

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

RECEIVED

JUL 28 2014

S.C. Supreme Court

JAMES FREDDIE MILLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000373

A P P E N D I X

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Appellate Defender

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	IN THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	THE COURT OF GENERAL SESSIONS
	)	2009-GS-23-09275
THE STATE OF SOUTH CAROLINA,	)	
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
JAMES FREDDIE MILLER,	)	
	)	DATE: APRIL 3, 2012
DEFENDANT.	)	LAURENS, SOUTH CAROLINA

PROBATION VIOLATION HEARING

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR.

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

E.R. CASTILLO
PROBATION AGENT

TARA WATERS, ATTORNEY AT LAW
PUBLIC DEFENDER

PROVIDED FOR: OFFICE OF THE ATTORNEY GENERAL

FOR COPIES CONTACT: JO RICE
jrice@sccourts.ORG
OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

*(ONE EXHIBIT, C-1, A MENTAL HEALTH LETTER, WAS ENTERED
INTO EVIDENCE OFF THE RECORD AS A COURT'S EXHIBIT)

1 THE COURT: All right. Apparently, this is Mr.
2 Miller?

3 MS. CASTILLO: Yes, sir.

4 THE COURT: Go right ahead.

5 MS. CASTILLO: May it please the Court, Your Honor.
6 This is James Freddie Miller's case. Indictment Number:
7 09-GS-23-09275 for shoplifting and that is for a third or
8 subsequent offense, value of \$2000.00 or less. He was
9 sentenced by Judge McIntosh on July 1, 2011. He was
10 sentenced to 10 years suspended to 3 years and 5 years
11 probation. He started living in Atomic Drive Laurens with
12 his sister.

13 For priors, Your Honor, he lied to me in 2011..
14 Subject stated he did not use any illegal drugs during his
15 office visit. He was submitted to random drug testing and
16 he was positive for THC and methamphetamine. Subject then
17 admitted after the test that he was using marijuana days
18 prior to his report date and a week prior to his office
19 visit. He was given 1217 verbal reprimand and he was
20 referred to Voc Rehab for substance abuse counseling.

21 On August 24, 2011, subject was positive again with
22 cocaine on 24th of August and admitted to using cocaine on
23 22nd of August. He was arrested for shoplifting in Laurens
24 and had a bench warrant from Lexington County. He failed
25 to notify his agent regarding his arrest and he's behind on

THE STATE OF SOUTH CAROLINA VERSUS JAMES FREDDIE MILLER

1 supervision fees of \$50.00, drug testing, \$20.00 and
2 surcharge of \$5.00. He was given an 1182 at that time. He
3 was instructed to complete substance abuse counseling
4 through Voc Rehab and to include inpatient if deemed
5 necessary by counselor and he must pay supervision fees and
6 catch up all fees by 90 days.

7 Also, on November 7, 2011, subject, excessive use of
8 alcoholic beverage per police report. He was arrested for
9 disorderly conduct August 25th. He was arrested for child
10 support bench warrant on August 26th and behind on all his
11 accounts. He failed to complete substance abuse counseling
12 and failed to report August 31st, September 2nd, September
13 6th and he pretty much absconded his supervision. We
14 issued absconded warrant and he was sentenced by Judge
15 Jefferson on November 7, 2011.

16 His case has been continued. He must complete the
17 inpatient program. He remained in custody until bed space
18 was available. Supervision arrearage will satisfy the
19 pre-trial detention, restructure all financial obligations
20 and all conditions previously imposed remain in full force
21 and effect.

22 For his current violation, Your Honor, he violated
23 condition 110 and special conditions of this case: subject
24 failed to report upon release from Morris Village
25 facility on 27th of February, subject failed to report as

1 instructed by agent 6th of March, failed to follow advice
2 of agent by not reporting, failed to complete Morris
3 Village inpatient program as ordered by Judge Jefferson on
4 November 7th and failed to report Gateway 5th of March for
5 his follow-up.

