

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

RECEIVED

JUL 23 2014

S.C. Supreme Court

JAMES ROBERT BYRD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002348

APPENDIX

CARMEN V. GANJEHSANI
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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South Carolina Department of Correction, Parole and Pardon Service
Administrative Hearing

State of South Carolina

County of Greenville

State

-VS-

Defendant

James Byrd

SID#

015333 41106

ADMINISTRATIVE HEARING

No. 81 -GS- 23 - 01042 Count

Program Parole

Conditions of Supervision Order Date

7-18-1981

Affidavit Date

1-27-2010; 3-19-10; 6-3-10

ORDER

Whereas the above named defendant has been charged with violating the conditions of supervision ordered on the above date, as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated as indicated above, a copy of which is incorporated by reference.

IT IS ORDERED that the above named defendant is continued under supervision subject to the conditions set forth in the supervision agreement and this order. This action is taken in the (presence/absence) of the defendant. The Agent is directed to immediately withdraw the warrant or citation issued in this case.

Additional Conditions: Continue supervision. Exempt \$425.00 fee
areas due to hardship. Reduce fee to \$25.00/month
for all 11 years. Zero tolerance for future violations.

This 14th day of March 2011
Day Month Year
Greenville SC
City

Fudna Day
Presiding Hearing Officer

☒ You are hereby advised that failing to observe all conditions of this order could result in Revocation or Modification of any conditions of this parole or imposition of any special conditions deemed proper by a Hearing officer or the Board.

☐ You are hereby advised that failing to observe all conditions of this order could result in the Court at any time ~~revoking or modifying any condition of this probation, imposing any special conditions it deems proper, or extending the period of your probation not to exceed five (5) years.~~ At any time within the period of your probation, the Court may, if it sees fit, impose any judgement and sentence it might have imposed in the first instance.

☐ You are hereby advised that failing to observe all conditions of this order could result in Revocation or Modification of any conditions of this community supervision or imposition of any lawful special conditions deemed proper by a Hearing officer or the Court.

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 the conditions of this order identified above during the period of my supervision. I have received a copy of this order.

Witnessed by

[Signature]

Offender's Signature

James R. Byrd

Signed this 14th day of March 2011 at Greenville SC
Day Month Year City

South Carolina Department
Administrative Hearing

State of South Carolina

County of Greenville

State

-VS-

Defendant

James Byrd

SID#

00091106

ADMINISTRATIVE HEARING

No. 81-GS-23-1042 Court

Program Parole

Conditions of Supervision Order Date

11-26-03

Affidavit Date

6-6-06

ORDER

Whereas the above named defendant has been charged with violating the conditions of supervision ordered on the above date, as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated as indicated above, a copy of which is incorporated by reference.

IT IS ORDERED that the above named defendant is continued under supervision subject to the conditions set forth in the supervision agreement and this order. This action is taken in the (presence/absence) of the defendant. The Agent is directed to immediately withdraw the warrant or citation issued in this case.

Additional Conditions:

Continue on Supervision. Pay ALL supervision fee Accounts Current when disability Settlement is received.

This 3 day of October 2006
Day Month Year
Greenville SC
City

Roy Evans
Presiding Hearing Officer

- ☐ You are hereby advised that failing to observe all conditions of this order could result in Revocation or Modification of any conditions of this parole or imposition of any special conditions deemed proper by a Hearing officer or the Board.
- ☐ You are hereby advised that failing to observe all conditions of this order could result in the Court at any time revoking or modifying any condition of this probation; imposing any special conditions it deems proper; or extending the period of your probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgement and sentence it might have imposed in the first instance.
- ☐ You are hereby advised that failing to observe all conditions of this order could result in Revocation or Modification of any conditions of this community supervision or imposition of any lawful special conditions deemed proper by a Hearing officer or the Court.

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 the conditions of this order identified above during the period of my supervision. I have received a copy of this order.

Witnessed by

Offender's Signature

Signed this

31st
Day

day of

Oct.
Month

2006
Year

at

Greenville
City

SC

Form 9B (Stock)

Copy Distribution- White-Agent; Yellow-Hearing Officer; Pink-Offender

South Carolina Department of Correction, Parole and Pardon Service
Administrative Hearing

State of South Carolina

County of Greenville

State

-vs-

Defendant James Robert Byrd

SID# 0004106

ADMINISTRATIVE HEARING

No. 81-GS-23-01042 Court

Program Parole

Conditions of Supervision Order Date

11-26-03

Affidavit Date

12-18-08

ORDER

Whereas the above named defendant has been charged with violating the conditions of supervision ordered on the above date, as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated as indicated above, a copy of which is incorporated by reference.

IT IS ORDERED that the above named defendant is continued under supervision subject to the conditions set forth in the supervision agreement and this order. This action is taken in the (presence/absence) of the defendant. The Agent is directed to immediately withdraw the warrant or citation issued in this case.

Additional Conditions: Continue Supervision - I do NOT find this to be a willful violation; EXEMPT \$420.00 supervision fees payments.

This 4th day of JUNE, 2009

Day

Month

Year

Greenville

City

SC

Harold Aiken

Presiding Hearing Officer

☒ You are hereby advised that failing to observe all conditions of this order could result in Revocation or Modification of any conditions of this parole or imposition of any special conditions deemed proper by a Hearing officer or the Board.

☐ You are hereby advised that failing to observe all conditions of this order could result in the Court at any time revoking or modifying any condition of this probation; imposing any special conditions it deems proper; or extending the period of your probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgement and sentence it might have imposed in the first instance.

☐ You are hereby advised that failing to observe all conditions of this order could result in Revocation or Modification of any conditions of this community supervision or imposition of any lawful special conditions deemed proper by a Hearing officer or the Court.

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 the conditions of this order identified above during the period of my supervision. I have received a copy of this order.

Witnessed by [Signature]

Offender's Signature [Signature]

Signed this 4th day of June, 2009 at Greenville, SC

Day

Month

Year

City

South Carolina Department of Correction, Parole and Pardon Service
Administrative Hearing

State of South Carolina

County of Greenville

State

-VS-

Defendant

James Byrd

SID#

00041106

ADMINISTRATIVE HEARING

No. 81-GS-23-1042

Court

Program

Parole

Conditions of Supervision Order Date

11-26-03

Affidavit Date

11-05-07

ORDER

Whereas the above named defendant has been charged with violating the conditions of supervision ordered on the above date, as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated as indicated above, a copy of which is incorporated by reference.

IT IS ORDERED that the above named defendant is continued under supervision subject to the conditions set forth in the supervision agreement and this order. This action is taken in the (presence/absence) of the defendant. The Agent is directed to immediately withdraw the warrant or citation issued in this case.

Additional Conditions:

*Continued on parole. Exempt \$1,785. & supervision fee
means. Intensive Supervision NTE sixty days as
determined by the agent. Defendant to report weekly. Pay
parole supervision fee rate of \$40.00*

This 18th day of March 2008

Day

Month

Year

Judith Day
Residing Hearing Officer

City

Greenville

SC

- ☒ You are hereby advised that failing to observe all conditions of this order could result in Revocation or Modification of any conditions of this parole or imposition of any special conditions deemed proper by a Hearing officer or the Board.
- ☐ You are hereby advised that failing to observe all conditions of this order could result in the Court at any time revoking or modifying any condition of this probation; imposing any special conditions it deems proper; or extending the period of your probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgement and sentence it might have imposed in the first instance.
- ☐ You are hereby advised that failing to observe all conditions of this order could result in Revocation or Modification of any conditions of this community supervision or imposition of any lawful special conditions deemed proper by a Hearing officer or the Court.

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 the conditions of this order identified above during the period of my supervision. I have received a copy of this order.

Witnessed by

Offender's Signature

Signed this

18th
Day

day of

March
Month

2008
Year

at

Greenville
City

SC

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

Offender's Name: James Byrd

Prior Violation Dates	Prior Violations	Prior Violation Disposition
11-30-04	By being \$85 in arrears on his SF; And by failing to follow the advice and instructions of his Supervising Agent.	Written Reprimand TL Amick
2-13-06	By being \$260.00 in arrears toward his Supervision Fee; By failing to maintain gainful employment or show any proof thereof; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 5, 7, 9, and 10 ordered in cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services.	<i>After</i> 03-28-06 per hearing officer cont on. report weekly as agent directs; must locate a stable residence w/in 72 hours; refer to mental health; exempt \$400 sf arrears.
2-24-06	By moving his residence without his Agent knowledge or consent thereby absconding supervision verified by home visit on 2-24-06; By failing to report on 1-26-06, and 2-23-06 after being duly notified; And by failing to follow the advice and instructions of his supervising agent. Such actions constitute a willful violation of conditions 1, 2, and 10 in cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole and Pardon Services.	
6-6-06	By being \$200.00 in arrears toward his Supervision Fee; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 7, and 10 ordered in cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation order dated 3-28-06.	<i>Evans</i> 10-3-06 HO cont on, pay all SF account current when disability settlement is rec'd.

Details of the Present Violation:

By failing to abide by the Halloween Curfew regulations in that subject was caught leaving his residence on 10/31/2007 at 7:00 pm and getting into a vehicle with a suspended license verified by Agent as well as Greenville Police Officer; By having shown no progress since his Administrative Hearing on 10-3-06 toward his disability claim or providing agent with any information regarding the status of his claim and owing a balance of \$510.00 toward his Supervision Fee, By failing to refrain from the use of alcohol in that subject admitted to the Agent during home visit on 10/31/2007 that he had been drinking alcoholic beverages; And failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 3, 7, 9, 10, special conditions and Standard Sex Offender Condition 10 of the Parole set forth under cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006 & 10/03/2006.

Agent's Recommendation:

Full Revocation

Agent's Justification:

Due to Mr. Byrd failing to abide by the rules and regulation of his sex offender conditions as well as failing to follow the advice and instructions of his Agent. Mr. Byrd is no stranger to Supervision and he knows how it works so it is no reason for him not to abide by the conditions just like everyone else. We believe that he is a poor candidate for probation at this time.

Tony Anderson,

Date: January 23, 2008

Supervisor's Signature

Date: 1/23/08

Form 1106 (Template) [Revision: D Revision Date: 1/31/1998]

Page 2 of 2

*monetary non willful
willful Halloween curfew
alcohol uses*

*ordered
continued under supervision
example \$1785
sex offender cont.
this document by one of the*

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

State of South Carolina, County of: Greenville
Offender's Name: James Byrd
SID#: 00041106
Case 101

Warrant#: W-23-07-1567
Date of Birth:
SCDC#: 00098230

Indictment Numbers:
81-GS-23-1042

Offense and Offense Code:
Kidnaping (95)

*Discerning
GPS*

Supervision Program: Parole Begin Date: 11-26-03 End Date: 12-31-50
Supervision Level: S-High

Sentencing Judge: SC Dept. Of Probation, Parole, and Pardon
Sentencing Date: 11-26-03
Location (Bold Response): SCDC Jail Community

Sentencing County: Greenville

Sentence:
Life

Special Conditions:

Electronic Monitoring (Home Detention) for an indeterminate period not to exceed 90 days, as determined by the Department.
Intensive supervision for an indeterminate period not to exceed 6 months, as determined by the Department.
Must have no contact with the Victim and/or Victim's family for duration of parole.
Must reimburse SCDPPPS \$300.00 for the cost of the Psychological.

Current Address and Summary of Residence:

Greenville, SC 29601

Reporting:

Mr. Byrd is on S-High so he is to report on a monthly basis.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Unemployed	12-8-05 to Present	N/A	\$0.00
Executive Kitchen	1-23-04 to 12-7-05	Unknown	Unknown
Unemployed	11-26-03 to 1-22-04	N/A	\$0.00

Financial Conditions:

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Restitution						
Intensive Supervision Fee	\$46,980.00	\$20.00/ Week	\$0.00 260	N/A 1/15/06	\$1785.00	\$46,720.00

*1360
425
1785*

*46980
46720
260*

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

Offender's Name: **JAMES ROBERT BYRD**

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Fees					\$420	
Regular Supervision	\$25,100.00	\$50.00/M	\$0.00		\$100.00	\$25,100.00
Regular Supervision	\$480.00	\$40.00/M	\$160.00	8/14/2008	\$320.00	\$320.00

Prior Violation Dates	Prior Violations	Prior Violation Disposition
11/5/2007	By failing to abide by the Halloween Curfew regulations in that subject was caught leaving his residence on 10/31/2007 at 7:00 pm and getting into a vehicle with a suspended license verified by Agent as well as Greenville Police Officer.	3-18-08 per HO Gary: Cont. on parole; Exempt \$1,785.00 sf arrears; Int. sup. nte 60 ds. as determined by agent; Def. to report wkly.; Pay reg. sf rate of \$40.
11/5/2007	By having shown no progress since his Administrative Hearing on 10-3-06 toward his disability claim or providing agent with any information regarding the status of his claim and owing a balance of \$510.00 toward his Supervision Fee,	3-18-08 per HO Gary: Cont. on parole; Exempt \$1,785.00 sf arrears; Int. sup. nte 60 ds. as determined by agent; Def. to report wkly.; Pay reg. sf rate of \$40.
11/5/2007	By failing to refrain from the use of alcohol in that subject admitted to the Agent during home visit on 10/31/2007 that he had been drinking alcoholic beverages;	3-18-08 per HO Gary: Cont. on parole; Exempt \$1,785.00 sf arrears; Int. sup. nte 60 ds. as determined by agent; Def. to report wkly.; Pay reg. sf rate of \$40.

Details of the Present Violation:

The Defendant has violated his Parole in the following manner: By being \$200.00 in arrears on his Supervision Fee as of 12-18-08; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 7, and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006 and 3-18-08.

Agent's Recommendation:

☒ Partial Revocation of Weekend Time

Agent's Justification:

Mr. Byrd is going through a rough time right now due to his health and his money situation. I know that if Mr. Byrd was able to pay he would but I do not believe at this time he is able. I have seen the process that he been going through since his last stroke and I know it has to be hard on him. Mr. Byrd is dedicated to do what is right and the reason I say that is because he walk from his house to the Probation office to report after I advise him to call and I will come see him. I do not believe that this violation is willful at this time.

Tony Anderson

Senior Agent

Date: 6/1/2009

Supervisor's Signature

Whitney Smith

Date: 6-3-09

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

Offender's Name: **JAMES ROBERT BYRD**State of South Carolina, County of: **GREENVILLE**SID#: **00041106**Warrant#: **C-23-08-3513**

Date of Birth:

SCDC#: **00098230****Indictment Numbers:****81-GS-23-01042****Offense and Offense Code:****95 - Kidnapping (SR if victim >=18 unless judge order not)****GPS DISCRETIONARY**Supervision Program: **Parole**Begin Date: **11/26/2003** End Date: **12/31/2050**Supervision Level: **Sex Off. - High**

Sentencing Judge:

Sentencing County: **GREENVILLE**Sentencing Date: **7/28/1981**Location (Bold Response): **Community****Sentence:****Kidnapping - Life**

3-18-08 per HO Gary: Cont. on parole; Exempt \$1,785.00 sf arrears; Int. sup. nte 60 ds, as determined by agent; Def. to report wklly.; Pay reg. sf rate of \$40. J.S.

10-3-06 HO cont on, pay all SF accts curr when disability settlement is rec'd.

3-28-06 HO cont on report wldy as agt directs; must locate a stable residence w/in 72 hrs; refer 2 mental health; exempt \$400 sf arrs.

Special Conditions:

EM - Electronic Monitoring (Home Detention) for an indeterminate period not to exceed 90 days, as determined by the Department;
Other1 - Intensive supervision for an indeterminate period not to exceed 6 months, as determined by the Department; Other2 - Must have no contact with the Victim and/or Victim's family for duration of parole; Other3 - Must reimburse SCDPPPS \$300.00 for the cost of the Psychological.

