b> 6:21 <b>GOING-</b> 4:6,14,18 8:15,16 <b>GOT-</b> 5:23 8:15 <b>GUESS-</b> 6:14</p> <hr/> <p style="text-align: center;">H</p> <p><b>HANDLE-</b> 6:9 <b>HANDS-</b> 9:17 <b>HANGING-</b> 8:15 <b>HARD-</b> 7:9 <b>HASN'T-</b> 5:18 <b>HEAD-</b> 8:15 <b>HEARING-</b> 1:23 7:25 8:1 10:3,10 <b>HEREBY-</b> 10:9 <b>HERETO-</b> 10:17,21 <b>HON-</b> 1:37 2:19 <b>HONOR-</b> 4:5,20 5:22 8:19,20,22</p> <hr/> <p style="text-align: center;">I</p> <p><b>I'M-</b> 4:25 5:8 7:5,9 8:15,16 <b>I'VE-</b> 8:4 <b>INDEX-</b> 3:3,22 <b>INDEX3-</b> 3:10 <b>INTEREST-</b> 10:17 <b>IT'S-</b> 4:8 5:16,18 7:13</p>
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STATE OF SOUTH CAROLINA )  
 COUNTY OF BEAUFORT )  
 )  
 THE STATE )  
 )  
 vs. )  
 )  
 TONJA MCALLISTER )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

FOURTEENTH JUDICIAL CIRCUIT  
 IN THE COURT OF GENERAL SESSIONS

MOTION TO RECONSIDER  
 PROBATION REVOCATION

WARRANT NO(s): I260686  
 INDICTMENT NO(s): 2008GS0700248

2013 OCT 31 AM 9:39  
 CLERK OF COURT  
 BEAUFORT COUNTY, S.C.

This matter comes before the Court on Defendant's Motion to Reconsider Probation Revocation and sentence imposed on October 24<sup>th</sup>, 2013, pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure and based on both Federal and State case law. The Defendant pled guilty before the Honorable Carmen Mullen on October 27<sup>th</sup>, 2008 to one count of Breach of Trust with Fraudulent Intent Value \$5,000 or more. The Court sentenced the Defendant to three year suspended upon five years probation and restitution in the amount of \$58,097.50 plus supervision fees and court cost.

At the time of her sentencing the Defendant was employed, earning roughly \$2400.00 a month. Based on the Defendant's income, her initial repayment amount was \$750 a month. The payment was restructured in August 2010 to \$500 a month after the Defendant had lost her job and was on unemployment. Through the five year probationary period the Defendant was required to pay between 30% and 60% of her monthly income towards restitution and was able to repay \$17,525 of the restitution she owed, averaging a payment of \$292 a month over 5 years. The Defendant's probation was set to expire on October 26<sup>th</sup>, 2013 and because she had not been able to fully repay her restitution the case was brought back before the Honorable Carmen Mullen to be reviewed on October 24<sup>th</sup>, 2013.

Based on the court ordered repayment plan the Defendant was not expected to repay the total restitution back in the five year period and the Defendant is currently only four months in

arrears (\$2030.00) on a sixty month sentence. The Defendant has had no violations during her five-year probationary period and the amount that she did repay reflects a bona fide effort on her part to meet her restitution obligation. However, based on her arrearage and her inability to pay the restitution in whole the Defendant was revoked two days before her probation was set to terminate and sentenced to two years in the South Carolina Department of Corrections with the remainder of restitution converted to a civil judgment.

### CASE LAW/ANALYSIS

It is well established, in both Federal and South Carolina case law, that probation may not be revoked solely on the ground that the probationer failed to pay fines or to make restitution.<sup>1</sup> Before probation can be revoked solely on financial grounds the judge must determine on the record that the probationer failed to make a bona fide effort to pay.<sup>2</sup> Depriving someone of their conditional freedom without the finding of willful violation to pay directly contravenes the Fourteenth Amendment's due process requirement.<sup>3</sup>

In *State v. Spare*<sup>4</sup> the South Carolina Court of Appeals provided a roadmap for making the findings required under *Bearden* and *Barlet*.<sup>5</sup> The Court of Appeals held that "the circuit court may not revoke probation solely on the basis of a failure to pay money unless the record reflects the court made the following findings:

1. The State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation;<sup>6</sup>

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<sup>1</sup> See *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983); *Barlet v. State*, 288 S.C. 481, 343 S.E.2d 620 (1986); *Nichols v. State*, 308 S.C. 334, 417 S.E.2d 860 (S.C. 1992)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *State v. Spare*, 374 S.C. 264, 647 S.E.2d 706 (S.C.App. 2007)

<sup>5</sup> *State v. Coker*, 397 S.C. 244, 723 S.E.2d 619 (S.C.App. 2010) citing *State v. Spare*, 374 S.C. 264, 647 S.E.2d 706 (S.C.App. 2007)

<sup>6</sup> *State v. Coker*, 397 S.C. 244, 723 S.E.2d 619 (S.C.App. 2010) citing *State v. Spare*, 374 S.C. at 268, 647 S.E.2d at 708

2. The probationer made a willful choice not to pay in that the probationer had the funds to pay and chose not to do so or lacked the funds to pay and did not make a bona fide effort to acquire the funds;<sup>7</sup>
3. If the court finds the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so the court may not imprison the probationer unless it also finds that alternate measures are not adequate to meet the State's interests in punishment and deterrence."<sup>8</sup>

None of the required findings from *Spare* were made in the case at hand. The only determination made on the record in this case was a blanket finding of willfulness not to pay which was not supported by factual evidence. The State, represented by the Department of Probation, did not offer evidence of a violation as no such violation existed. At the hearing it was the position of the Defendant's probation agent that probation be terminated and the remainder of the restitution be converted to a civil judgment. The Defendant's probation agent stated that the Defendant had done her best to pay considering her financial situation, and that while the payments were not always timely and not necessarily always full, they did occur. The Defendant's situation is similar to that of the defendant in *Spare* – in that case the court noted that from all indications the defendant was making progress, albeit slowly, toward paying his restitution and that although frustrating, that evidence alone did not support the court's finding of willfulness.

At no time during her probation did the Defendant willfully fail to pay her restitution. The Defendant struggled finding and maintaining employment but never stopped making a

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<sup>7</sup> *State v. Coker*, 397 S.C. 244, 723 S.E.2d 619 (S.C.App. 2010) citing *State v. Spare*, 374 S.C. at 268-69, 647 S.E.2d at 708-09.

<sup>8</sup> *State v. Coker*, 397 S.C. 244, 723 S.E.2d 619 (S.C.App. 2010) citing *State v. Spare*, 374 S.C. at 268 n. 2, 647 S.E.2d at 708 n. 2, 709 (quoting *Bearden*, 461 U.S. at 672, 673 [103 S.Ct. 2064]).

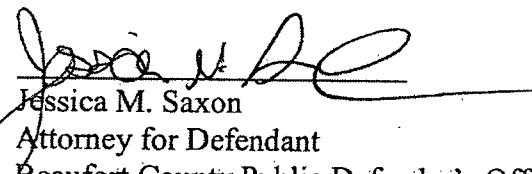
bona fide effort to pay her restitution and fees. The sentence of the Court to revoke her probation has caused the Defendant to lose her current job and will most certainly lead to the loss of her home. The State did not seek to have her probation revoked but merely terminated. The Defendant, aside from financial issues, did not violate any conditions of her probation.

CONCLUSION

Based on the above facts and in light of the case law on this matter, the Defendant respectfully requests that the Court reconsider the sentence imposed in this matter. The Defendant respectfully requests that the Court terminate the Defendants probation without any revocation as there is no evidence of a violation or willful failure to pay and convert the remainder of the restitution to a civil judgment.

Respectfully submitted,

October 30<sup>th</sup>, 2013  
Beaufort, SC

  
Jessica M. Saxon  
Attorney for Defendant  
Beaufort County Public Defender's Office  
P. O. Box 525  
Beaufort, SC 29901  
Telephone: (843) 255-5810

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

FOURTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA )

ORDER DENYING MOTION  
TO RECONSIDER  
PROBATION REVOCATION

vs. )

TONJA MCALLISTER, )  
DEFENDANT. )

WARRANT NO(s): I260686  
INDICTMENT NO(s): 2008GS0700248  
CITATION NO(s): C-07-13-0023

Defendant, Tonja Mcallister, through her undersigned attorney, moved before this Honorable Court to reconsider the probation revocation and sentence imposed on the Defendant on October 24<sup>th</sup>, 2013.