6 Mr. Miller has proven time and time again that he is
7 not suitable for this probation. He was under supervision
8 and probation for nine times and he has been in and out of
9 jail for thirty-seven years. He was given another chance
10 last November by Judge Jefferson to continue his case and
11 to complete the inpatient program, however, he failed to
12 complete that.

13 I called the Morris Village and asked about what
14 happened and they told me that prior to 27th of February or
15 the week of 27th of February, subject asked to be released
16 early and they denied that request and on 27th of February,
17 he told the counselor that his sister had surgery and his
18 father needed help taking care of his sister. That's why
19 they released him and also they gave him a follow-up
20 appointment at Gateway the 5th of March. I didn't know
21 about it until March the 5th and I went to his house to
22 conduct a home visit right away and I spoke to his sister
23 Janice and she stated that the subject left early morning
24 at that time and she stated that she never had the surgery,
25 however, she was at the hospital and was released 22nd of

THE STATE OF SOUTH CAROLINA VERSUS JAMES FREDDIE MILLER

1 February, five days after the subject was released from
2 Morris Village. I left a message for the sister to tell
3 the subject to report the next day, which is the 6th of
4 March. The subject did not report.

5 The subject, after walking in our office March 12th
6 and that's when we served the warrant and also while we
7 were booking him, Judge, at the Detention Center, he stated
8 that he was going to get a Uzi and then Lieutenant
9 Champagne asked what he was going to do with a Uzi and he
10 said that he was going to empty it and he's not going back,
11 while staring at me.

12 Also, Judge, he has an active bench warrant from
13 Simpsonville Police Department for driving under the
14 suspension and so, pretty much, I am asking for a full
15 revocation.

16 THE COURT: All right. Mr. Miller, if you would,
17 raise your right hand.

18 (Judge Addy administers the oath to Mr. Miller)

19 THE COURT: You are James Freddie Miller?

20 MR. Miller: Yes, sir.

21 THE COURT: Mr. Miller, were you served with a copy of
22 this violation report and this warrant?

23 MR. Miller: Yes, sir.

24 THE COURT: All right. And have you reviewed that
25 with Ms. Waters?

THE STATE OF SOUTH CAROLINA VERSUS JAMES FREDDIE MILLER

1 MR. Miller: Yes, sir.

2 THE COURT: Do you admit or deny that you are in
3 violation of your probation?

4 MR. Miller: I deny it.

5 THE COURT: All right. Ms. Waters, happy to hear from
6 you.

7 MS. WATERS: Thank you, Your Honor. First of all,
8 what the Court was just apprised of regarding a DUS or any
9 statements that were made during booking, that is brand new
10 information to me and not contained in the violation report
11 and, therefore, should not be considered during the course
12 of this hearing.

13 I have -- well, first of all, standing behind my
14 client is his sister, Janice Miller. This is the sister
15 that was in the hospital. This is the sister that the
16 Probation Department asked to relay a message to my client
17 to report on March 6th. Your Honor, I'm actually going to
18 hand up two documents. These were provided to me by
19 Ms. Miller when she came to meet with me yesterday.

20 (Ms. Waters hands a document to the judge and one to
21 Ms. Castillo)

22 They show that she was in the hospital from February
23 22nd through February, I believe it was, the 28th. She was
24 actually supposed to have surgery. She suffers from
25 Hepatitis C and cirrhosis of the liver. Because her blood

THE STATE OF SOUTH CAROLINA VERSUS JAMES FREDDIE MILLER

1 count was off, they could not perform the surgery. She was
2 assigned follow-ups with doctors. She was given medication
3 to help stabilize the internal bleeding that she was
4 experiencing and so this does prove that she was in the
5 hospital and she was supposed to have surgery, but they
6 were physically unable to perform the surgery on her
7 without killing her.

8 Your Honor, because Ms. Miller suffers from Hepatitis
9 C and cirrhosis and in my preliminary research, one of the
10 symptoms of both these diseases is memory loss. I've asked
11 Ms. Miller point blank if she remembers the agent asking
12 her to have her brother report on March 6th. She doesn't
13 remember. I don't believe that it's fair to hold my client
14 to a report date that he, himself, was not notified of.
15 There was no letter that was left. There was nothing in
16 writing. It was just a verbal message from one family
17 member to another and, Your Honor, within families you
18 sometimes forget to tell people things and that's further
19 exacerbated by the conditions that she suffers from that,
20 you know, cause her to have memory problems even on a good
21 day.