Current Address and Summary of Residence:

Street, GREENVILLE, SC 29601, GREENVILLE, USA,

Reporting:

Mr. Byrd is on Sex Offender High therefore he is to report on monthly basis.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Unemploy	11/6/2008 -		\$0.00
	11/26/2003 - 1/22/2004		\$0.00
Executive Kitchen	1/23/2004 - 12/8/2005		\$0.00
	12/8/2005 - 4/1/2008		\$0.00
SC Franks Chapel of Remeberance	4/2/2008 - 11/5/2008		\$800.00

Financial Conditions:

Violation Report

Offender's Name: JAMES ROBERT BYRD

Regular Supervision	\$300.00	\$25.00/M	\$25.00	5/4/2011	\$50.00	\$275.00
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Prior Violation Dates	Prior Violations	Prior Violation Disposition
6/3/2010	By being convicted of 5 counts of Fraudulent check and receiving a sentence of a Fine of \$207.00 and Restitution or a Consecutive Sentence of 30 Days on all 5 counts. And by failing to follow the advice and instructions of his Supervising Agent.	3-14-11 per HO Gary: Cont. sup.; Exempt \$425 fee arrears due to hardship; Reduce fee to \$25/mo. for 1 yr.; Zero tolerance for future viol. J.S.
3/19/2010	By failing to report as instructed on 3-11-10 after being duly notified; By failing to notify his Agent of his arrest on 3-2-10 for the following: Driving Negligent; Operating Uninsured Vehicle; 5 counts of Fraud Check;	3-14-11 per HO Gary: Cont. sup.; Exempt \$425 fee arrears due to hardship; Reduce fee to \$25/mo. for 1 yr.; Zero tolerance for future viol. J.S.
1/27/2010	By being \$275.00 in arrears on his Supervision Fee as of 1-27-10; And by failing to follow the advice and instructions of his Supervising Agent	3-14-11 per HO Gary: Cont. sup.; Exempt \$425 fee arrears due to hardship; Reduce fee to \$25/mo. for 1 yr.; Zero tolerance for future viol. J.S.
6/6/2006	By being \$200.00 in arrears on his Supervision Fee as of 12-18-08; And by failing to follow the advice and instructions of his Supervising Agent	10-3-06 HO cont on, pay all SF accts curr when disability settlement is rec'd.
11/5/2007	By failing to abide by the Halloween Curfew; By failing to refrain to use of alcohol; And being behind on his \$	3-18-08 per HO Gary: Cont. on parole; Exempt \$1,785.00 sf arrears; Int. sup. nte 60 ds. as determined by agent; Def. to report wkly.; Pay reg. sf rate of \$40. J.S.

Details of the Present Violation:

There is probable cause to believe that the offender committed the offense of CDV 1st on 5-9-11 on a Leila Denise Banks verified by the Greenville County Sheriff's Office (GCSO) Supplemental report dated 5-10-11; By failing to refrain from the use of alcohol beverage also verified by the GCSO supplemental report dated 5-10-11; And by failing to follow the advice and instruction of his Supervising Agent. Such actions constitute a willful conditions 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

Agent's Recommendation:

Full Revocation

Agent's Justification:

It is stated in the incident report dated 5-10-11 that subject and the victim was extremely intoxicated. This is a direct violation of condition 10 of the Sex Offender conditions which states that I will not consume alcoholic beverages. By failing to refrain from violating state or local law in that he was arrested for the offense of CDV 1st and fail to notify his Supervising Agent of this arrest. I believe that subject is a poor candidate for supervision at this time.

Tony Anderson

Senior Agent

Date: 7/12/2011

Supervisor's Signature

Date: 7/12/11

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

Offender's Name: **JAMES ROBERT BYRD**
 State of South Carolina, County of: **GREENVILLE**
 SID#: **00041106**

Warrant#: **W-23-11-0384**

Date of Birth: -----

SCDC#: **00098230**

Indictment Numbers:

81-GS-23-01042

Offense and Offense Code:

95 - Kidnapping (SR if victim >=18 unless judge order not)

GPS DISCRETIONARY

Supervision Program: **Parole**
 Supervision Level: **Institutionalized**

Begin Date: **11/26/2003** End Date: **12/31/2050**

Sentencing Judge:
 Sentencing Date: **7/28/1981**
 Location (Bold Response): **Jail**

Sentencing County: **GREENVILLE**

Sentence:

Kidnapping - Life

Special Conditions:

EM - Electronic Monitoring (Home Detention) for an indeterminate period not to exceed 90 days, as determined by the Department;
 Other1 - Intensive supervision for an indeterminate period not to exceed 6 months, as determined by the Department;
 Other2 - Must have no contact with the Victim and/or Victim's family for duration of parole;
 Other3 - Must reimburse SCDPPPS \$300.00 for the cost of the Psychological.

Current Address and Summary of Residence:

ST., GREENVILLE, SC 29605, GREENVILLE, USA.

Reporting:

Mr. Byrd is on Sex Offender High therefore he reports on a monthly basis.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Unemploy	11/6/2008 -		\$0.00
	11/26/2003 - 1/22/2004		\$0.00
EXECUTIVE KITCHEN	1/23/2004 - 12/8/2005		\$0.00
SC FRANKS CHAPEL OF REMEBERANCE	4/2/2008 - 11/5/2008		\$800.00
	12/8/2005 - 4/1/2008		\$0.00

Financial Conditions:

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

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

Offender's Name: **JAMES ROBERT BYRD**

Regular Supervision	\$25,100.00	\$50.00/M	\$725.00	3/10/2011	\$425.00	24,375.00
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Prior Violation Dates	Prior Violations	Prior Violation Disposition
	By being \$200.00 in arrears on his Supervision Fee as of 12-18-08; And by failing to follow the advice and instructions of his Supervising Agent	6-4-09 per HO Aiken: Cont. sup.; I do not find this to be a willful viol.; Exempt \$420 sf arrearage.
	By failing to abide by the Halloween Curfew; By failing to refrain to use of alcohol; And being behind on his \$	3-18-08 per HO Gary: Cont. on parole; Exempt \$1,785.00 sf arrears; Int. sup. nte 60 ds. as determined by agent; Def. to report wkly.; Pay reg. sf rate of \$40.

Details of the Present Violation:

C-23-10-0676

By being convicted of 5 counts of Fraudulent check and receiving a sentence of a Fine of \$207.00 and Restitution or a Consecutive Sentence of 30 Days on all 5 counts; And by failing to follow the advice and instructions of his Supervising Agent; Such actions constitute a willful violation of conditions 6 and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006, 3/18/08 and 6/4/09; By violating conditions 1, 6, and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11-26-03 and continuation orders by the Administrative Hearing Officer dated 3-28-06, 10-03-2006, and 6-4-09.

W-23-10-0273

The Defendant has violated his Parole in the following manner: By failing to report as instructed on 3-11-10 after being duly notified; By failing to notify his Agent of his arrest on 3-2-10 for the following: Driving Negligent; Operating Uninsured Vehicle; 5 counts of Fraudulent Check; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions By violating conditions 1, 6, and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11-26-03 and continuation orders by the Administrative Hearing Officer dated 3-28-06, 10-03-2006, and 6-4-09; By violating conditions 7, 9, and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006, 3-18-08 and 6-4-09.

C-23-10-0140

By being \$275.00 in arrears on his Supervision Fee as of 1-27-10; And by failing to follow the advice and instructions of his Supervising Agent; Such actions constitute a willful violation of conditions 7, and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006 and 3-18-08.

Agent's Recommendation:

Revocation

Agent's Justification:

Due to subject violating all parts of his Parole agreement and every violation it seems to be getting worse. I believe that he is a poor candidate at this time; Due to Mr. Byrd not being a stranger to Parole and he knows the conditions that he must follow. We have been very easy on Mr. Byrd due to his disability claim and after all that he still continues to do what he want. He receive some of his money and he goes out and buys a car and do everything but what he said he would do; Subject has a prior order from a hearing officer stating he need to catch all fees once his disability starts.

Tony Anderson

Senior Agent

Date: 3/11/2011

Supervisor's Signature

Date: 3-11-11

*example \$425
 \$25 year fee 1 yr \$50*

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

Offender's Name: **JAMES ROBERT BYRD**State of South Carolina, County of: **GREENVILLE**SID#: **00041106**Warrant#: **C-23-10-0676, W-23-10-0273, C-23-10-0140**

Date of Birth: -----

SCDC#: **00098230****Indictment Numbers:****81-G5-23-01042****Offense and Offense Code:****95 - Kidnapping (SR if victim >=18 unless judge order not)****GPS DISCRETIONARY**Supervision Program: **Parole**Begin Date: **11/26/2003** / End Date: **12/31/2050**Supervision Level: **Sex Off. - High**

Sentencing Judge:

Sentencing County: **GREENVILLE**Sentencing Date: **7/28/1981**Location (Bold Response): **Community****Sentence:**

Kidnapping - Life

Special Conditions:

EM - Electronic Monitoring (Home Detention) for an indeterminate period not to exceed 90 days, as determined by the Department;

Other1 - Intensive supervision for an indeterminate period not to exceed 6 months, as determined by the Department; Other2 - Must have no contact with the Victim and/or Victim's family for duration of parole; Other3 - Must reimburse SCDCPPPS \$300.00 for the cost of the Psychological.

Current Address and Summary of Residence:

GREENVILLE, SC 29605, GREENVILLE, USA,

Reporting:

Mr. Byrd is on Sex offender high therefore he reports on a monthly basis.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Unemploy	11/6/2008 -		\$0.00
	11/26/2003 - 1/22/2004		\$0.00
EXECUTIVE KITCHEN	1/23/2004 - 12/8/2005		\$0.00
	12/8/2005 - 4/1/2008		\$0.00
SC FRANKS CHAPEL OF REMEBERANCE	4/2/2008 - 11/5/2008		\$800.00

Financial Conditions:

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

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

13

State of South Carolina, County of: Greenville
Offender's Name: James Byrd
SID#: 00041106

Warrant#: C-23-06-0561
Date of Birth:
SCDC#: 00098230

Indictment Numbers:
81-GS-23-1042

Offense and Offense Code:
Kidnapping (95)

Supervision Program: Parole Begin Date: 11-26-03 End Date: 12-31-50
Supervision Level: S-High

Sentencing Judge: SC Dept. Of Probation, Parole, and Pardon
Sentencing Date: 11-26-03
Location (Bold Response): SCDC Jail Community

Sentencing County: Greenville

Sentence:
Life

Special Conditions:

Electronic Monitoring (Home Detention) for an indeterminate period not to exceed 90 days, as determined by the Department.
Intensive supervision for an indeterminate period not to exceed 6 months, as determined by the Department.
Must have no contact with the Victim and/or Victim's family for duration of parole.
Must reimburse SCDPPPS \$300.00 for the cost of the Psychological.

Current Address and Summary of Residence:

Greenville, SC 29601

Reporting:

Mr. Byrd is on S-High so he is to report on a monthly basis.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Unemployed	12-8-05 to Present	N/A	\$0.00
Executive Kitchen	1-23-04 to 12-7-05	Unknown	Unknown
Unemployed	11-26-03 to 1-22-04	N/A	\$0.00

Financial Conditions:

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Restitution						
Supervision Fee	\$960.00	\$40.00/ Month	\$800.00	9-28-05	\$160.00	\$160.00
Intensive Supervision Fee	\$46,980.00	\$20.00/ Week	\$0.00	N/A	\$640.00	\$46,720.00

South Carolina Department of Probation, Parole and Pardon Service Notice of Violation and Response

County: <u>Greenville</u>
Offender Name: <u>James Byrd</u>
SID#: <u>41100</u>
Case#: <u>101</u>
Episode (OS#): <u>1</u>
Agent Badge#: <u>192</u>

Type of Case ☐ Probation ☒ Parole ☐ Community Supervision ☐ SFI ☐ YOA ☐ Other

Violation Category ☒ Compliance ☐ Community Safety No. of Previous Staffings ☐ 1 ☐ 2 ☐ 3 or More

THIS NOTICE IS TO FORMALLY ADVISE YOU THAT YOU HAVE FAILED TO ABIDE BY THE FOLLOWING CONDITIONS OF SUPERVISION:

Details of Current Violation(s):

\$59 in arrears on supervision fee as of 3-31-04.
\$75 in arrears on BORA as of 3-31-04.

UNDER AUTHORITY GIVEN TO S. C. PROBATION AND PAROLE AGENTS BY THE S. C. CODE OF LAWS, YOU ARE HEREBY INSTRUCTED TO COMPLY WITH THE FOLLOWING CHANGES:

Violation(s) Determined to Exist? ☐ Yes ☐ No

☐ Continue Supervision

☐ Forward to Administrative Hearing Officer

Response:

☐ Modify Supervision Level:

☐ High

☐ Intensive _____ Days

☐ Exempt \$ _____

☐ Convert to PSE \$ _____ to _____ Hours

☐ Restructure Monetary Obligations (increase rate and/or frequency of payment).

☐ Home Detention: _____ Days

☐ Electronic Monitoring _____ Days

☐ Reinstate PSE

☐ Impose PSE: _____ Hours

☒ Other: All monies to be current by 5-12-04.

You are hereby advised that failing to observe all conditions noted above could result in the Board/Court/Administrative Hearing Officer at any time revoking or modifying any condition of your supervision or imposing any lawful special conditions it deems proper. At any time within the period of supervision the Court or Board may, if it sees fit, impose any judgement, sentence, or reimpose the sentence it might have imposed previously.

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 of the order identified above during the period of my supervision. I have received a copy of this document.

Offender: <u>[Signature]</u>	Date: <u>4-28-04</u>	Agent: <u>[Signature]</u>	Date: <u>3-31-04</u>	Supervisor/Hearing Official: <u>Michael E. Miller</u>	Date: <u>3/31/04</u>
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South Carolina Department of Probation, Parole and Pardon Services
 Notice of Violation and Response

County: Greenville

Offender Name: <u>James Byrd</u>	SID#: <u>41106</u>	Case#: <u>101</u>	Episode# (OE#): <u>1</u>	Agent Badge#: <u>192</u>
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Type of Case: ☐ Probation ☒ Parole ☐ Community Supervision ☐ SFI ☐ YOA ☐ Other

Violation Category: ☒ Compliance ☐ Community Safety

No. of Previous Staffings: ☐ 1 ☒ 2 ☐ 3 or More

THIS NOTICE IS TO FORMALLY ADVISE YOU THAT YOU HAVE FAILED TO ABIDE BY THE FOLLOWING CONDITIONS OF SUPERVISION:

Details of Current Violation(s):

\$85 in arrears on supervision fee as of 11-30-04.

UNDER AUTHORITY GIVEN TO S. C. PROBATION AND PAROLE AGENTS BY THE S. C. CODE OF LAWS, YOU ARE HEREBY INSTRUCTED TO COMPLY WITH THE FOLLOWING CHANGES:

Violation(s) Determined to Exist? ☐ Yes ☐ No

☐ Continue Supervision

☐ Forward to Administrative Hearing Officer

Response:

☐ Modify Supervision Level:

☐ High

☐ Intensive _____ Days

☐ Exempt \$ _____

☐ Convert to PSE \$ _____ to _____ Hours

☐ Restructure Monetary Obligations (Increase rate and/or frequency of payment) _____

☐ Home Detention: _____ Days

☐ Electronic Monitoring _____ Days

☐ Reinstate PSE

☐ Impose PSE: _____ Hours

☒ Other: All monies to be current by 1-4-05.

You are hereby advised that failing to observe all conditions noted above could result in the Board/Court/Administrative Hearing Officer at any time revoking or modifying any condition of your supervision or imposing any lawful special conditions it deems proper. At any time within the period of supervision the Court or Board may, if it sees fit, impose any judgement, sentence, or reimpose the sentence it might have imposed previously.

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 of the order identified above during the period of my supervision. I have received a copy of this document.

Offender <u>[Signature]</u>	Date <u>12-15-04</u>	Agent <u>[Signature]</u>	Date <u>11-30-04</u>	Supervisor/Hearing Official <u>[Signature]</u>	Date <u>11/30/04</u>
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STATE OF SOUTH CAROLINA

AFFIDAVIT

County of Greenville

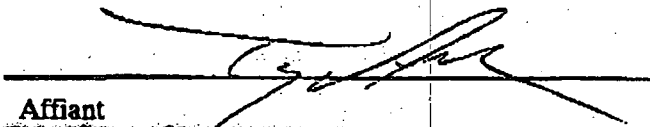
Personally appeared before me, Tony Anderson, who first being duly sworn, deposes and says that James Byrd did within this County and State on the 13th day of February, 2006, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

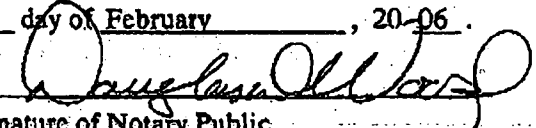
By violating conditions of Parole 5, 7, 9, and 10 ordered in cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services.

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 Defendant has violated his Parole in the following manner: By being \$260.00 in arrears toward his Supervision Fee; By failing to maintain gainful employment or show any proof thereof; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 5, 7, 9, and 10 ordered in cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services.


Affiant

Sworn to and subscribed before me this

13th day of February, 20-06.
Signature of Notary Public10-14-09

My Commission Expires

RETURN

STATE OF SOUTH CAROLINA
COUNTY OF

Greenville

THE STATE
against

James Byrd

ARREST WARRANT

Offense: Violation of Parole

Offense Section:

Date: February 24th 2006

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Tony Anderson

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name James Byrd

Address

Simpsonville, SC 29681 (Last Known)

Phone

Sex Male Race Black Height 510

Weight 162 Birth date

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant.

Decision

Date Set 3/29/06
Magistrate S. H. G. 6/03
Amount NO BOND
Surety

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the
following defendant:

on the 24th day of March, 2006.

Constable or Law Enforcement Officer

This Warrant is certified for service in (County of warrant
Certification) County. The accused is to be arrested and brought
before me to deal with according to law.