This Honorable Court declined to hear the motion, as no new evidence became available at the time of the Motion to Reconsider that warrants the Court make an alternative finding.

THUS, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Reconsider Probation Revocation is DENIED.

2013 NOV - 1 PM 1:25  
CLERK OF COURT  
SOUTH CAROLINA



The Honorable Carmen T. Mullen  
Fourteenth Circuit Judge

10 - 31, 2013  
Beaufort, South Carolina



STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

STATE OF SOUTH CAROLINA

Respondent

versus

TONJA MCALLISTER

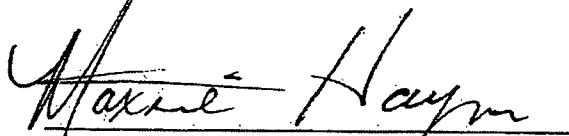
Appellate

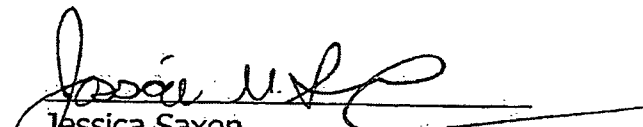
AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY appeared before me, Jessica Saxon, who being duly sworn, states:

1. That regular communication exists throughout the State of South Carolina, and this is the proper circumstances for hand delivered mail.
2. That on November 5, 2013 an Original Notice of Intent to Appeal in the above captioned case was filed with the Beaufort County Clerk of Court.
3. That an original Notice of Intent to Appeal in the above captioned case was served on the Clerk of Court, South Carolina Court of Appeals, PO Box 11629, Columbia, SC, by depositing same in the United States Post Office at Beaufort, SC on November 6, 2013, with the proper postage prepaid thereon.
4. That a true copy of the Notice of Intent to Appeal in the above captioned case was served on The South Carolina Department of Probation, Parole and Pardon Services, PO Box 37, Beaufort, S.C., by depositing same in the United States Post Office at Beaufort, SC on November 6, 2013, with the proper postage paid thereon.

SWORN to and subscribed before me  
this 5th day of November, 2013

  
Notary Public for South Carolina  
My Commission Expires: 1/24/2015

  
Jessica Saxon  
Attorney for Defendant



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

November 14, 2013

Ms. Jessica M Saxon  
1905 Duke Street  
PO Box 525  
Beaufort SC 29907-9901

Re: The State v. Tonja McAllister  
Appellate Case No. 2013-002401

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, opposing counsel is not listed.
- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

cc: Salley W. Elliott, Esquire  
Robert Michael Dudek, Esquire



**COUNTY COUNCIL OF BEAUFORT COUNTY**

**OFFICE OF THE PUBLIC DEFENDER**

Human Services Building • 1905 Duke Street (Room 210) • P.O. Box 525

Beaufort, South Carolina 29901-0525

Phone: (843) 255-5805 Fax: (843) 255-9494

November 25<sup>th</sup>, 2013

Ms. V. Claire Allen  
1015 Sumter Street  
PO Box 11629  
Columbia, SC 29211

Re: The State v. Tonja Mcallister  
Appellate Case No. 2013-002401

Dear Ms. Allen,

I have corrected the deficiencies noted in your letter dated November 14<sup>th</sup>, 2013. Enclosed please find a corrected and clocked Notice of Intent to Appeal with a proper caption listing opposing counsel and the missing order(s) and/or judgment(s) challenged on appeal.

I will no longer be handling Ms. Mcallister case once the Notice of Intent to Appeal has been properly filed. It is my understanding that the family has hired Ms. Kate Brobston of the private bar to handle the appeal. Ms. Brobston is an attorney with The Law Offices of Jim Brown and can be reached at (843)-470-0003.

If there is anything further required of me, please do not hesitate to call.