22 MS. CASTILLO: Now, Your Honor, the ---

23 MS. WATERS: Can I finish addressing the violations,
24 please?

25 THE COURT: I'll give you a chance to speak again. Go

1 ahead.

2 MS. WATERS: Your Honor, with regard to Mr. Miller and
3 the allegation that he didn't complete Morris Village, I'm
4 going to hand up to the Court, and to the agent, a letter
5 from Morris Village saying that he did successfully
6 complete the program. He was discharged from the program
7 on February 27th. He complied with all requirements of the
8 program and this letter from the Department of Mental
9 Health actually says that his participation was excellent.
10 He actively participated. They recommend that he follow up
11 with NA or AA or some type of 12-step program to further
12 solidify what he learned while he was at Morris Village.
13 So, I believe that this would undercut the allegation that
14 he did not complete the program as required by Judge
15 Jefferson.

16 Your Honor, the follow-up appointment set for
17 March 5th at Gateway, Mr. Miller's transportation is,
18 essentially, his father because he does not have a driver's
19 license. His father wasn't able to drive him to Gateway
20 that day, but I did call Gateway and they verified for me
21 that Mr. Miller called in and re-scheduled his appointment
22 from March 5th to March 23rd. Unfortunately, he was locked
23 up prior to that day and so he was not able to make that
24 appointment.

25 Your Honor, Mr. Miller was never asked to report upon

THE STATE OF SOUTH CAROLINA VERSUS JAMES FREDDIE MILLER

1 release from the Morris Village Facility. He reported on
2 March 12th as the agent did tell the Court and that would
3 have been his normal report day. So, he did come on his
4 normal report date the first time that it came up after he
5 was released from Morris Village.

6 Now, Your Honor, I believe that I've addressed all of
7 the violations contained in this report and I do believe
8 that I've provided evidence to show that Mr. Miller is not
9 in willful violation of his probation and I would ask the
10 Court to make that finding.

11 MS. CASTILLO: Your Honor, this is the letter I got
12 from ---

13 THE COURT: Is it the same letter in the packet?

14 MS. CASTILLO: Yes, sir.

15 THE COURT: Okay. (Looks at document)

16 MS. CASTILLO: And also, he was instructed, Your
17 Honor, after he was released that he needs to report to my
18 office.

19 MS. WATERS: Your Honor, may I see that? I was not
20 provided a copy of that letter.

21 THE COURT: This one? (Indicating)

22 MS. WATERS: No, sir. (Judge Addy hands document to
23 Ms. Waters) This was not included in the packet that I
24 received. (Ms. Waters hands document back to Judge Addy)

25 THE COURT: Typically, when one completes Morris

THE STATE OF SOUTH CAROLINA VERSUS JAMES FREDDIE MILLER

1 Village, they receive a certificate of completion.

2 (Mr. Miller speaks to Ms. Waters)

3 MS. WATERS: And, Your Honor, because I was not
4 provided the letter that was in the Court packet, I did not
5 know that there was going to be any debate as to whether or
6 not he successfully completed the program and so I did not
7 look any further into it.

8 (Mr. Miller speaks to Ms. Waters)

9 THE COURT: Mr. Miller, anything that you would care
10 to say, sir?

11 MR. MILLER: Your Honor, I got a lot out of Morris
12 Village. I've been clean for seven months and two days
13 from drugs. I have no intentions of ever using drugs
14 again. Mr. Carlton told me that I should continue my
15 program and be a speaker with NA and AA, because I spoke to
16 the crowd one night and maybe if I can do that -- I know,
17 crack cocaine is a bad addiction and I realize that. I've
18 been in trouble all my life because of drugs, since I was
19 17 years old. I've got good health now. I've got mental
20 disorders. They told me to continue my therapy with Mental
21 Health and go to Voc Rehab. I've got a hundred things I've
22 got to do without a vehicle, but I'm going to do them
23 because I've got to do them, because I know if I don't
24 continue the meetings, it's hard, but I know if I continue
25 the meetings, get involved in the meetings and become a

THE STATE OF SOUTH CAROLINA VERSUS JAMES FREDDIE MILLER

1 speaker, it's going to be good for me and I want something
2 different. I want to change my life. I gave my whole life
3 up. I never have no intentions of going back there.