(L.S.)

Signature of Judge

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of GREENVILLE

Personally appeared before me, Tony Anderson, who first being duly sworn, deposes and says that JAMES ROBERT BYRD did within this county and State on the 27 day of January, 2010, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

By violating conditions 7, 9, and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006, 3-18-08 and 6-4-09.

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:

By being \$275.00 in arrears on his Supervision Fee as of 1-27-10; And by failing to follow the advice and instructions of his Supervising Agent; Such actions constitute a willful violation of conditions 7, and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006 and 3-18-08.

Tony Anderson
Affiant

Sworn to and subscribed before me this
27 day of January, 2010

Tony Anderson
Signature of Notary Public

DEC 01 2010

My Commission Expires

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of GREENVILLE

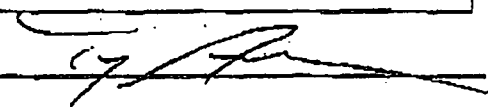
Personally appeared before me, Tony Anderson, who first being duly sworn, deposes and says that JAMES ROBERT BYRD did within this county and State on the 3 day of June, 2010, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

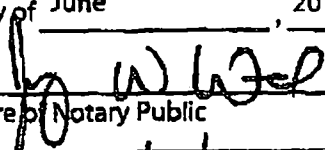
By violating conditions 6 and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006, 3/18/08 and 6/4/09.

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:

By being convicted of 5 counts of Fraudulent check and receiving a sentence of a Fine of \$207.00 and Restitution or a Consecutive Sentence of 30 Days on all 5 counts; And by failing to follow the advice and instructions of his Supervising Agent; Such actions constitute a willful violation of conditions 6 and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006, 3/18/08 and 6/4/09.


Affiant

Sworn to and subscribed before me this
3 day of June, 2010


Signature of Notary Public

12/01/2010
My Commission Expires

RETURN

STATE OF SOUTH CAROLINA
COUNTY OF
GREENVILLE

THE STATE
against

JAMES ROBERT BYRD

ARREST WARRANT

Offense: Violation of Conditions of Parole Supervision

Offense Section: 24-21-680

Date: 3/19/2010

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Tony Anderson

Disposition

Sentence

Co-Defendants

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the
following defendant:on the 25 day of March, 2010M. Odom
Constable or Law Enforcement OfficerThis Warrant is certified for service in [County of warrant
Certification] County. The accused is to be arrested and brought
before me to deal with according to law.

Signature of Judge

(L.S.)

INFORMATION ON DEFENDANT

Name JAMES ROBERT BYRD

Address GREENVILLE, SC 29601

Phone (000) 000-0000

Sex Male Race Black Height 510

Weight 162 Birth date

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant

Decision

Date Set

Magistrate

Amount

Surety

BAIL

325.00

NOTED

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of GREENVILLE

Personally appeared before me, Tony Anderson, who first being duly sworn, deposes and says that JAMES ROBERT BYRD did within this county and State on the 18 day of December, 2008, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

By violating conditions 7, and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006 and 3-18-08.

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 Defendant has violated his Parole in the following manner: By being \$200.00 in arrears on his Supervision Fee as of 12-18-08; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 7, and 10 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006, 10/03/2006 and 3-18-08.

Tony Anderson
Affiant

Sworn to and subscribed before me this
18 day of December, 2008

Tony Anderson
Signature of Notary Public

DEC 01 2008

My Commission Expires

Addendum

continuation orders by the Administrative Hearing Officer dated 03/28/2006 & 10/03/2006.

Sworn to and Subscribed before me
this 5 day of November, 2007.


Affiant


Signature of Notary Public
My Commission Expires
December 1, 2010
My Commission Expires

RETURN

STATE OF SOUTH CAROLINA
COUNTY OF

GREENVILLE

THE STATE
against

JAMES ROBERT BYRD

ARREST WARRANT

Offense: Violation of Conditions of Parole Supervision

Offense Section: 24-21-680

Date: 11/5/2007

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Tony Anderson

Disposition

Sentence

Co-Defendants

A copy of this Arrest Warrant was delivered by me to the
following defendant:

on the 16 day of Nov 2007

Constable or Law Enforcement Officer

This Warrant is certified for service in [County of warrant]
[Certification] County. The accused is to be arrested and brought
before me to deal with according to law.

Signature of Judge

(L.S.)

INFORMATION ON DEFENDANT

Name JAMES ROBERT BYRD

Address

Phone (864)

Sex Male Race Black Height 5'9"

Weight 182 Birth date

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant

Decision

BAR

Date Set

Magistrate

Amount

Surety

11/16/07
Gibbs
NO BOND

Form 16.1-Arrest Warrant
 Form Approved by
 SC Attorney General
 Section 17-13-160
 March 18, 1978

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

[ORIGINAL]

Parole

ARREST WARRANT

Indictment Number 81-GS-23-01042

Warrant Number W-23-07-1587

State Identification No. (SID) 00041106

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF GREENVILLE, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that JAMES ROBERT BYRD, did on the 5 day of November, 2007 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions 3, 7, 9, 10, special conditions and Standard Sex Offender Condition 10 of the Parole set forth under cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006 & 10/03/2006.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JAMES ROBERT BYRD before me forthwith to be dealt with according to 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. Done at GREENVILLE, S. C. this 5 day of November, 2007.

County of **GREENVILLE**

Signature of Probation and Parole Agent

(L.S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Tony Anderson, who, first being duly sworn, deposes and says that JAMES ROBERT BYRD did within this County and State on the 5 day of November, 2007, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

By violating conditions 3, 7, 9, 10, special conditions and Standard Sex Offender Condition 10 of the Parole set forth under cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and continuation orders by the Administrative Hearing Officer dated 03/28/2006 & 10/03/2006.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

The Defendant has violated his Parole in the following manner: By failing to abide by the Halloween Curfew regulations in that subject was caught leaving his residence on 10/31/2007 at 7:00 pm and getting into a vehicle with a suspended license verified by Agent as well as Greenville Police Officer. By having shown no progress since his Administrative Hearing on 10-3-06 toward his disability claim or providing agent with any information regarding the status of his claim and owing a balance of \$510.00 toward his Supervision Fee. By failing to refrain from the use of alcohol in that subject admitted to the Agent during home visit on 10/31/2007 that he had been drinking alcoholic beverages; And failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 3, 7, 9, 10, special conditions and Standard Sex Offender Condition 10 of the Parole set forth under cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services and acknowledged by the offender on 11/26/2003 and

Sworn to and Subscribed before me
 this 5 day of November, 2007.

Affiant

(L.S.)

Address: SUITE 6500
 301 UNIVERSITY RIDGE
 GREENVILLE, SC 29601
 GREENVILLE
 USA
 (864) 282-4540

My Commission Expires

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of Greenville

Personally appeared before me, Tony Anderson, who first being duly sworn, deposes and says that James Byrd did within this County and State on the 6th day of June, 2006, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

By violating conditions of Parole 5, 7, 9, and 10 ordered in cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation order dated 3-28-06.

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 Defendant has violated his Parole in the following manner: By being \$200.00 in arrears toward his Supervision Fee; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 7, and 10 ordered in cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation order dated 3-28-06.

Tony Anderson
Affiant

worn to and subscribed before me this

6th day of June, 20 06.

[Signature]
Signature of Notary Public

10-14-09

My Commission Expires

CITATION

Indictment Number(s):

81-GS-23-1042

ORIGINAL

No. C-23-06-0561

SOUTH CAROLINA V. James Byrd	County Greenville	
	SCDC # 00098230	SID # 00041106
	Citation for Violation of ☒ Parole ☐ Emergency Powers Act Release ☐ Supervised Furlough ☐ Community Supervision	

TO: James Byrd

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

Place 305 East North Street Greenville, SC 29601	Room TBD Date and When Notified Time
--	--

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

Violations Charged

By violating conditions of Parole 5, 7, 9, and 10 ordered in cause number 81-GS-23-1042 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation order dated 3-28-06.

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

List of Rights:

You have the right at the preliminary 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 at the hearing at your expense. An attorney may be appointed to represent you in extraordinary circumstances. 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.

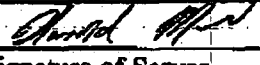
Greenville, South Carolina	Probation and Parole Agent
Date June 6 th 2006	 Agent # 422 Tony Anderson

PROOF OF SERVICE

Date Served: 6/15/06	Place: Probation Office
Served On: (Print Name) James Byrd	
Served By: (Print Name) Harold Moore	Title: Agent

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct

Executed on: 6/15/06 DATE	 Signature of Server
Address of Server 301 University Ridge Suite 6500	City Greenville State SC Zip 29601

RETURN

STATE OF SOUTH CAROLINA

COUNTY OF

GREENVILLE

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

THE STATE

against

JAMES ROBERT BYRD

ARREST WARRANT

Offense: Violation of Conditions of Parole Supervision

Offense Section: 24-21-680

Date: 5/11/2011

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Constable or Law Enforcement Officer

Tony Anderson

This Warrant is certified for service in County of warrant
Certification County. The accused is to be arrested and brought
before me to deal with according to law.

Signature of Judge

(I.S.)

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name JAMES ROBERT BYRD

Address [REDACTED]
GREENVILLE, SC 29605

Phone [REDACTED] ext. 111

Sex Male Race Black Height 510

Weight 162 Birth date [REDACTED]

Social Security Number [REDACTED]

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on

with

Attorney for the Defendant

Decision

BAIL

Date Set

Magistrate

Amount

Surety

5.12.11

K.T. [REDACTED]

No Bond

Form 16.1 - Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 18, 1978

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Parole

ARREST WARRANT

Indictment Number 81-GS-23-01042

Warrant Number W-23-11-0384

State Identification No. (SID) 00041108

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF GREENVILLE, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that JAMES ROBERT BYRD, did on the 11 day of May, 2011 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JAMES ROBERT BYRD before me forthwith to be dealt with according to 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. Done at GREENVILLE, S. C. this 11 day of May, 2011.

Signature of Probation and Parole Agent

(L.S.)

County of GREENVILLE

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Tony Anderson, who, first being duly sworn, deposes and says that JAMES ROBERT BYRD did within this County and State on the 11 day of May, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

By violating conditions 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

There is probable cause to believe that the offender committed the offense of CDV 1st on 5-9-11 on a Lella Denise Banks verified by the Greenville County Sheriff's Office (GCSO) supplemental report dated 5-10-11; By failing to refrain from the use of alcohol beverage also verified by the GCSO supplemental report dated 5-10-11; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful conditions 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

Sworn to and Subscribed before me
this 11 day of May, 2011.

Signature of Notary Public

(L.S.)

My Commission Expires

Address: SUITE 6500
301 UNIVERSITY RIDGE
GREENVILLE, SC 29601
GREENVILLE
USA
(864) 282-4540

Affiant

South Carolina Department of Probation, Parole, & Pardon ServicesAdministrative Hearing Summary

Releasee James Byrd SCDC# 00098230 SID# 00041106
Location Greenville County Law Enforcement Center Greenville, South Carolina
Date August 2, 2011 Time 11:05AM Tape# FG08022011

PERSONS IN ATTENDANCE:

Fredna Gary / Administrative Hearing Officer

Allan Norfus for Tony Anderson / Agent

James Byrd / Parolee

FINDINGS:

I find that Mr. James Byrd has violated conditions 3 and 10 as set forth in the affidavit dated May 11, 2011; such conditions having been contained in the Certificate of Parole accepted by the defendant in writing on November 26, 2003..

I find that there is probable cause to believe that Mr. Byrd has used alcoholic beverages which is in direct violation of condition number 10 of the standard sex offender conditions. I find that there is also probable cause to believe that Mr. Byrd used alcohol to excess as indicated in an incidence report dated 05-09-2011 by the Greenville County Sheriff Department resulting in Mr. Byrd's arrest and pending charge of Criminal Domestic Violence 1st Offense..

I find that there is probable cause to believe that Mr. Byrd has violated Federal, State, and/or Local Laws. Agent Norfus testified and presented documents which show that probable cause exists indicating that Mr. Byrd (while intoxicated) did commit the offense of Criminal Domestic Violence 1st Offense against Leila Banks who is his roommate/girlfriend. Mr. Byrd has requested a jury trial and has yet to receive a hearing date. Please see the incidence report from the Greenville County Sheriff Department in reference to the pending charge of Criminal Domestic Violence 1st Offense. Also, Mr. Byrd admitted that he and Ms. Banks had an argument resulting from his belief that he saw a male leaving his room (also where Ms. Banks resides) as he returned home from work. Mr. Byrd denies any physical altercation with the victim. Mr. Byrd also denies being intoxicated.

I find that the aforementioned violations constitute a willful failure to follow the advice and instructions of the supervising agent. I base these findings on the Greenville County Sheriff Department Incidence Report and on the testimony and evidence submitted by Agent Norfus.

CONTINUED ON NEXT PAGE

South Carolina Department of Probation, Parole, & Pardon ServicesAdministrative Hearing Summary**CONTINUED FROM PREVIOUS PAGE****CONCLUSIONS:**

Revocation of parole is justified for Mr. James Byrd. There is probable cause to believe that Mr. Byrd did use alcoholic beverages as described in the incidence report thereby failing to follow the advice and instructions of the agent. There is also probable cause to believe that Mr. Byrd committed the offense of Criminal Domestic Violence 1st Offense as described in the incidence report by the Greenville County Sheriff Department authorities, thereby failing to follow the advice and instructions of the agent. Mr. Byrd wilfully failed to follow the advice and instructions of the agent. Mr. Byrd has failed to make a good faith effort towards complying with the conditions of supervision and is therefore, not currently suitable for supervision in the community.

RECOMMENDATION:**REVOCATION.**

Respectfully submitted,

Fredna Gary
Administrative Hearing Officer

FOR THE BOARD'S INFORMATION: Mr. Byrd is a registered sex offender. He resides at a local hotel. His residential situation makes it difficult to place him on intensive supervision with electronic monitoring until the charge is disposed of.

**SCDC# 098230; HEARING SCHEDULED FOR TELE-CONFERENCE AT 9:00 A.M.
ON 09-14-2011 AT PERRY CORRECTIONAL INSTITUTION; AGENT: TONY
ANDERSON; COUNTY: GREENVILLE; OFFENDER WILL ATTEND.**

Agency I.D.
SC0230000

EC5 05/11/2011 07:48:32

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Case Number

11000065704

☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Stolen Property	Incident Type <u>1245 - Criminal Domestic Violence 1st</u>				
☒ Supplemental Report	☐ Other Report	☐ Additional Defendants	☐ Additional Recovered Property	Patrol District <u>05</u> Page <u>1</u> of <u>1</u> Pages				
I.D. OVERFLOW	☐ Complainant	Subject's Name (Last, first, middle)		Victim Relationship To Subject		Ethnicity	Resident	
	☐ Victim	Address		City	State	Zip Code	Patrol District	
	☐ Subject	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.		
	☐ Runaway	Victim No. <u> </u>		Visible Injury ☐ Yes ☐ No	Complaint of any Non-Visible Injuries ☐ Yes ☐ No	Victim Using Alcohol ☐ Yes ☐ No ☐ Unk	Two-Man Veh ☐ One Man Veh ☐ ALONE ☐	
	☐ Wanted	Explain:		Drugs ☐ No ☐ Yes Type:		Detective ☐ Other ☐ ASSISTED ☐		
	☐ Arrest	Subject No. <u> </u>		Using Alcohol ☐ No ☐ Yes ☐ Unk	☐ Arrested on Current Offense			
	☐ Missing	Using Drugs ☐ No ☐ Yes Type:		☐ Unk ☐ Cleared By Arrest on Prior Offense				
	☐ Jail	Arrestee Armed ☐ Yes ☐ No		Weapon Type		☐ On View Arrest ☐ Summoned ☐ Custody		
	☐ Other	Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority						
	Arrest Location							
NARRATIVE	Overflow:							
	Banks Leila Denise:Victim 1							
	DOB: <u> </u>							
	Byrd, James Robert:Subject 1							
	Subject Types: Suspect Arrest							
	DL STATE/NUMBER: S <u> </u> DOB: <u> </u>							
	Narrative:							
	I made contact with the victim, who stated she was punched in the face by the suspect. I asked the suspect what was going on. He stated to ask the victim. I again ask the victim what was going on. She stated again he punched me in the face. while I was collecting information from them, both were noticeably intoxicated. Both had the odor of an alcoholic beverage on their person. Their were empty beer cans through the motel room. Both confirmed they were drinking. However the suspect denied ever hitting the victim. I took a closer look at the victim, and noticed she mout had dried blood around the outside of her mouth. I also noticed blood on the wall near the first bed that was closest to the door.							
	Both subject were extremely intoxicated, and could not get a clear story from either subject. The victim had trouble completing her sentences, and could barely stand up. The suspect could speak clearer, but had trouble maintaining his balance. Due to the level of intoxication of the victim, I was unable to collect a written statement from her. However she did advise she was punched in the face by the suspect, and there were visible injuries to substantiate her claim.							
	I placed the suspect under arrest for criminal domestic violence. He was taken into custody without incident. I transported him to Greenville County Detention Center, and placed him in jail under a temporary commitment for the listed charge (I-433450). He was clear from any further wants from this agency, and clear NCIC. This case is cleared by arrest.							
PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	
ADMIN	Subject Identified ☒ Yes ☐ No		Subject Located ☒ Yes ☐ No		☐ Active ☐ Admin Closed ☐ Unfounded		☐ Arrested Under 18 ☒ Arrested 18 and Over	
	Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest							
	Reporting Officer(s)	Date	Unit/Star#	Approving Officer	Date	Unit/Star#		
	ANDERSON, JOSEPH	05/09/2011	012 / 01065	MCCOY, MARK	05/10/2011	004 / 00430		
	Follow Up Investigation ☐ Yes ☒ No							