Kindest Regards,

Jessica M. Saxon  
Assistant Public Defender  
Beaufort County  
843-255-5810  
jsaxon@bcgov.net

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM BEAUFORT COUNTY  
COURT OF GENERAL SESSIONS  
CARMEN T. MULLEN, CIRCUIT COURT JUDGE  
INDICTMENT NO. 2008GS07-00248

TONJA MCALLISTER,.....APPELLANT

v.

STATE OF SOUTH CAROLINA,.....RESPONDENT

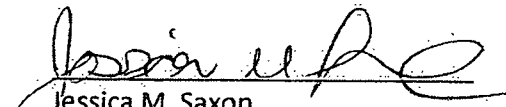
NOTICE OF INTENT TO APPEAL

Jessica M. Saxon, Esquire  
Beaufort County Public Defender's Office  
P.O. Box 525  
Beaufort, SC 29907  
(843)-255-5810  
Initial Counsel for Defendant

Attorney General's Office  
Appellate Division  
The Honorable Alan Wilson  
P.O. Box 11549  
Columbia, S.C. 29211  
(803)-734-3970  
Attorney for Respondent

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CLERK OF COURT  
BEAUFORT COUNTY, S.C.

TONJA MCALLISTER appeals from her probation revocation and sentence on October 24, 2013 before the Honorable Carmen T. Mullen, Presiding Judge, Fourteenth Judicial Circuit; Tonja Mcallister appeals the Denial of her Motion to Reconsider Sentence on October 31, 2013 before the Honorable Carmen T. Mullen, Presiding Judge, Fourteenth Judicial Circuit.

  
Jessica M. Saxon  
Attorney for Tonja Mcallister  
Beaufort, SC 29901  
(843)255-5805

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of General Session

The Honorable Carmen T. Mullen, Circuit Court Judge

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Appellate Case Number 2013-002401

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The State,.....Respondent  
v.  
Tonja McAllister,.....Appellant

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CERTIFICATE OF COUNSEL

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The undersigned counsel certifies that the Amended Record on Appeal complies with SCACR Rule 210(c).

May \_\_\_\_, 2014

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James A. Brown, Jr.  
Attorney for Appellant  
1600 Burnside St., Suite 100  
PO Box 592  
Beaufort, SC 29901  
(843) 470-0003

Opposing Attorney of Record:

Matthew C. Buchanan  
General Counsel  
South Carolina Department of Probation,  
Parole and Pardon Services  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-343

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
General Sessions Court

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JUN 04 2014  
SC Court of Appeals

The Honorable Carmen T. Mullen, Circuit Court Judge

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Appellate Case Number 2013-002401  
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The State, ..... Respondent

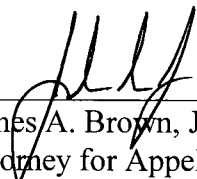
v.

Tonja McAllister.....Appellant

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PROOF OF SERVICE  
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Counsel for Tonja McAllister hereby certifies that he has prepared and served a copy of an Amended Record on Appeal on this 3<sup>rd</sup> day of June, 2014, upon the State, by depositing a copy, postage pre-paid, in the United States Mail, addressed to Matthew C. Buchanan, South Carolina Department of Probation, Parole and Pardon Services, P.O. Box 11589, Columbia, SC 29211.

June 3, 2014

  
-----  
James A. Brown, Jr.  
Attorney for Appellant

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June 3, 2014

The Honorable Jenny Abbott Kitchings  
SC Court of Appeals  
1015 Sumter Street  
PO Box 11629  
Columbia, South Carolina 29211

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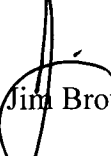
**SC Court of Appeals**

RE: State v. McAllister; Indictment Number 2008GS0700248  
Appellate Case Number 2013-002401

Ms. Kitchings:

Please find enclosed for filing an original and 14 copies of the Amended Record on Appeal. Also enclosed is the Certificate of Counsel and Proof of Service for the same. Should you require anything further, please do not hesitate to contact our office.

Sincerely,



Jim Brown

Enclosures

cc: Matthew C. Buchanan, South Carolina Department of Probation, Parole and Pardon Services, w/enclosures  
Tonja McAllister, w/enclosures