4 MS. WATERS: Your Honor, and I actually represented
5 Mr. Miller when he was in front of Judge Jefferson and
6 Morris Village was the first substance abuse treatment that
7 he had ever received in his life.

8 THE COURT: Well, Mr. Miller, there's some allegation
9 here that you lost your cool when you were taken into
10 custody. What happened?

11 MR. MILLER: I just didn't think I did anything to be
12 violated. I did everything that I was told, Your Honor.
13 They should have told me before -- I know when you get out
14 of jail you've got to go report. The mental institution
15 hospital, I didn't know I had to. If they had instructed
16 me to, I would have been there.

17 MS. WATERS: Your Honor, I believe that Mr. Miller was
18 quite angry that he was being violated and he may have said
19 some things that he shouldn't have said. I think that ---

20 MR. MILLER: I'm sorry.

21 MS. WATERS: --- a part of that can be controlled once
22 he does get in with a mental health treatment plan ---

23 MR. MILLER: Yeah, because ---

24 MS. WATERS: --- because while he was at Morris
25 Village, he received his first initial diagnosis of having

1 mental health issues.

2 THE COURT: What's the diagnosis?

3 MS. WATERS: I believe ---

4 THE COURT: Substance abuse, personality disorder
5 or...

6 MR. MILLER: Can't stay focused and psychotic and
7 paranoid.

8 MS. WATERS: And I believe they are -- based on my
9 dealings with Mr. Miller and what he's told me about his
10 childhood, I wouldn't be surprised if there was also some
11 PTSD in there.

12 THE COURT: Well, why didn't you show up at Gateway on
13 March 5th? She said something about your father not being
14 able to give you a ride. You can walk, you can bike, you
15 can hitch a ride.

16 MR. MILLER: It's about ten miles. I know I should
17 have, but I had full intentions of going. I want to go.

18 THE COURT: The road to hell is paved with good
19 intentions, Mr. Miller.

20 MS. WATERS: Your Honor, I did confirm that he
21 rescheduled the appointment. So, it wasn't that he just
22 no-showed. He had every intention of going. He was just
23 unable to get there the day of the appointment was
24 scheduled for. He had a plan to go on the 23rd and to go
25 to Gateway, Voc Rehab, and the Social Security office at

THE STATE OF SOUTH CAROLINA VERSUS JAMES FREDDIE MILLER

1 the same time because they are all right there in the same
2 area and Mental Health, as well.

3 THE COURT: All right. Anything further?

4 MS. WATERS: No, sir.

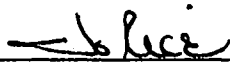
5 THE COURT: All right. I do find that Mr. Miller is
6 in willful violation of his probationary terms and that he
7 failed to report when instructed, he did not follow up with
8 Gateway when he was supposed to have followed up with them
9 and I am not convinced that he completed the program at
10 Morris Village despite what has been provided to me by
11 counsel for the defendant and so I do find that he is in
12 willful violation of his probation and he should not have
13 left when he left. He should have stuck around, he should
14 have gotten a certificate, he should have graduated and he
15 definitely should have followed up with Gateway. I'm glad
16 he's made progress. He was given one last chance by Judge
17 Jefferson. I can't give him another. Revoke six years and
18 terminate. Mr. Miller, be glad it's not seven. Good luck
19 to you, sir.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR LAURENS COUNTY, SOUTH CAROLINA, SO GIVEN ON APRIL 3, 2012 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 16TH DAY OF DECEMBER, 2012.