GREENVILLE COUNTY SHERIFF'S OFFICE Incident Report

Agency I.D. SC0230000 Offense **13B** SLED Sub-Code **00** RTA **EC5 05/11/2011 07:48:32 05** Case Number **11000065704** Adult/Juv **0**

EVENT	INCIDENT TYPE		OFFENSE COMPLETED	FORCED ENTRY	PREMISE TYPE		UNITS ENTERED	TYPE VICTIM		
	1246 - Criminal Domestic Violence 1st		Y	N	14 - Hotel/Motel/Etc.; 14 - Hotel/Motel/Etc.		0	☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Religious Org. ☐ School / Public ☐ Other ☐ Unknown ☐ Police Officer		
	Incident Location (Subdivision, Mill Village, Apartment & Number, Street Name & Number)				Closest Intersection		Zip Code			
	SC (ECONOMY INN)				Chalmers Rd		29805			
VICTIM	Incident Date	Time	To	Date	Time	Weapon Type	Time Arrived	Time Completed	Patrol District	
	05/09/2011	20:00		05/09/2011	20:16	40	20:22	21:34	05	
	Complainant Name (Last, first, Middle)			Relationship	Race	Sex	Age	Primary Phone	Business Phone	Mobile Phone
	SEE, VICTIM			J						
SUBJECT	Address		City		State		Zip Code	Patrol District		
			Greenville		South Carolina		29805	05		
	Victim's Name (Last, first, Middle)		Victim Relationship To Subject		Resident	ethnicity	Race	Sex	Age	
	Banks, Leila Denise		CS		J		B	F	45 to 45	
NARRATIVE	Visible Injury (Vict 1) ☒ Yes ☐ No Explain: bloody mouth / abrasion to right side of mouth Complaint of any Non-Visible Injuries ☐ Yes ☒ No									
	Victim (No.1) Using Alcohol ☒ Yes ☐ No ☐ Unk Drugs ☐ Yes ☐ No ☒ Unk Type:									
	Two-Man Veh ☐ One Man Veh ☐ Detective/PLASMT ☐ Other ☐ ALONE ☐ ASSISTED ☐ Jurisdiction:									
	☒ Suspect ☐ Runaway ☐ Wanted ☐ Warrant ☒ Arrest ☐ Missing Subject's Name (Last, first, Middle) Byrd, James Robert Address 214 City Greenville State SC Zip Code 29805 Patrol District 05 Subject (No.1) Using Alcohol ☒ Yes ☐ No ☐ Unk Drugs ☐ Yes ☐ No ☒ Unk Type Arrested Near Offense Scene ☒ Yes ☐ No Date/Time of Offense 05/09/2011 20:18 Date of Arrest 05/09/2011 Arrestee Armed ☐ Yes ☒ No Weapon Type ☒ Arrested on Current Offense ☐ Cleared By Arrest on Prior Offense Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority ☒ On View Arrest ☐ Summoned ☐ Custody									
VEHICLE	Charge		Warrant Number		Ticket Number					
	Criminal Domestic Violence 1st		I-433450							
	Arrest Location		3605 Augusta Rd Greenville 29805 214		Gang Affiliation:		NG - Not Gang Related			
	I arrived at the incident location in response to a disturbance									
PROPERTY	Jurisdiction of Theft:		Jurisdiction of Recovery:							
	Tag Number		Year	Make	Model	Style	Color	Value		
	Tag Only ☐									
ADMIN	Subject Identified	Subject Located		☐ Active ☐ Admin Closed		☐ Arrested Under 18		☐ Ex-Cleared Under 18		
	☒ Yes ☐ No	☒ Yes ☐ No		☐ Unfounded		☒ Arrested 18 and Over		☐ Ex-Cleared 18 and Over		
	Reason For Exceptional Clearance		☐ Offender Death ☐ No Prosecution		☐ Victim Declines Cooperation		☐ Extradition Denied		☐ Juvenile No Arrest	
	Reporting Officer(s)	Date	Unit/Star#	Approving Officer	Date	Unit/Star#				
ANDERSON, JOSEPH		06/09/2011	012 / 01055	MCCOY, MARK	05/10/2011	D04 / 00430				
Follow Up Investigation		☐ Yes ☒ No								

5/15/11

RECORDING OF SEPTEMBER 14, 2011 PAROLE BOARD HEARING (SUBMITTED
SEPARATELY TO THE COURT)

09/14/2011 10:04 883-734-73

SCPPS PROCURMENT

PAGE 01/05

South Carolina Department of Probation, Parole and Pardon Services
Parole Revocation Order

SCDC# 98230
SID# 00041106

South Carolina

-VS-

James Byrd

ORDER

Whereas the above named Parolee has been charged with violating the conditions of parole ordered on 4-20-2010 by the South Carolina Board of Probation, Parole and Pardon Services, as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, we find the Parolee has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated 3-18-2011 a copy of which is incorporated by reference.

The South Carolina Board of Probation, Parole and Pardon Services now finds that the Parolee has violated the conditions of Parole number:

1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☒ 11 ☐ 12 ☐ 13 ☐
Special Conditions ☒ Additional Conditions which were agreed to by the Parolee on the above date ☒ 16 ☐

☒ In consequence whereof, the South Carolina Board of Probation, Parole and Pardon Services hereby orders the parole ~~revoked~~ and orders the above named Parolee be returned to the South Carolina Department of Corrections to serve the remainder of the original sentence imposed by the Court, said sentence to run from the date of commitment until the final date of expiration of the maximum active sentence. The parole is revoked in the (☒ Presence ☐ Absence ☐ Waiver) of the Parolee by the panel of the full Board.

☐ IT IS ORDERED that the above named Parolee is continued on parole as provided for in the sentence identified above and subject to the conditions set forth therein and not inconsistent with the order. This action is taken in the (☐ Absence ☐ Presence ☐ Waiver) of the Parolee.

☐ Additional Conditions ordered by the Board.

Additional Conditions:

Ordered this 14th, day of September, 2011.

[Signature]

Chairman

[Signature]

[Signature]

This is to certify that I have read or have had read to me the Order and the Conditions set out therein. If I have been continued under supervision, I agree to comply with the above conditions and all conditions of my original parole order not inconsistent with this order.

Ordered this 14th, day of September, 2011.

[Signature]
Agent

[Signature]
Parolee

South Carolina Department of Probation, Parole, & Pardon ServicesAdministrative Hearing Summary

Releasee James Byrd SCDC# 00098230 SID# 00041106
 Location Greenville County Law Enforcement Center Greenville, South Carolina
 Date August 2, 2011 Time 11:05AM Tape# FG08022011

PERSONS IN ATTENDANCE:

Fredna Gary / Administrative Hearing Officer

Allan Norfus for Tony Anderson / Agent

James Byrd / Parolee

FINDINGS:

I find that Mr. James Byrd has violated conditions 3 and 10 as set forth in the affidavit dated May 11, 2011; such conditions having been contained in the Certificate of Parole accepted by the defendant in writing on November 26, 2003.

I find that there is probable cause to believe that Mr. Byrd has used alcoholic beverages which is in direct violation of condition number 10 of the standard sex offender conditions. I find that there is also probable cause to believe that Mr. Byrd used alcohol to excess as indicated in an incidence report dated 05-09-2011 by the Greenville County Sheriff Department resulting in Mr. Byrd's arrest and pending charge of Criminal Domestic Violence 1st Offense.

I find that there is probable cause to believe that Mr. Byrd has violated Federal, State, and/or Local Laws. Agent Norfus testified and presented documents which show that probable cause exists indicating that Mr. Byrd (while intoxicated) did commit the offense of Criminal Domestic Violence 1st Offense against Leila Banks who is his roommate/girlfriend. Mr. Byrd has requested a jury trial and has yet to receive a hearing date. Please see the incidence report from the Greenville County Sheriff Department in reference to the pending charge of Criminal Domestic Violence 1st Offense. Also, Mr. Byrd admitted that he and Ms. Banks had an argument resulting from his belief that he saw a male leaving his room (also where Ms. Banks resides) as he returned home from work. Mr. Byrd denies any physical altercation with the victim. Mr. Byrd also denies being intoxicated.

I find that the aforementioned violations constitute a willful failure to follow the advice and instructions of the supervising agent. I base these findings on the Greenville County Sheriff Department Incidence Report and on the testimony and evidence submitted by Agent Norfus.

CONTINUED ON NEXT PAGE

South Carolina Department of Probation, Parole, & Pardon Services
Administrative Hearing Summary

CONTINUED FROM PREVIOUS PAGE

CONCLUSIONS:

Revocation of parole is justified for Mr. James Byrd. There is probable cause to believe that Mr. Byrd did use alcoholic beverages as described in the incidence report thereby failing to follow the advice and instructions of the agent. There is also probable cause to believe that Mr. Byrd committed the offense of Criminal Domestic Violence 1st Offense as described in the incidence report by the Greenville County Sheriff Department authorities, thereby failing to follow the advice and instructions of the agent. Mr. Byrd wilfully failed to follow the advice and instructions of the agent. Mr. Byrd has failed to make a good faith effort towards complying with the conditions of supervision and is therefore, not currently suitable for supervision in the community.

RECOMMENDATION:

REVOCATION.

Respectfully submitted,

Fredna Gary
Administrative Hearing Officer

FOR THE BOARD'S INFORMATION: Mr. Byrd is a registered sex offender. He resides at a local hotel. His residential situation makes it difficult to place him on intensive supervision with electronic monitoring until the charge is disposed of.

**SCDC# 098230; HEARING SCHEDULED FOR TELE-CONFERENCE AT 9:00 A.M.
ON 09-14-2011 AT PERRY CORRECTIONAL INSTITUTION; AGENT: TONY
ANDERSON; COUNTY: GREENVILLE; OFFENDER WILL ATTEND.**

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

Offender's Name: **JAMES ROBERT BYRD**

State of South Carolina, County of: **GREENVILLE**

SID#: **00041106**

Warrant#: **W-23-11-0384**

Date of Birth:

SCDC#: **00098230**

Indictment Numbers:

81-GS-23-01042

Offense and Offense Code:

95 - Kidnapping (SR if victim >=18 unless judge order not)

GPS DISCRETIONARY

Supervision Program: **Parole**

Begin Date: **11/26/2003** End Date: **12/31/2050**

Supervision Level: **Institutionalized**

Sentencing Judge:

Sentencing County: **GREENVILLE**

Sentencing Date: **7/28/1981**

Location (Bold Response): **Jail**

Sentence:

Kidnapping - Life

Special Conditions:

EM - Electronic Monitoring (Home Detention) for an indeterminate period not to exceed 90 days, as determined by the Department.; Other1 - Intensive supervision for an indeterminate period not to exceed 6 months, as determined by the Department.; Other2 - Must have no contact with the Victim and/or Victim's family for duration of parole.; Other3 - Must reimburse SCDPPPS \$300.00 for the cost of the Psychological.

Current Address and Summary of Residence:

GREENVILLE, SC 29605, GREENVILLE, USA,

Reporting:

Mr. Byrd is on Sex Offender High therefore he reports on a monthly basis.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Unemploy	11/6/2008 -		\$0.00
	11/26/2003 - 1/22/2004		\$0.00
EXECUTIVE KITCHEN	1/23/2004 - 12/8/2005		\$0.00
SC FRANKS CHAPEL OF REMEBERANCE	4/2/2008 - 11/5/2008		\$800.00
	12/8/2005 - 4/1/2008		\$0.00

Financial Conditions:

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

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

Offender's Name: **JAMES ROBERT BYRD**

Regular Supervision	\$300.00	\$25.00/M	\$25.00	5/4/2011	\$50.00	\$275.00
---------------------	----------	-----------	---------	----------	---------	----------

Prior Violation Dates	Prior Violations	Prior Violation Disposition
6/3/2010	By being convicted of 5 counts of Fraudulent check and receiving a sentence of a Fine of \$207.00 and Restitution or a Consecutive Sentence of 30 Days on all 5 counts. And by failing to follow the advice and instructions of his Supervising Agent.	3-14-11 per HO Gary; Cont. sup.; Exempt \$425 fee arrears due to hardship; Reduce fee to \$25/mo. for 1 yr.; Zero tolerance for future viol. J.S.
3/19/2010	By failing to report as instructed on 3-11-10 after being duly notified; By failing to notify his Agent of his arrest on 3-2-10 for the following: Driving Negligent; Operating Uninsured Vehicle; 5 counts of Fraud Check;	3-14-11 per HO Gary; Cont. sup.; Exempt \$425 fee arrears due to hardship; Reduce fee to \$25/mo. for 1 yr.; Zero tolerance for future viol. J.S.
1/27/2010	By being \$275.00 in arrears on his Supervision Fee as of 1-27-10; And by failing to follow the advice and instructions of his Supervising Agent	3-14-11 per HO Gary; Cont. sup.; Exempt \$425 fee arrears due to hardship; Reduce fee to \$25/mo. for 1 yr.; Zero tolerance for future viol. J.S.
6/6/2006	By being \$200.00 in arrears on his Supervision Fee as of 12-18-08; And by failing to follow the advice and instructions of his Supervising Agent	10-3-06 HO cont on, pay all SF accts curr when disability settlement is rec'd.
11/5/2007	By failing to abide by the Halloween Curfew; By failing to refrain to use of alcohol; And being behind on his \$	3-18-08 per HO Gary; Cont. on parole; Exempt \$1,785.00 sf arrears; Int. sup. nte 60 ds. as determined by agent; Def. to report wkly.; Pay reg. sf rate of \$40. J.S.

Details of the Present Violation:

There is probable cause to believe that the offender committed the offense of CDV 1st on 5-9-11 on a Leila Denice Banks verified by the Greenville County Sheriff's Office (GCSO) Supplemental report dated 5-10-11; By failing to refrain from the use of alcohol beverage also verified by the GCSO supplemental report dated 5-10-11; And by failing to follow the advice and instruction of his Supervising Agent. Such actions constitute a willful conditions 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

Agent's Recommendation:

Full Revocation

Agent's Justification:

It is stated in the incident report dated 5-10-11 that subject and the victim was extremely intoxicated. This is a direct violation of condition 10 of the Sex Offender conditions which states that I will not consume alcoholic beverages. By failing to refrain from violating state or local law in that he was arrested for the offense of CDV 1st and fail to notify his Supervising Agent of this arrest. I believe that subject is a poor candidate for supervision at this time.

Tony Anderson

Senior Agent

Date: 7/12/2011

Supervisor's Signature

Date: 7/12/11

Form 16.1- Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Parole

ARREST WARRANT

Indictment Number 81-GS-23-01042

Warrant Number W-23-11-0384

State Identification No. (SID) 00041108

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF GREENVILLE, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that JAMES ROBERT BYRD, did on the 11 day of May, 2011 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditons 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JAMES ROBERT BYRD before me forthwith to be dealt with according to 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. Done at GREENVILLE, S. C. this 11 day of May, 2011.

County of GREENVILLE

Signature of Probation and Parole Agent

(L.S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Tony Anderson, who, first being duly sworn, deposes and says that JAMES ROBERT BYRD did within this County and State on the 11 day of May, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

By violating conditons 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

There is probable cause to believe that the offender committed the offense of CDV 1st on 5-9-11 on a Leila Denice Banks verified by the Greenville County Sheriff's Office (GCSO) Supplemental report dated 5-10-11; By failing to refrain from the use of alcohol beverage also verified by the GCSO supplemental report dated 5-10-11; And by failing to follow the advice and instructions of his supervising Agent. Such actions constitute a willful conditions 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

Sworn to and Subscribed before me
this 11 day of May, 2011.

Affiant

Signature of Notary Public

(L.S.)