JO RICE
OFFICIAL COURT REPORTER

THE STATE OF SOUTH CAROLINA VERSUS JAMES FREDDIE MILLER

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

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Probation

ARREST WARRANT

Indictment Number 09-GS-23-09275

Warrant Number W-30-12-0030

State Identification No. (SID) 00080158

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

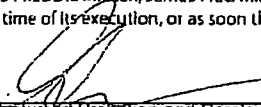
It appearing from the attached affidavit that there are reasonable grounds to believe that JAMES FREDDIE MILLER, James Fred Miller, did on the 7 day of March, 2012 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Violation of Probation conditions 1, 10 and Special Condition(s) and additional conditions for cause 09-GS-23-09275 pursuant to Section 24-21-430 and 24-21-450 of the South Carolina Code of Laws.

Now, therefore, you are empowered and directed to arrest the said defendant and bring JAMES FREDDIE MILLER, James Fred Miller 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 LAURENS, S. C. this 7 day of March, 2012.

County of LAURENS


Signature of Probation and Parole Agent

(L.S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Eden Rose Nlm Castillo, who, first being duly sworn, deposes and says that JAMES FREDDIE MILLER, James Fred Miller did within this County and State on the 7 day of March, 2012, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

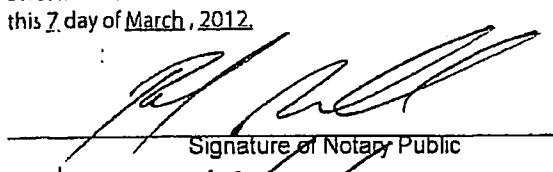
Violation of Probation conditions 1, 10 and Special Condition(s) and additional conditions for cause 09-GS-23-09275 pursuant to Section 24-21-430 and 24-21-450 of the South Carolina Code of Laws.

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:

Condition 1. Subject failed to report upon released from Morris Village Facility on 27 Feb 2012.
-Subject failed to report as instructed by his Agent on 6 March 2012.
10. Failed to follow advice from his agent by not reporting as instructed on 6 March 2012.
-Subject failed to complete Morris Village In-patient Program as ordered by Judge Jefferson on 11/7/2011.
-Subject failed to report to Gateway on 5 March for follow-up appointment.

Such actions constitute a violation of conditions, 10 and Special Condition(s) and additional conditions imposed by the releasing authority of the Department under authority given by the South Carolina Code Case number 09-GS-23-09275 in the Greenville County Court of General Sessions on 07/01/2011.

Sworn to and Subscribed before me
this 7 day of March, 2012.


Signature of Notary Public

(L.S.)

10/7/20
My Commission Expires


Affiant

Address: P.O. BOX 305
LAURENS, SC 29360
LAURENS
USA

(864) 984-4564

STATE OF SOUTH CAROLINA

County of Laurens
STATE VS.James Freddie Miller
AKA: _____
Race: W Sex: M
DOB: _____
SSN: _____
SID#: 00080158

IN THE COURT OF GENERAL SESSIONS

Indictment Number: 09 -GS- 23 - 92751
Probation C/W#s: W-30-12-0030 (3-7-12)Name of Original Offense: Shedding, 3rd
Original A/W#: ISF338
Date of Original Offense: 9-19-09
Conviction S.C. Code §: 16-13-110 (B)(1)
Conviction CDR Code #: 2181717
Original Sentence: 10yrs; ss; 3yrs; 5yrs prob

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 5/11/10 in the Court of General Sessions of Greenville County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 11-7-11, as set forth in the attached warrant(s) or citation(s) dated 3-7-12. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 110, and special conditions

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 6 months/years, the remainder of the original sentence, and/or pay \$ _____
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Financial Obligations: Order satisfies: ☒ Department fees (arrearage) Civil judgment: ☐ Department fees
☒ Fines and other fees (arrearage/balance) ☐ Fines and other fees
☐ Restitution (and 20%) (arrearage/balance) ☐ Restitution (and 20%)
- ☒ Additional Conditions ordered by the Court: Probation terminated. Time satisfies all remaining financial obligations and all conditions previously imposed.