My Commission Expires

Address: SUITE 6500
301 UNIVERSITY RIDGE
GREENVILLE, SC 29601
GREENVILLE
USA
(864) 282-4540

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

NIKKI R. HALEY
 Governor



KELA E. THOMAS
 Director

2221 Devine Street, Suite 300
 Post Office Box 50666
 Columbia, South Carolina 29250
 Telephone: (803) 734-9367
 Fax: (803) 734-9240
www.dppps.sc.gov

Convictions For: Byrd, James Robert

SCDC#: 00098230

SID#: 00041106

The following chart shows the offenses for which the inmate is serving time. The column labeled "V" reflects whether the offense is, by statute, violent or non violent. The column labeled "S" shows whether or not the inmate is considered to be a sex offender. The column labeled "Indictment" reflects the indictment number on which the inmate was convicted. The convictions are listed next with the date the sentence will be completed, labeled "Max Out".

<u>Sentenced/Time</u>									
V	S	Date	Yrs	Mos	Day	County	Indictment	Current Convictions Offense	Max Out
Y	Y	4/13/1981	999	99	999	GREENVILLE	81GS231042	Kidnapping (SR if victim >=	NONE
N	N	5/27/2010	0	0	150	GREENVILLE	--	FRAUD INSUFF FUNDS CHECK	8/27/2010
N	N	8/19/2010	0	0	0	GREENVILLE	00000	MOVING TRAFFIC VIOL	8/19/2010
N	N	8/19/2010	0	0	0	GREENVILLE	00000	MOVING TRAFFIC VIOL	8/19/2010
Y	N	4/13/1981	30	0	0	GREENVILLE	81GS231043	CRIMINAL SEX CONDUCT 1ST DEG	9/8/1996
Y	N	7/28/1978	3	0	0	GREENVILLE	78GS231180	VEHICLE THEFT	3/8/1979

FORM 5

STATE OF SOUTH CAROLINA

County of Greenville

IN THE COURT OF COMMON PLEAS

James Robert Byrd
Full name and prison number (if any) of Applicant
SCC # 9230

2011-CP-23-

07/06

FILED
CLERK OF
COURT
JUL 22 2011
PM 1:12S.C. Probation, Parole and
Pardon Services
State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS TO READ CAREFULLY

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

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

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

1. Place of detention Wirkland Correctional Institution
2. Name and location of Court which imposed sentence South Carolina Department of Probation, Parole and Pardon Services
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Parole Violation Warrant # W23110384

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) Parole Violation - September 15, 2011
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayesse to (7), list:
(a) the name of each Court to which you appealed:
South Carolina Department of Parole & Pardon
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
denied
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
October 11, 2011
- i. _____
- ii. _____
- iii. _____
- (d) If known, citations of any written opinion or orders entered pursuant to such result:
Only avenue for relief is to file for Conviction Relief [Per]
- i. _____
- ii. _____
- iii. _____
9. If you answered Ayesse to (7), state your reasons for not so appealing:
(a) _____

(b) _____
(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

See attachment

(a) _____
(b) _____
(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

See attachment

(a) _____
(b) _____
(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? *No*

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? *No*

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (b)? *No*

(d) any other petitions, motions or applications in this or any other Court? *No*

13. If you answered A yes to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof: *None*

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed: *None*

i. _____

ii. _____

iii. _____

iv. _____
(c) the disposition thereof: *None*

None

i. _____
ii. _____
iii. _____
iv. _____

(d) the date of each such disposition: *None*

None

i. _____
ii. _____
iii. _____
iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

None

i. _____
ii. _____
iii. _____
iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (b) your trial, if any? NO
 (c) your sentencing? NO
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes6 to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. _____
 ii. None
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. _____
 ii. None
 iii. _____

5

19.

State clearly the relief you seek in filing this application:

Reinstatement of Parole under the Condition Pursuant to the Continuation Order by the Administrative Hearing Officer dated March 14, 2011

20.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA

County of Greenville))

VERIFICATION

I, James Robert Earl SCOTCH98830

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

James R. Earl

SWORN to and subscribed before me this 11th day of November, 2011

John A. Cawley, Jr. (L.S.)
 Notary Public

My Commission Expires October 8, 2014

6

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

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

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

James R. Bird
Applicant

SWORN or affirmed to and subscribed before me this
14th day of November, 2011

Glenn C. Wick
Notary Public

My Commission Expires October 8, 2014

0.

Ground

a] Violation of Fourth and Fourteenth Amendment to Due Process and Equal Protection of the Law.

b] Violation of Fourth and Fourteenth Amendment to Equal Protection of the Law.

c] Violation of Constitutional Right to bail

d] Violation of Fourth and Fourteenth Amendment

Fact

1. a] Applicant Parole revocation violated his Constitutional right to the presumption of innocence when the charge for which the Parole violation rest solely on was still pending in court.

b] The Administrative Hearing Officer erred in allowing Greenville County Deputy Sheriff J. L. Anderson statement to be enter in as evidence when such admission constituted a violation of Applicant created right granted by the Responding

2. a] Applicant Constitutional right was violated when Agent Tony Anderson willfully withheld a written statement from Miss Felicia Banks that completely exonerate Applicant from any and all wrong doing.

Fact

1. CJ The Responding refuse to set Applicant bond for Parole violation.

2. Applicant is treated different than other's of his class by the Responding In other words, other parolee who receive Criminal Charges are Not Violate until they are found guilty or Plea guilty.

Note The Criminal Domestic Violence Charge in which the Responding base the Parole Violation is still in the Court of law as of November 14, 2011

71

Support For P.3) Fact 1

South Carolina Department of Probation, Parole and Pardon Services
Notice of Administrative Hearing

STATE OF SOUTH CAROLINA		VS.	
Offender's Name	LARRY ALBERT BRYD		
SLIP	000 0111106		
WARRANT/RECALL ISSUE DATE	5, 11, 11		
HEARING INFORMATION		Date: 8, 2, 11 Time: 11:00 AM ☒ PM ☐ Location: LEC	

You are notified that an administrative hearing will be conducted by a neutral Hearing Officer on the above mentioned date, time, and location (SEE BOX TO RIGHT). This hearing is on the charges that are set forth in the warrant or citation issued on the above mentioned issue date (SEE BOX TO LEFT), which was served on you.

You may have an attorney at your expense represent you at the administrative hearing. The South Carolina Department of Probation, Parole and Pardon Services is not required to provide you with counsel in this matter. If you cannot afford to hire an attorney, you may at your hearing, petition for an appointed attorney. An attorney will not be appointed except in the most extraordinary circumstances. You may have witnesses present to testify for you. It is your responsibility to have your witnesses and attorney present. You have the right to question any person making allegations against you at the hearing.

YOU ARE REQUIRED TO BE PRESENT AT YOUR ADMINISTRATIVE HEARING AS SCHEDULED ABOVE. IF YOU DO NOT APPEAR, THE HEARING WILL BE HELD IN YOUR ABSENCE.

I UNDERSTAND THAT I MUST BE AT MY ADMINISTRATIVE HEARING AND I HAVE RECEIVED A COPY OF THIS NOTICE.

Offender's Signature	Date
<i>[Signature]</i>	2, 11, 11
Witness's Signature	Date
<i>[Signature]</i>	2, 2, 11, 11

☐ Waiver:	
I agree to waive all prior written notice of my hearing.	
Offender's Signature	Date
<i>[Signature]</i>	
Agent's Signature	Date
<i>[Signature]</i>	

Support For P.37 Fac 62

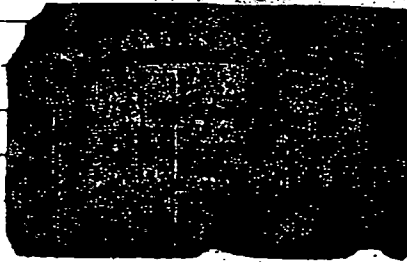
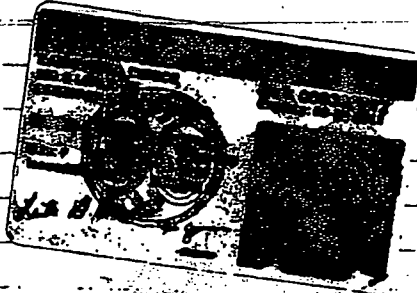
To whom it may concern
My name is Leila Barks. I am
writing this letter a statement
of my own free will and without
threat or promises.

This letter or statement is
concerning James Robert Byrd
and his arrest on May 9th 2011.
I will attempt to address the
things I remember the day in
question, but I am sure I want
remember everything that happened
do to the state of mind I had
at that time. I remember cooking
when Byrd came in. I had gotten
home from the store and started
cooking. Just before he had
come in I had taken my
medicare along with one of
the two beers I had bought

Support For P.37 Fac 62

at the store. When he came
in accusing me of having someone
in our room when he wasn't
there, which wasn't true we
argued about it. I was getting tired
of arguing about it and wanted
him to leave and he would not
leave at some point I called
the police. But what I don't remember
is telling them that he hit me
because he had not hit me...
He said that I must have given
the police statement saying he
hit me but I don't remember that.
So if I signed anything stating
that he hit me I would like
to see it. Or, we have our
difference just like any other
couple, but I have never gotten
violent. This is what I remember
and how I remember it. And

what I will be testifying to
in his up coming Trial.



Statement of Case

On May 9, 2011, Applicant resided at the Economy Inn located at 3305 Augusta Rd Greenville County. When a argument between Applicant and his companion occurred. His a result of Greenville County Sheriff being call out Applicant was arrested and charge. With Criminal Domestic Violence 1st Warrant #1-433450.

On May 12, 2011, Applicant was Served with #23113384 for Parole Violation. The sole reason for Warrant #1-433450 was based on the Criminal Domestic Violence Charge placed against him on May 9, 2011 by the Greenville County Sheriff Officer.

On October 2, 2011, Applicant receive his Administrative hearing whereas a Parole Revocation date was set for September 14, 2011. The hearing officer was informed that the Criminal Domestic Violence Charge was still pending in Court.

On September 14, 2011, Applicant appeared before the South Carolina Department of Probation, Parole and Pardon Services Board whereas his Parole was violated and Applicant was place in the custody of South Carolina Department of Corrections. The Board of Parole was informed by Parole Agency Tony Anderson that the Criminal Domestic Violence Charge was still pending in Court.

(7)

James Robert Bird SCDC #19320
FI-145

Kirkland Correctional Institution
1344 Broad River Road
Columbia, South Carolina 29210
RE: Post Conviction Relief Application

Greenville County Courthouse
Clerk of Court Office
Greenville, South Carolina 29601

November 14, 2011

Dear Clerk of Court:
Please find enclosed for filing in your Court my Post Conviction
Relief Application.

Would you be so kind as to return me a check copy
of the same for my personal file.

Thanking you in advance for your effort and time
in this matter.

I Remain,
Sincerely,
James Robert Bird SCDC #19320

James R. Bird SCDC #19320
FI-145
Kirkland Correctional Institution
1344 Broad River Road
Columbia, South Carolina 29210



SCDC
NOV 20 2011
MAIL ROOM

KCI MAILROOM
NOV 15 2011

Greenville County Courthouse
Clerk of Court Office
Greenville, South Carolina
29601

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-7846
COUNTY OF GREENVILLE	)	
	)	
James Robert Byrd,	)	
S.C.D.C. No. 98230,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 22, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections. The Applicant was indicted at the April 1981 term of the Greenville County Grand Jury for kidnapping (1981-GS-23-1642) and first-degree criminal sexual conduct (CSC) (1982-GS-23-1643). The Applicant was represented by H.W. "Pat" Paschal, Jr., Esquire.

After the State brought the case to trial, the Applicant was found guilty. On July 28, 1981, the Honorable James B. Stephen sentenced the Applicant to concurrent terms of life imprisonment for kidnapping and thirty (30) years for first-degree CSC.

Direct Appeal

A notice of appeal was filed at the South Carolina Supreme. John L. Sweeney, Esquire and William I. Diggs, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court affirmed the Applicant's conviction and sentence. State v. Byrd,

Op. No. 82-MO-382 (S.C. Sup. Ct. filed Dec. 29, 1982).

Post-Conviction Relief

1983

The Applicant filed a PCR application on January 19, 1983. The Applicant raised the following issues:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Unconstitutional search.
4. Unconstitutional indictment.
5. Unconstitutional statute.
6. Double jeopardy.

An evidentiary hearing was convened on May 17, 1983. Phillip E. Reeves, Esquire represented the Applicant. The Honorable Francis B. Nicholson denied and dismissed the PCR application by order dated June 27, 1983. The Applicant filed a timely notice of appeal at the South Carolina Supreme Court, which was perfected by Tara Shurling, Esquire of the South Carolina Office of Appellate Defense. On January 9, 1984, the Supreme Court denied the petition for writ of certiorari.

1986-CP-23-0278

The Applicant filed a PCR application on January 6, 1986 (1986-CP-23-0278). The Applicant raised the following issues:

1. Ineffective assistance of counsel.
2. "Trial judge failed to advise jury mercy could be recommended."
3. "Trial judge made false statement in his charge to jury."

The Respondent filed a return and motion to dismiss. In an order dated September 4, 1986, the Honorable C. Victor Pyle, Jr. dismissed the application because it was successive. The Applicant did not appeal.

1996-CP-23-0471

The Applicant filed a PCR application on February 14, 1996 (1996-CP-23-0471). The Applicant raised the following issues:

1. "Parole question regarding life sentence for kidnapping."
2. "Change in State law."
3. "Violation of Applicant constitution right to due process."

The Respondent filed a return and motion to dismiss. The Honorable C. Victor Pyle, Jr. issued a conditional order of dismissal dated June 26, 1996. Judge Pyle issued a final order of dismissal dated August 16, 1996. The Applicant filed a timely notice of appeal at the South Carolina Supreme Court, which was perfected by Wanda H. Haile, Esquire of the South Carolina Office of Appellate Defense. On December 8, 1997, the Supreme Court denied the petition for writ of certiorari.

1998-CP-23-1302

The Applicant filed a PCR application on April 14, 1998 (1998-CP-23-1302). The Applicant raised the following issue:

1. "Denial of due process of law where Applicant was convicted at a standard of less than required by the due process clause as a result of erroneous jury instructions on the term 'reasonable doubt;' and counsel was rendered ineffective through change in common law making and recognizing the jury instructions as erroneous and a structural defect."

An evidentiary hearing was convened on August 3, 1999 at the Greenville County Courthouse. James F. Brehm, Esquire represented the Applicant. The Honorable John W. Kittredge denied and dismissed the PCR application by order dated September 17, 1999. The Applicant filed a timely notice of appeal at the South Carolina Supreme Court, which was perfected by Wanda H. Haile, Esquire of the South Carolina Office of Appellate Defense. The

Supreme Court denied the petition for writ of certiorari and the remittitur was sent on December 4, 2001.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on January 10, 2002 (3:02-0060-12BC). The Respondent submitted a motion for summary judgment on May 1, 2002. The Honorable Joseph R. McCrorey, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated January 10, 2003. On March 17, 2007, the Honorable C. Weston Houck, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

Parole Revocation

On November 26, 2003, the Applicant was paroled by the South Carolina Board of Probation, Pardon and Parole Services (the Parole Board).

On May 11, 2011, an arrest warrant was issued to the Applicant for the following violations:

By violating conditons [sic] 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

(Parole Arrest Warrant number W-23-11-0384). The return on the warrant indicates it was served upon the Applicant on May 12, 2011. A more detailed Violation Report was issued on July 12, 2011.

On August 2, 2011, the Applicant attended an administrative hearing. The hearing

officer issued an Administrative Hearing Summary in which: (1) it was found the Applicant violated conditions 3 and 10 in the Certificate of Parole accepted by the Applicant upon his release and (2) parole revocation was recommended. On September 14, 2011, the Applicant appeared at a parole violation hearing held before a three (3) member panel of the Parole Board, pursuant to which his parole was revoked.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Violation of Fourth and Fourteenth Amendments:
 - a. Violation of due process.
 - b. Violation of equal protection.
 - c. Violation of presumption of innocence because the parole violation was based on charges that were still pending.
 - d. The administrative hearing officer should not have allowed the statement of a deputy sheriff to be "enter in as evidence when such admission constituted a violation of Applicant created right granted by the Responding."
 - e. Parole agent "willfully withheld a statement from Miss Lelia D. Banks that completely exonerate Applicant from any and all wrong doing."
2. Violation of constitutional right to bail.

III.

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

A proceeding under the Uniform Post-Conviction Procedure Act may be instituted by: "Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint." S.C. Code Ann. § 17-27-20 (Supp. 2004). An inmate's non-collateral claim that his parole was unlawfully revoked falls squarely within the ambit of the PCR statute. Kerr v. State, 345 S.C. 183, 547 S.E.2d 494 (2001); Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). However, this does not give the court the authority either to conduct a de novo review of the case or to otherwise sit in an appellate capacity to review the Parole Board's discretionary decision. To the contrary, the South Carolina Code specifically provides: "[t]he board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed." S.C. Code Ann. § 24-21-680 (1989 & Supp. 2004). The court's review of whether the Applicant's parole was unlawfully revoked is limited to an examination of whether the revocation procedure itself was lawful.

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

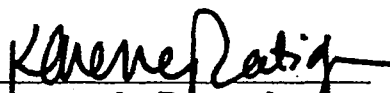
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 29, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2011-CP-23-7846

JAMES ROBERT BYRD, 98230)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

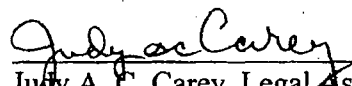
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James Robert Byrd, 98230
 Lieber Correctional Institution
 Post Office Box 205
 Ridgeville SC 29472**

DATED this 29th day of March, 2012.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMONS PLEAS
 CASE NO: 2011-CP-23-7846

James Robert Byrd, #98230,
 Applicant,

MOTION FOR DISCOVERY

vs.

THE STATE OF SOUTH CAROLINA)
)
 Respondent.)

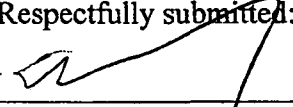
FILED - CLERK OF COURT
 GREENVILLE CO, S.C.
 2012 OCT 23 PM 1:30

The above Applicant, through his undersigned attorney, moves for an Order granting discovery. The Applicant believes discovery is necessary so he can fully prepare his case.

WHEREFORE, the Applicant moves the court for an Order granting discovery in the above matter.

Respectfully submitted:

Dated: October 18, 2012


 Rodney W. Richey, Esq.
 Attorney for Applicant
 Post Office Box 10916
 Greenville, SC 29603
 864-467-0503

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	CASE NO: 2011-CP-23-7846
COUNTY OF GREENVILLE	)	
	)	
James Robert Byrd, SCDC # 98230,	)	AMENDMENTS TO
Applicant,	)	POST CONVICTION
	)	RELIEF APPLICATIONS
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
_____	)	

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were

or whether or not I understood exactly what the term "criminal" element" actually meant.

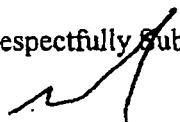
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with any adversarial litigation.
27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.

29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

January 11, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMONS PLEAS
 CASE NO: 2011-CP-23-7846

James Robert Byrd, SCDC # 98230,)
)
 vs.)
)
 THE STATE OF SOUTH CAROLINA)

AFFIDAVIT OF SERVICE

I certify that I have served the Amendments to PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on January 11, 2013, addressed to their attorney of record, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:



Tina Garduno, paralegal
 Richey and Richey, P.A.
 Post Office Box 10916
 Greenville, South Carolina 29603

Sworn to before me on
 January 11, 2013



Notary Public of South Carolina
 My Commission Expires: 7/15/2013

STATE OF SOUTH CAROLINA

) IN THE SUMMARY COURT

COUNTY/CITY OF GREENVILLE

) DISCHARGE
) *sl*

By **Greenville County/City Judge**, in and for the County and State aforesaid:

For as much as **James Robert Byrd**, in your custody now for want of his finding sureties to be released on the charge(s) of

I433450: Domestic / Criminal Domestic Violence - 1st offense

has been found Not Guilty.

These are, therefore, to authorize and require you that if the said **James Robert Byrd** do remain in jail for no other cause, then you forbear to detain him any longer, but suffer him to go at large, and that upon the pain that will fall therein.

Given under my Hand and Seal, at **Greenville County/City** on March 7, 2013 and in the two hundred and twenty-first year of American independence.

Samuel Fisher

JUDGE

**Greenville County/City
West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611
Phone: (864) 294-4810 Fax: -**

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

James Robert Byrd, #98230,
Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA)
Respondent.)IN THE COURT OF COMMONS PLEAS
CASE NO: 2011-CP-23-7846**ORDER FOR DISCOVERY**FILED-CLERK OF COURT
GREENVILLE CO. SC
JUL 2 2013

2013 JUN -4 PM 2:31

Hearing Date:

April 17, 2013

Judge:

G. Edward Welmaker

Applicant Attorney:

Rodney W. Richey

Respondent Attorney:

Karen Ratigan

Court Reporter:

S. Hanks

THIS MATTER CAME BEFORE THE COURT on motion of the Applicant's attorney for discovery in the above referenced Post Conviction Relief Case. Present at the hearing was the Applicant and his attorney, Rodney W. Richey. The State was represented by Karen Ratigan, Esquire. Tony Anderson of the South Carolina Probation and Parole Office and representatives from the Greenville County Sheriff's Office were also present. The Applicant requested the following:

1. The Applicant's attorney requested tapes from the Applicant's Parole Violation hearing.
2. The Applicant's attorney requested a signed copy of the Administrative Hearing Officer's recommendation.
3. The Applicant's attorney requested the police report that was the basis of the Applicant's parole violation.
4. The Applicant's attorney requested the hearing officer, Fredna Gary, be called as a witness

Copy mailed to

Attorney Richey and Ratiganon 6 / 4 / 13

at the Post Conviction Relief hearing.

FINDINGS FACTS

The Court makes the following Findings of Facts:

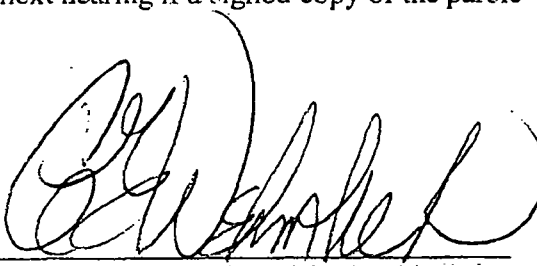
1. Officer Anderson stated he did not know if the hearing tapes were still available. He stated he would advise the parties within 10 days whether the tapes are available.
2. Officer Anderson testified he would determine if a signed copy of the parole violation was available. If the signed copy is available, Officer Anderson will forward a copy to the parties.
3. If the hearing officer, Fredna Gary, cannot provide a signed copy of the parole violation report to the parties, she must appear and testify before the court.
4. Officer Anderson provided the police report to the Applicant at this hearing. Therefore, the Applicant has a copy of the police report in his possession.

WHEREFORE IT IS ORDERED:

1. Officer Tony Anderson will advise parties within 10 days of this order whether the hearing tapes are available.
2. Officer Tony Anderson to provide a signed copy of the parole violation to parties, if available.
3. Hearing officer, Fredna Gary, will appear at the next hearing if a signed copy of the parole violation report is not provided to parties.

AND IT SO ORDERED.

Dated: 5/24/13
Greenville, South Carolina


The Honorable G. Edward Welmaker
Circuit Court Judge

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2011-CP-23-7846

JAMES ROBERT BYRD)

APPLICANT)

vs.)

STATE OF SOUTH CAROLINA)

RESPONDENT)

ORIGINAL

TRANSCRIPT OF RECORD

August 28, 2013

Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

RODNEY RICHEY, ESQ.

Attorney for the Applicant

KAREN C. RATIGAN, ESQ.

Attorney for the Respondent

APRIL HERRON

Official Court Reporter

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1 MS. RATIGAN: May it please the Court?

2 THE COURT: Yes, ma'am.

3 MS. RATIGAN: This is the case of James Robert Byrd
4 vs. The State of South Carolina, docket number is
5 2011-CP-23-7846. This is actually a PCR from a parole
6 revocation hearing. It is a very lengthy procedural
7 history so I'm just going to try to hit the high points.
8 Mr. Byrd went to trial on charges of kidnapping and first
9 degree criminal sexual conduct back in 1981. He was found
10 guilty and sentenced to concurrent terms of life for
11 kidnapping and 30 years on first degree CSC. He had an
12 appeal. He then had one, two, three, four PCR
13 applications. He filed a petition for a federal habeas
14 corpus in the United States District Court. That all
15 happened between the trial date and 2003.

16 On November 26th of 2003 he was paroled. May 11th of
17 2011 an arrest warrant was issued for several violations.
18 It was served upon Mr. Byrd on May 12th, 2011. A more
19 detailed violation report was issued on July 12th of 2011.
20 On August 2nd of 2011 there was an administrative hearing.
21 The hearing officer issued a summary in which it was found
22 that he violated the conditions of the certificate of
23 parole and that parole revocation was recommended. On
24 September 14th of 2011, Mr. Byrd went to a parole
25 violation hearing before a three member panel to the

1 board. Pursuant to which his parole was revoked.

2 And again, I'm kind of skimming through it pretty
3 quickly. This is contained on the first five pages of the
4 return that the State filed.

5 THE COURT: Okay.

6 MS. RATIGAN: Mr. Byrd has filed a timely PCR
7 Application. I would note that PCR's from parole
8 revocations are slightly different because you don't have
9 counsel, you don't have the right to counsel at parole
10 hearings. So, on page six of the return I set forth the
11 law on this. Basically, at this point the PCR Judge is
12 just determining whether or not the revocation was lawful,
13 the procedure was lawful.

14 THE COURT: Okay.

15 MS. RATIGAN: Again, that's set forth by the statute
16 and by case law on page six. At this point I would turn
17 it over to Mr. Richey. I would note that we had brought
18 this case up for a hearing back in April and limited
19 discovery was granted and that's going to all be presented
20 through the Applicant.

21 THE COURT: All right, good enough.

22 All right, Mr. Richey.

23 MR. RICHEY: We call Mr. Allen Norfus.

24 THE CLERK: Mr. Norfus, please place your left hand
25 on the Bible, raise your right hand.

1 ALLEN NORFUS, after being duly sworn, testified
2 as follows:

3 THE CLERK: Thank you, please be seated. State your
4 full name for the record.

5 THE WITNESS: Allen Jay Norfus, Sr.

6 DIRECT EXAMINATION

7 BY MR. RICHEY:

8 Q Mr. Norfus, where are you employed?

9 A Through the South Carolina Department of Probation
10 and Parole South Carolina Greenville County office.

11 Q Were you employed there when James Byrd had a parole
12 revocation hearing?

13 A Yes, sir.

14 Q And what part of or what play did you have in this
15 procedure? Were you his agent?

16 A I was not his agent but I conducted the hearing. I
17 ran the second half of the sex offender case load for
18 Greenville County.

19 Q And are you -- when you say hearing, are you
20 referring to the administrative hearing or the hearing
21 before the parole board?

22 A The administrative hearing.

23 Q Okay. At the administrative hearing -- you have a
24 copy of the report from the administrative hearing? Do
25 you have a copy in front of you?

ALLEN NORFUS-DIRECT BY MR. RICHEY

1 A Yes.

2 Q And at that hearing, Mr. Byrd, the reason for his
3 revocation at this hearing was because of an incident of
4 criminal domestic violence, is that correct?

5 A It was criminal domestic violence in which the report
6 stated that he also was drinking alcohol.

7 Q So, the combination of those is the reason why the
8 citation or warrant was issued for him? Is that...

9 A The warrant was issued because of the circumstances
10 of the CDV. We review those as community safety issues.

11 Q Okay. The CDV at the time, it was a pending charge,
12 is that correct?

13 A Yes.

14 Q And it was something that he was -- that he was not
15 convicted of, is that correct?

16 A As of issuance of the warrant, the date of the
17 warrant, no, he hadn't been convicted yet.

18 Q So -- so, it was, at that point, it wasn't an
19 absolute fact that he had committed these crimes, correct?

20 A No, the warrant was issued off of probable cause.

21 Q And did you -- do you recall whether you talked to
22 the deputy at the sheriff's office or the alleged victim
23 at all?

24 A Yes. I spoke to the victim and we pulled the
25 incident report prior to issuing a probable cause warrant.

ALLEN NORFUS-DIRECT BY MR. RICHEY

1 We have to pull the incident report and see exactly what
2 the circumstances of the incident were. If there was a
3 victim in which the -- a person on probation conflicted
4 bodily harm on a person or part of such offense that we
5 would view as community safety, we would staff with a
6 supervisor and he would determine such. The victim, after
7 the warrant was issued, prior to the hearing,
8 administrative hearing, the victim did call. We made
9 contact with the victim trying to see exactly what her
10 point of view was. She didn't say anything about whether
11 or not Mr. Byrd was innocent of the charges and that they
12 both were drinking. And made very little clarity of what
13 exactly occurred that night.

14 Q Without this incident, his parole -- well, without
15 this incident, according to the report, his parole would
16 not have been violated, is that correct? If he did not
17 have this incident?

18 A Which incident? Because --

19 Q The CDV and--

20 A No, that's not true. Because of the drinking part of
21 his conditions and the sex offender case load, that no
22 person shall engage in the drinking of alcoholic
23 beverages.

24 Q No, I'm saying, did alcohol, the CDV, that was all
25 one incident; right?

ALLEN NORFUS-DIRECT BY MR. RICHEY

1 A Right.

2 Q I'm just saying if this incident doesn't occur then
3 he would not have been violated for those things, correct?

4 A It's kind of hard to say. If he had other -- I don't
5 know if he had other issues that were going on with his
6 case. If he had other financial issues or whatever the
7 case might be. So, I'm not going to say yes that he would
8 not have been violated.

9 MR. RICHEY: One moment, Your Honor, please.

10 THE COURT: All right.

11 BY MR. RICHEY:

12 Q Did -- now this parole was based off this incident
13 report that the police provided to you or you got a copy
14 of, is that correct?

15 A We requested a copy of the incident report from
16 Greenville County Sheriff's Office.

17 Q Is there any other documents that you recall
18 presenting at the hearing?

19 A The only thing we presented was, I believe, was the
20 incident report and our violation report, the 1106 form
21 that we submit.

22 MR. RICHEY: Okay, answer any questions Ms. Ratigan
23 has for you.

24 THE COURT: Cross-examination.

25 MS. RATIGAN: Thank you, Your Honor.

ALLEN NORFUS-CROSS BY MS. RATIGAN.

1 CROSS-EXAMINATION

2 BY MS. RATIGAN:

3 Q Just to make sure I understand, so the officer who
4 responded to the CDV, did he note that Mr. Byrd had been
5 drinking or did he see that he was drinking?

6 A He did note in the incident report that the --
7 reading directly from the incident report, both were
8 noticeably intoxicated. I'm sorry, both had the odor of
9 alcohol beverage on their person. And there were empty
10 beer cans throughout the motel. Both confirmed they were
11 drinking.

12 Q And just drinking would have violated his parole?

13 A Correct, ma'am. They can't have alcohol in their
14 presence whatsoever.

15 MS. RATIGAN: Okay, that's all I have, Your Honor.

16 MR. RICHEY: I call Tony Anderson.

17 THE COURT: Thank you, sir, I appreciate it.

18 THE WITNESS: Thank you.

19 THE CLERK: Place your left hand on the Bible, raise
20 your right hand.

21 TONY ANDERSON, after being duly sworn, testified
22 as follows:

23 THE CLERK: Thank you, please be seated. State your
24 full name for the record.

25 THE WITNESS: Tony Anderson.

TONY ANDERSON-DIRECT BY MR. RICHEY

1 DIRECT EXAMINATION

2 BY MR. RICHEY:

3 Q Mr. Anderson, at the time of Mr. Byrd's parole
4 hearing, were you employed with the probation office?

5 A I was.

6 Q What relationship did you have with Mr. Byrd? Were
7 you his agent?

8 A I was.

9 Q And the parole administrative hearing, you didn't
10 participate in that, is that correct?

11 A No, I believe I had training that day.

12 Q Okay. But the substance of the allegations, were
13 they made by you or produced by you?

14 A Yes, sir.

15 Q Okay. The violations, you heard the previous agent,
16 the violations were basically that he was drinking and had
17 this alleged CDV charge, correct?

18 A Correct.

19 Q Is that the only -- well, is that the major reason
20 why he was violated?

21 A I wouldn't say that was the major reason why he was
22 violated, that was his present violations. But he had
23 prior violations on his record. So, all that come into
24 play once the decision is made.

25 Q Okay. And I ask again, there was no evidence that he

TONY ANDERSON-DIRECT BY MR. RICHEY

1 had been convicted of any of these charges?

2 A No, sir.

3 Q Okay. At the time that he was on parole, he was on
4 parole for two charges, correct?

5 A I don't have the file in front of me but I know
6 kidnapping was one of them, yes.

7 Q Okay. And -- and a non sex offender parolee, the
8 alcohol restriction is not automatic on them, correct?

9 A Right, they just can't drink to excess.

10 Q So, if he was not on parole for the sex offender
11 part, then he could actually be in the presence of alcohol
12 but not drink excessively?

13 A Right.

14 MR. RICHEY: Thank you, answer any questions
15 Ms. Ratigan has for you.

16 CROSS-EXAMINATION

17 BY MS. RATIGAN:

18 Q And it is true that just having an arrest is a parole
19 violation?

20 A Not arrest. Not contacting your agent of that
21 arrest.

22 Q Okay. And I assume Mr. Byrd did not contact you
23 after he was arrested?

24 A No, ma'am.

25 Q And were you the agent who presented the case to the

TONY ANDERSON-CROSS BY MS. RATIGAN

1 three member board?

2 A Yes, ma'am.

3 MS. RATIGAN: Okay, that's all I have, Your Honor.

4 MR. RICHEY: That's all.

5 We call Ms. Gary.

6 THE COURT: All right, you may step down.

7 THE CLERK: Place your left hand on the Bible, raise
8 your right hand.

9 FRETNA GARY, after being duly sworn, testified
10 as follows:

11 THE CLERK: Thank you, you may be seated. State your
12 name for the record.

13 THE WITNESS: Fretna Daphine Gary.

14 DIRECT EXAMINATION

15 BY MR. RICHEY:

16 Q Ma'am, where are you employed?

17 A South Carolina Department of Probation Parole and
18 Pardon Services.

19 Q And what are you -- how long have you been employed
20 as an administrative hearing officer for them?

21 A For four years.

22 Q Okay. And you do you recall a case with Mr. Byrd?

23 A I do. I had a difficult time at first trying to
24 place him but I remember.

25 Q And you issued -- you issued a report from this

FRETNA DAPHINE GARY-DIRECT BY MR. RICHEY

1 hearing, is that correct?

2 A I did.

3 Q And do you have a copy of that report? Well, I can
4 show you this copy if you don't have one.

5 A I have a copy that I received from the Clerk of
6 Court's Office. My records are destroyed after one year.

7 Q Okay. Well, I'm going to let you -- I'm going to let
8 you look at this, and I've got a highlighted part on it,
9 but look at this report. Does this reflect a report that
10 you would do?

11 A Yes, sir.

12 Q Okay. And that report is not signed by you, is that
13 correct?

14 A That is correct.

15 Q Can you tell me why it's not signed and what's the
16 procedure of signing it or not signing it?

17 A Because we usually send it by email to the agent.

18 Q Okay. To which agent?

19 A To the supervising agent of that particular person.

20 Q Of the offender?

21 A Yes, sir.

22 Q Okay. And so, because you haven't signed this, it
23 does not mean that you did not issue the report?

24 A That's correct.

25 Q So, it's your testimony that you, in fact, issued the

FRETNA DAPHINE GARY-DIRECT BY MR. RICHEY

1 report on this case?

2 A Yes, sir.

3 Q And your failure to sign it is because that's a
4 interoffice procedure because it's done through email, is
5 that correct?

6 A Yes, sir.

7 Q Okay. In this report, I'm going to hand you a copy
8 of this report and this is a clean copy. I want you to
9 look, this is -- I'll give you a second to look for yours.
10 Okay, ma'am, in this report, did you find probable cause
11 that Mr. Byrd had violated his parole?

12 A I did.

13 Q And can you tell me the basis for -- I can read your
14 conclusion about the domestic violence charge and the
15 alcohol, is that the reason why you found probable cause?

16 A I found probable cause because of reading the
17 incident report from the sheriff's department, that
18 particular officer stated in detail, the events of that
19 day. In retrospect to both parties being intoxicated.
20 And that the victim's lip was bleeding and there was blood
21 on the wall, beer cans throughout the motel room. And
22 because there was a warrant issued. In order to receive a
23 warrant it's my understanding that you have to have
24 probable cause. So, based upon that, based upon the fact
25 that he had already had five prior hearings, two of which

FRETNA DAPHINE GARY-DIRECT BY MR. RICHEY

1 involved new charges. One was new charges, the other one
2 was new convictions for those charges. I believe that
3 there was probable cause to believe that he did commit the
4 offense of criminal domestic violence.

5 Q Okay. The officer did not testify at this hearing,
6 is that correct?

7 A That's correct.

8 Q Okay. Ma'am, if I ask you some of the questions I
9 asked the other agent, if he did not have the charge, do
10 you believe that still would have been probable cause to
11 violate him? Without the charge with alcohol and without
12 the incident report?

13 A I would have to say that's not my call. That depends
14 upon the agent and his supervisor.

15 Q So, basically they bring to you and you decide what
16 they bring to you?

17 A No, sir. They decide what they bring to me. I
18 decide what to do with it.

19 Q Right. Right. They bring it to you then you decide
20 it?

21 A Yes, sir.

22 Q All right. And you testified that this previous
23 violation had something to do with him being violated on
24 this particular incident?

25 A Everything is based upon the preponderance of the

FRETNA DAPHINE GARY-DIRECT BY MR. RICHEY

1 evidence, the weight of evidence. His prior violations
2 played a role in that weight.

3 Q Okay. So, the prior violations, it's just not based
4 on what he did this particular time, it's based on his
5 history.

6 A It's based primarily on what the current violations
7 are. But it also is based upon his prior violations while
8 under supervision.

9 Q Okay. So, in essence he could actually be -- the
10 current violations could not raise to the level to violate
11 him but when you look at in totality with his previous
12 violations, it could result in a revocation?

13 A I've never used prior violations to revoke anyone or
14 ask that someone be revoked. But I do take into account
15 that he has had prior violations.

16 MR. RICHEY: Okay, thank you, ma'am. Answer any
17 questions Ms. Ratigan has for you.

18 MS. RATIGAN: I don't have any questions for
19 Ms. Gary.

20 THE COURT: Thank you, Ms. Gary, I appreciate it, you
21 can step down.

22 THE WITNESS: Thank you.

23 THE COURT: Yes, ma'am.

24 Anything further from the Applicant?

25 MR. RICHEY: Call Mr. Byrd.

FRETNA DAPHINE GARY-DIRECT BY MR. RICHEY

1 I ask that Ms. Gary be excused, if she wants to be.

2 THE COURT: Okay, do you want to stay or do you want
3 to go?

4 MS. GARY: I'll stay.

5 THE COURT: Okay, good. Glad to have you.

6 THE CLERK: Place your left hand on the Bible, raise
7 your right hand.

8 JAMES BYRD, after being duly sworn, testified as
9 follows:

10 THE CLERK: Thank you, you may be seated. Please
11 state your full name for the record.

12 THE WITNESS: James Robert Byrd.

13 DIRECT EXAMINATION

14 BY MR. RICHEY:

15 Q Mr. Byrd, you are on a parole revocation violation,
16 correct?

17 A Yes, sir.

18 Q You're going to have to speak up.

19 A Yes, sir.

20 Q Okay. And it's your position that your parole was
21 improperly violated, is that correct?

22 A That's correct.

23 Q And can you tell me why you believe that?

24 A Well, at the time that it was violated it was based
25 on a pending allegation. I had not been before the court.

JAMES BYRD-DIRECT BY MR. RICHEY

1 I had not received due process on the charge that they
2 violated me on.

3 Q Okay, let's go back. All this testimony about the
4 CDV and all of that, at the time you went before parole,
5 for your parole administrative hearing and your
6 revocation, it's your position there were pending charges
7 and the allegations were not proved.

8 A That is true.

9 Q Okay. And you believe that you were improperly
10 violated on those charges?

11 A That is true.

12 Q Okay. Has anything happened with the charges,
13 subsequently?

14 A Yes, sir.

15 Q What is that?

16 A I was found not guilty.

17 Q Okay. And so, that solidifies your position that you
18 should not have been violated?

19 A Yes, sir.

20 Q Okay. Is there -- what are the other issues that you
21 believe your parole was improperly violated?

22 A Well, my understanding on the August 2nd
23 administrative hearing, the administrative, according to
24 my memories, she did not find probable cause. And
25 probable cause was required to be found. As I remember,

JAMES BYRD-DIRECT BY MR. RICHEY

1 Agent Norfus testified -- well, he didn't testify, he read
2 a statement from the sheriff deputy. That statement
3 was -- that incident report was incorrect, it was totally
4 wrong. It is proven by my acquitter of the charge of
5 criminal domestic violence. What have not been mentioned,
6 in March I had just had another stroke. The reason I talk
7 this way is because I've had five strokes since I got out
8 of prison. In March I had a stroke and went to the
9 hospital and was hospitalized about a week or a little
10 more. At the time the incident happened, I was walking on
11 a crutch. I had speech impairment that I couldn't talk
12 clearly. It had been foolish for me to be drinking at
13 that time. Because my high blood pressure, one of the
14 things they was talking about, my high blood pressure was
15 causing me to have these strokes. My agent, Tony
16 Anderson, could testify he got all my medical records.
17 And I had just come out of the hospital. So, for me to be
18 drinking, you know, it would have been crazy. And it
19 wasn't true. I don't know why the officer said -- I can't
20 say why he would say that. Unless he took the way I was
21 talking or, you know, as me being under the influence or
22 something.

23 Q So, your position, this incident report that they're
24 relying upon, you saying that you were not intoxicated?

25 A No, sir.

JAMES BYRD-DIRECT BY MR. RICHEY

1 Q And it was not--

2 A No, sir.

3 Q -- actually true?

4 A Not true. And, in fact, a Judge had an opportunity
5 to look at the evidence of the allegations. And surely he
6 wouldn't have come back with a non not guilty verdict had
7 he believed the incident report.

8 Q Okay. And you stated the hearing officer did not
9 find probable cause. You are aware that was there a
10 report issued in this case, correct?

11 A Yes, sir.

12 Q And you are aware that in this report, it says
13 there's probable cause and you were in the courtroom when
14 she testified, correct?

15 A That is correct.

16 Q And your position right now is inconsistent; with
17 those two things, correct?

18 A That is correct.

19 Q I'm going to ask you a question -- correct. But your
20 position is that at the date of the hearing, she didn't
21 find probable cause?

22 A That is correct.

23 Q Tell me what you base that on.

24 A Well, after Agent Norfus had read the incident report
25 from the sheriff's department, I remember her saying, you

JAMES BYRD-DIRECT BY MR. RICHEY

1 saying, Officer Norfus, you were saying that he did it.
2 He was saying that he didn't do it. I don't know. I'm
3 going to tell you what I'm going to do, Mr. Byrd. I'm
4 going to send it to the parole board and let them deal
5 with it. That is not probable cause.

6 Q Okay.

7 A She didn't even announce it.

8 Q Okay. Okay. What other incidents did you have with
9 your parole being revoked?

10 A Beg your pardon?

11 Q What other issues do you have with your parole being
12 revoked?

13 A On this present?

14 Q Yeah.

15 A Because I was not guilty of a rule violation.

16 Q So, it's your position that your administrative
17 process was not fair because you were violated on
18 something that you were not found guilty on, correct?

19 A Correct. I believe that they should have waited
20 until after the criminal domestic violence charge had went
21 to court to verify that there were, in fact, violation of
22 state law.

23 Q So, it's your position that they should have held off
24 until you went to court and then saw what happened with
25 the warrant and then went forward?

JAMES BYRD-DIRECT BY MR. RICHEY

1 A Yes, sir.

2 MR. RICHEY: Okay, thank you. Answer any questions
3 Ms. Ratigan has for you.

4 CROSS-EXAMINATION

5 BY MS. RATIGAN:

6 Q Didn't you have five other prior violations while you
7 were out on parole?

8 A Yes, ma'am.

9 Q Okay. And your testimony is that you weren't
10 drinking that day and you don't understand why the officer
11 said he smelled it on you, because you hadn't been
12 drinking?

13 A That is correct.

14 MS. RATIGAN: Okay, that's all I have, Your Honor.

15 THE COURT: Anything else?

16 MR. RICHEY: That's all.

17 THE COURT: All right, thanks for being here, I
18 appreciate it. Step down.

19 Anything further from the Applicant?

20 MR. RICHEY: No, sir.

21 THE COURT: Anything from the State?

22 MS. RATIGAN: We rest on the record, Your Honor.

23 THE COURT: Okay, good enough. All right, after
24 having had the opportunity to review all of the documents
25 filed in this matter and all the documents tendered to the

1 application and having had the opportunity to read the
2 testimony -- to listen to the testimony of the witnesses
3 in this case, I'm going to respectfully deny your
4 application for post-conviction relief, Mr. Byrd.
5 Essentially, what I'm tasked with doing in a request for
6 an application for post-conviction relief from a parole
7 board hearing is to determine whether it was convened and
8 conducted in accordance of the law. And I find in this
9 instance that it was convened in accordance with the law.
10 I recognize that you take exception to having been
11 found to have violated your parole based on a charge that
12 had not yet been adjudicated. And you argue that that's a
13 violation of your constitutional due process rights to be
14 punished for something that had not yet fully been
15 adjudicated. And on an offense for which you did not have
16 the opportunity to have a trial by jury, confront your
17 witnesses and to invoke your other important
18 Constitutional rights. Ordinarily, when someone comes
19 before me on a probation violation, I won't violate them
20 on those. Except under certain limited circumstances.
21 And in looking at this record, Ms. Gary, found that you
22 had violated your parole based on what appears to me to be
23 those certain limited circumstances that I would have
24 taken into consideration in a probation revocation as
25 well. She didn't find that you had committed the offense.

1 What she found is that there had been a warrant issued
2 based on probable cause that you had committed the
3 offense. After having made that determination, she noted
4 and she found that by preponderance of the evidence as the
5 hearing officer, that you had failed to notify your parole
6 agent, your parole officer, that there was a charge
7 pending. Which in and of itself is a violation of the
8 conditions of the parole. She also found that based on
9 the warrant that had been issued, there were allegations
10 of alcohol consumption in violations of the conditions of
11 your parole.

12 Now, when she says, I consider the five previous
13 violations, she wasn't considering those as part of her
14 evidentiary findings, she was considering those as matters
15 that lent to your credibility as a witness. And when she
16 looks at those five prior incidences and there are
17 allegations and findings that there has been alcohol
18 consumption in violations of the conditions of parole,
19 then she is more likely than not, that is by a
20 preponderance of the evidence, going to believe the
21 testimony and the evidence that she has heard that
22 suggests that you were consuming alcohol. Not
23 withstanding the fact that you may have denied that. She
24 found that the evidence that she had that you were
25 consuming alcohol was more believable than your testimony

1 that you had not been doing so. She, as the hearing
2 officer, found by a preponderance of the evidence that you
3 had violated the terms of your parole. Based on all of
4 the evidence presented to her in the aggregate. It wasn't
5 based on whether she believed you had committed the
6 offense of criminal domestic violence. As a matter of
7 fact, ultimately that was academic. She had other
8 grounds. That was essentially the vehicle that got her in
9 front of you on the parole revocation.

10 So, I understand the exception that you take to it on
11 constitutional grounds, however, I'm not here looking at
12 it on those specific constitutional grounds, just as to
13 whether they followed the law. And I'm constrained by the
14 law in that regard. And I find that they didn't and I
15 deny your petition. I wish you good luck, Mr. Byrd.

16 MS. RATIGAN: Thank you, Your Honor.

17 (WHEREUPON, the proceedings were concluded.)

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24

25

CERTIFICATE OF REPORTER

1

2

3

4 STATE OF SOUTH CAROLINA)

)

5 COUNTY OF GREENVILLE)

6

7

8 I, APRIL P. HERRON, Official Court Reporter for the

9 Thirteenth Judicial Circuit of the State of South

10 Carolina, do hereby certify that the foregoing is a true,

11 accurate and complete Transcript of Record of the

12 proceedings had and evidence introduced in the trial of

13 the captioned case, relative to appeal, in the Court of

14 Common Pleas for Greenville County, South Carolina, on the

15 28th day of August, 2013.

16 I do further certify that I am neither of kin,

17 counsel nor interest to any party hereto.

18

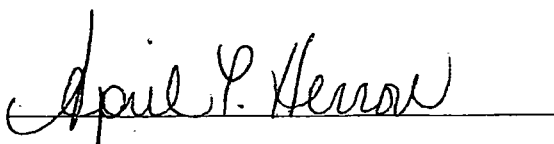
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February 12, 2014

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23

APRIL P. HERRON, Court Reporter

24

25

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No. 2011-CP-23-7846

James Robert Byrd,)
S.C.D.C. No. 98230,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

2013 OCT 24 AM 8 48

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 22, 2011. The Respondent made its return on March 29, 2012. An evidentiary hearing into the matter was convened on August 28, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Parole Agent Allen Norfus, Sr., former Parole Agent Tony Anderson, and Administrative Hearing Officer Fredna Gary. The Court had before it the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the prior PCR and appellate records, and South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) records relating to the Applicant's parole revocation.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections.

RBS

The Applicant was indicted at the April 1981 term of the Greenville County Grand Jury for kidnapping (1981-GS-23-1642) and first-degree criminal sexual conduct (CSC) (1982-GS-23-1643). The Applicant was represented by H.W. "Pat" Paschal, Jr., Esquire.

After the State brought the case to trial, the Applicant was found guilty. On July 28, 1981, the Honorable James B. Stephen sentenced the Applicant to concurrent terms of life imprisonment for kidnapping and thirty years for first-degree CSC.

Direct Appeal

A notice of appeal was filed at the South Carolina Supreme Court. John L. Sweeney, Esquire and William I. Diggs, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Supreme Court affirmed the Applicant's conviction and sentence. State v. Byrd, Op. No. 82-MO-382 (S.C. Sup. Ct. filed Dec. 29, 1982).

Post-Conviction Relief

1983

The Applicant filed a PCR application on January 19, 1983. The Applicant raised the following issues:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Unconstitutional search.
4. Unconstitutional indictment.
5. Unconstitutional statute.
6. Double jeopardy.

An evidentiary hearing was convened on May 17, 1983. Phillip E. Reeves, Esquire represented the Applicant. The Honorable Francis B. Nicholson denied and dismissed the PCR application by order dated June 27, 1983. The Applicant filed a timely notice of appeal at the South Carolina Supreme Court, which was perfected by Tara Shurling, Esquire of the South

RMS

Carolina Office of Appellate Defense. On January 9, 1984, the Supreme Court denied the petition for writ of certiorari.

1986-CP-23-0278

The Applicant filed a PCR application on January 6, 1986 (1986-CP-23-0278). The Applicant raised the following issues:

1. Ineffective assistance of counsel.
2. "Trial judge failed to advise jury mercy could be recommended."
3. "Trial judge made false statement in his charge to jury."

The Respondent filed a return and motion to dismiss. In an order dated September 4, 1986, the Honorable C. Victor Pyle, Jr. dismissed the application because it was successive. The Applicant did not appeal.

1996-CP-23-0471

The Applicant filed a PCR application on February 14, 1996 (1996-CP-23-0471). The Applicant raised the following issues:

1. "Parole question regarding life sentence for kidnapping."
2. "Change in State law."
3. "Violation of Applicant constitution right to due process."

The Respondent filed a return and motion to dismiss. The Honorable C. Victor Pyle, Jr. issued a conditional order of dismissal dated June 26, 1996. Judge Pyle issued a final order of dismissal dated August 16, 1996. The Applicant filed a timely notice of appeal at the South Carolina Supreme Court, which was perfected by Wanda H. Haile, Esquire of the South Carolina Office of Appellate Defense. On December 8, 1997, the Supreme Court denied the petition for writ of certiorari.

1998-CP-23-1302

The Applicant filed a PCR application on April 14, 1998 (1998-CP-23-1302). The Applicant raised the following issue:

1. "Denial of due process of law where Applicant was convicted at a standard of less than required by the due process clause as a result of erroneous jury instructions on the term 'reasonable doubt;' and counsel was rendered ineffective through change in common law making and recognizing the jury instructions as erroneous and a structural defect."

An evidentiary hearing was convened on August 3, 1999 at the Greenville County Courthouse. James F. Brehm, Esquire represented the Applicant. The Honorable John W. Kittredge denied and dismissed the PCR application by order dated September 17, 1999. The Applicant filed a timely notice of appeal at the South Carolina Supreme Court, which was perfected by Wanda H. Haile, Esquire of the South Carolina Office of Appellate Defense. The Supreme Court denied the petition for writ of certiorari and the remittitur was sent on December 4, 2001.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina on January 10, 2002 (3:02-0060-12BC). The Respondent submitted a motion for summary judgment on May 1, 2002. The Honorable Joseph R. McCrorey, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated January 10, 2003. On March 17, 2004, the Honorable C. Weston Houck, United States District Judge, issued an order granting the motion for summary judgment and dismissing the petition with prejudice.

Parole Revocation

On November 26, 2003, the Applicant was paroled by the South Carolina Board of Probation, Pardon and Parole Services (the Parole Board).

On May 11, 2011, an arrest warrant was issued to the Applicant for the following violations:

By violating conditons [sic] 3 and 10 of his Conditions of Supervision dated 11-21-03 and 10 of the Standard Sex Offender Conditions dated 1-30-06 by the South Carolina Board of Probation, Parole, and Pardon Services and continuation orders by the Administrative Hearing Officer dated 3/28/06, 10/3/06, 3/18/08, 6/4/09, and 3/14/11.

(Parole Arrest Warrant number W-23-11-0384). The return on the warrant indicates it was served upon the Applicant on May 12, 2011. A more detailed Violation Report was issued on July 12, 2011.

On August 2, 2011, the Applicant attended an administrative hearing. The hearing officer issued an Administrative Hearing Summary in which: (1) it was found the Applicant violated conditions 3 and 10 in the Certificate of Parole accepted by the Applicant upon his release and (2) parole revocation was recommended. On September 14, 2011, the Applicant appeared at a parole violation hearing held before a three (3) member panel of the Parole Board, pursuant to which his parole was revoked.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Violation of Fourth and Fourteenth Amendments:
 - a. Violation of due process.
 - b. Violation of equal protection.
 - c. Violation of presumption of innocence because the parole violation

- was based on charges that were still pending.
- d. The administrative hearing officer should not have allowed the statement of a deputy sheriff to be "enter in as evidence when such admission constituted a violation of Applicant created right granted by the Responding."
 - e. Parole agent "willfully withheld a statement from Miss Lelia D. Banks that completely exonerate Applicant from any and all wrong doing."
2. Violation of constitutional right to bail.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe the witness who testified at the hearing, and to closely pass upon his credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A proceeding under the Uniform Post-Conviction Procedure Act may be instituted by: "Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint." S.C. Code Ann. § 17-27-20 (Supp. 2004). An inmate's non-collateral claim that his parole was unlawfully revoked falls squarely within the ambit of the PCR statute. Kerr v. State, 345 S.C. 183, 547 S.E.2d 494 (2001); Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). However, this does not give the court the authority either to conduct a de novo review of the case or to otherwise sit in an appellate capacity to review the Parole Board's discretionary decision. To the contrary, the South Carolina Code specifically provides: "[t]he board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed." S.C. Code Ann. § 24-21-680 (1989 &

Supp. 2004). The court's review of whether the Applicant's parole was unlawfully revoked is limited to an examination of whether the revocation procedure itself was lawful.

The Applicant stated his parole was improperly violated based on a pending criminal domestic violence (CDV) charge and that he was later found not guilty of this charge. The Applicant stated he had not been drinking alcohol when he was arrested for CDV. The Applicant stated SCDPPPS should have waited to begin revocation proceedings until after the CDV charge went to court. The Applicant admitted, however, that he had five prior parole violations.

Parole Agent Allen Norfus, Sr. testified that, while he was not the Applicant's agent, he conducted the administrative hearing. Agent Norfus testified the Applicant was arrested for CDV and the incident report indicated he had been drinking alcohol. Agent Norfus testified he reviewed the incident report and spoke to the victim and determined there was probable cause to issue a parole arrest warrant. Agent Norfus testified the Applicant was not allowed to drink alcohol (because he was a Sex Offender) and that this violated his parole. Agent Norfus testified he presented the incident report and the violation report at the administrative hearing.

The Applicant's former Parole Agent, Tony Anderson, testified he was not present at the administrative hearing but that he presented the case to the Parole Board. Anderson testified he compiled the list of allegations against the Applicant. Anderson testified the Applicant violated his parole by (1) drinking alcohol and (2) not reporting that he had been arrested for CDV. Anderson testified the Applicant had five prior parole violations that were considered when the present parole violation was issued.

SCDPPPS Administrative Hearing Officer Fredna Gary testified she remembered the

Applicant's case. Hearing Officer Gary testified she issued a report from the hearing and that such report is not signed because it is usually sent by email to the offender's supervising parole agent. Hearing Officer Gary testified she found there was probable cause the Applicant violated his parole. Hearing Officer Gary testified the incident report from the CDV arrest indicated both the Applicant and the victim were intoxicated (and there were beer cans throughout the room) and that the victim's lip was bleeding and there was blood on the wall. Hearing Officer Gary testified the Applicant had five prior parole violations (two of which involved new charges) and that she takes the prior violations into account. Hearing Officer Gary testified she found probable cause in this case.

This Court finds the Applicant has failed to meet his burden of proving his due process rights were violated and his parole unlawfully revoked. This Court finds the Applicant was arrested for CDV and the arresting officer noted the Applicant's intoxication on the incident report. This Court finds the Applicant's use of alcohol and the failure to report the arrest were the basis for the Applicant's parole arrest warrant. This Court notes parole is a matter of grace, not a right. See Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593 (1972). As noted supra, the Applicant clearly violated the terms of his parole. Hearing Officer Gary did not find the Applicant committed the offense. Rather, she found the parole arrest warrant was issued based on probable cause and also considered the Applicant's five prior parole violations in reaching this conclusion. The Applicant's case was properly before the Parole Board and this Court finds the Parole Board's revocation procedure in this case was lawful. This Court concludes the Applicant is not entitled to a new parole revocation hearing.

This Court concludes the Applicant has not met his burden of proving he is entitled to

post-conviction relief. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.").

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

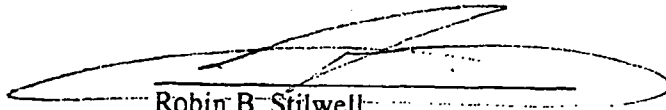
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations related to the parole revocation proceedings. Therefore, this PCR application is denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22 day of OCT, 2013.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Givice, South Carolina.

Witnesses

T. A. Ridgeway, Sheriff's Office

11/25/80

The State of South Carolina

McC. 80-1016-1381
81-GS-23-1042
JUN

County of GREENVILLE

COURT OF GENERAL SESSIONS

APRIL

Term, 1981

CA 80-111232

CR. 80-111232

THE STATE

VS.

JAMES ROBERT BYRD, JR.

~~GUilty~~

Verdict

GUilty

Richard J. Jucke
Foreman

INDICTMENT FOR

KIDNAPPING

FREE BILL

James R. Ridgeway, Jr.
TREAS. CLERK JURY

Foreman of Grand Jury

W. C. R. TRAYLOR

CLERK, S. C. 2005

54

HOW DOES THE DEFENDANT

Who in open court pleads guilty to the within indictment:

and consents to sentence this _____ day of _____ 1981

ATTEST: *W. M. Matheson*

Clerk of Court

Let the within defendant *James Robert Byrd* be confined

In the custody of the State Board of Corrections for a period of *Life*

pay a fine of _____ Dollars

JUL 28 1981

Presiding Judge

The State of South Carolina

INDICTMENT FOR

County of GREENVILLE

KIDNAPPING

At a Court of General Sessions, convened on the 9th day of April,
19 81, the Grand Jurors of Greenville County present upon their oath:

That JAMES ROBERT BYRD

did in Greenville County on or about the 24th day of November

19 80, commit the offense of kidnapping in violation of Section 16-3-910 of the Code of Laws of South Carolina, as amended, in that the said JAMES ROBERT BYRD did through threats of deadly harm, forcefully seize, kidnap, abduct and carry away Betty Garrett without the authority of law and against her will and consent.

Against the peace and dignity of the State, and contrary to the statute in such case and made and provided.

William W. Williams, Jr.
Solicitor

RETURN

STATE OF SOUTH CAROLINA

INFORMATION ON DEFENDANT

PRELIMINARY HEARING held by

Nov. 25, 1980

J. E. Gibson

County of GREENVILLE
or Municipality of GREENVILLE

CASE 180-111232 *B-562458*
W. S. HARRIS
100-768

THE STATE AGAINST

A copy of this Arrest Warrant was delivered by me to the following defendant:

James R. BERT BIRD

JAMES ROBERT BIRD

Name JAMES, ROBERT BIRD

Address

GREENVILLE, S.C.

Phone NO PHONE

Sex M Race B Height 5'11"

Weight 145 Birthdate

Social Security Number

INFORMATION ON WITNESSES

Name J. E. GIBSON

Address SHERIFF DEPT.

Phone 271-5240

Name

Address

Phone

Name

Address

Phone

Judge

on 1980

with Attorney for Defendant.

Decision:

BAIL

Date Set 11/25/1980

Judge *J. E. Gibson*

Amount \$34,000

Surety

on the 25 day of Nov, 1980
J. E. Gibson

I, Warrant is certified for service in

County for Municipality

The accused is to be arrested and brought before me to be dealt with according to law.

(L.S.)

Co-Defendants

Sentence

Disposition

Officer and Agency T.A. RIDGEMAN

Date 11-25-80

Code for Ordinance Section

16-3-652

Offense CRIMINAL SEXUAL CONDUCT 1st

ARREST WARRANT

STATE OF SOUTH CAROLINA

Arrest Warrant A 362458
ARREST WARRANT

COUNTY OF GREENVILLE

OR MUNICIPALITY OF GREENVILLE

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF GREENVILLE, AND ANY CONSTABLE OF THIS
MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that (name of
defendant): JAMES ROBERT BYRD
did on the 24 day of NOV, 1980,
violate the criminal laws of the State of South Carolina (or ordinances of the municipality
of GREENVILLE) as set forth below:

DESCRIPTION OF OFFENSE

CRIMINAL SEXUAL CONDUCT 1st DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring
JAMES ROBERT BYRD before me forthwith to be dealt with according to 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.

Done at GREENVILLE, S.C., this 25 day
of NOV, 1980.

[Signature] (L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF GREENVILLE

Personally appeared before me, Judge of this Court, one T.A. RIDGEWAY
who, first being duly sworn, deposes and says that (name of defendant)
JAMES ROBERT BYRD

did within this County and State on the 24 day of NOV,
1980, violate the criminal laws of the State of South Carolina (or ordinance of the municipality of
GREENVILLE) in the following particulars:

DESCRIPTION OF OFFENSE

CRIMINAL SEXUAL CONDUCT 1st DEGREE

The Affiant states that there is probable cause to believe that the defendant named above did commit the
crime(s) set forth, and that such probable cause is based on the following facts:

THIS AFFIANT HAS A SWORN STATEMENT FROM THE VICTIM, BETTY GARRETT, THAT A BLACK
MALE IN A GREEN STATION WAGON WITH THE BACK SEAT DOWN AND MILLER BEER BOTTLES
IN THE FLOOR DID FORCE HER IN THE CAR AND DID FORCE HER TO HAVE SEXUAL INTER-
COURSE WITH HIM. THE VICTIM ALSO STATED THAT SHE LEFT HER BLUE TENNIS SHOES
WITH WHITE STRIPES IN THE FRONT OF THE CAR. A CONSENT TO SEARCH WAS SIGNED
BY THE DEFENDANT AND THE CAR WAS LOCATED AT THE DEFENDANT'S HOUSE. IN THE FRONT
SEAT WERE A PAIR OF BLUE WITH WHITE STRIPES SHOES AND A MILLER BEER BOTTLE IN THE
IN THE BACK. ALSO THE VICTIM STATED THAT THE BACK SEAT WAS DOWN IN THE CAR. THE SEAT
WAS ALSO DOWN IN THE DEFENDANT'S CAR. *The victim had a cut on the back*
Sworn to and Subscribed before me *to 20 Real and abrasions on*
right hand.

this 25 day of Nov, 1980.

[Signature]
Signature of Judge

(L.S.)

[Signature]
Affiant

Address 70

Phone 271-5280

FORM CONTINUES ON BACK

ORIGINAL.

Witnesses

T. A. Ridgeway
Sheriff's Office

11/25/80

Verdict

GUILTY

Richard J. Jackson
Defendant

File # 1016-1423

81-GS-23-1043

JUN

The State of South Carolina

County of GREENVILLE

COURT OF GENERAL SESSIONS

APRIL Term 19 81
W. A. 302438 C. 80-111232

THE STATE

~~GUILTY~~ VS. ROBERT BYRD 2549m

The State, D.D. *Robert Byrd*
160 *facts*

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

TRUE BILL

James R. Ridgeway
SHERIFF OF GREENVILLE COUNTY

W. A. 302438 C. 80-111232

53

NOW COMES THE DEFENDANT

James Robert Byrd
Who in open court pleads guilty to the within indictment

and consents to sentence this _____ day of _____ 19 _____

ATTEST
Caroline W. Matton
Clerk of Court

Let the within defendant *James Robert Byrd*

be confined
in the custody of the State Board of Corrections
for a period of *30 days*

pay a fine of _____ Dollars
Caroline W. Matton

JUL 28 1981

James R. Ridgeway
Presiding Judge

The State of South Carolina**INDICTMENT FOR**County of GREENVILLE**CRIMINAL SEXUAL CONDUCT - FIRST DEGREE**

At a Court of General Sessions, convened on the 9th day of April,
 1981, the Grand Jurors of Greenville County present upon their oath:

That JAMES ROBERT BYRD

did in Greenville County on or about the 24th day of November,
 1981, commit criminal sexual conduct in the first degree, in violation of
 Section 16-3-652 of the Code of Laws of South Carolina, in that the
 said defendant did commit a sexual battery, to wit: sexual intercourse,
 against Betty Garrett by threatening her with the use of a deadly weapon;
 further that he did use aggravated force in the form of physical force of
 a high and aggravated nature to overcome the victim in that he was a male
 superior in size and strength to the victim and that he did cause her
 serious and painful injuries to accomplish the sexual battery; and further
 that the victim submitted to the sexual battery while she was the victim
 of a forcible confinement and kidnapping.

Against the peace and dignity of the State, and contrary to the statute in such case and made and
 provided.

William H. Wilder, Jr.
 Solicitor