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

This 3rd day of April, 2012,
Laurens, SC[Signature]
Presiding Judge
Eighth Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature [Signature]

Witnessed by _____

Signed this _____ day of _____, at _____, SC.
Day Month Year City

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

County of Laurens SC)James Freddie Miller)

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

v.)

2012-CP-23-

03344

APPLICATION FOR)

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland REE Center C-2-B-49
4344 Broad River Rd. Columbia SC 29210
2. Name and location of Court which imposed sentence Laurens Co. S.C
General Session Court.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-23-09275
 - (b) violation of Condition of Probation Supervisor

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April-4-2012
- (b) (6) six years
- (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?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) was not aware of such an appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) I was Not Instructed to report on 3-6-2012
- (b) I did everything Judge Jefferson told me to do.
- (c) I was Not Instructed to report on release at drug court
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) my probation agent said she gave a message to my sister for me to report
- (b) Judge Jefferson did not instruct me to report to state court for a follow up
- (c) I was never given an oral order or told I had to report after release from Morrisville
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? X/G
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for Reconsideration of Sentence
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Greenville Co. General Session Court
- ii. 205 East North St Greenville, SC 29601
- iii. _____
- iv. _____

4-18-2012

Answer to page (3) three, question (10)
Temi

ON November 7th 2011 I went before the Honorable Judge Jefferson for a violation of probation; Judge Jefferson ordered me to go through a drug program which I did. I successfully completed the program. I've enclosed (2) two copies of where I did successfully complete the program.

My probation agent Eden Rose Nim Castillo violated me because she said I did not complete the program, did not report the day I was discharged from the program. And did not report to probation as instructed by my agent, I never saw Ms. Castillo from 2-2-2012, until 3-12-2012, the day I went to report for probation, Ms. Castillo said she told my sister to tell me to report on 3-6-2012, Ms. Castillo should have told me herself. I do not believe I violated my probation in any way. Please find enclosed copies of where I did successfully complete the drug program. I did report on my normal day the 2nd Monday of the month. 3-12-2012 That's when I was arrested. James Fred M. Dean 259635

(c) the disposition thereof:

- i. No responds at this time
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

NO

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

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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) Did Not Know I Could.
 (b) I was told to file a PCR
 (c) My Attorney did not tell me I could.

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

- (a) ☒ your arraignment and plea? _____
 (b) your trial, if any? _____
 (c) ☒ your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? My Attorney did not advise me of anything.
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Motion of reconsideration of sentence.

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

- (a) the name and address of each attorney who represented you:
 i. Terna Waters, Public Defender's
office 100 Hillcrest Plaza, Laurens, SC. 29360
 ii. But she did not represent me with the motion of
consideration of sentence, I did it my
 iii. self.
 (b) the proceedings at which each such attorney represented you:
 i. I plead not guilty of violating
my probation, she was present
 ii. and at the time of sentence.
 iii. _____

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

For me to be given time served for
my probation Reinstated.

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

NO

STATE OF SOUTH CAROLINA)

County of Laurens, S.C.)

VERIFICATION

I, James Freddie Miller, 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.

SWORN to and subscribed before me this _____
 day of _____.

 Notary Public (L.S.)

My Commission Expires: _____

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

I, James Freddie Miller, 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.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-3344
COUNTY OF GREENVILLE	)	
	)	
James Fred Miller,	)	
S.C.D.C. No. 259635,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed May 17, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The Applicant waived presentment to the Greenville County Grand Jury on the charge of shoplifting, third offense or greater (2009-GS-23-9275). Susannah C. Ross, Esquire represented the Applicant.

On May 11, 2010, the Applicant pled guilty. The Honorable R. Lawton McIntosh sentenced the Applicant to ten (10) years suspended on service of three (3) years and five (5) years probation. Judge McIntosh ordered this sentence to be concurrent with the sentence the Applicant was already serving. The Applicant did not appeal.

On April 3, 2012, the Applicant appeared in court in Laurens County pursuant to a probation citation. He was represented by Tara Waters, Esquire. The Honorable Frank Addy revoked the Applicant's probation and levied a sentence of six (6) years imprisonment. The Applicant did not appeal.

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 application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "I was instructed to report on 3-6-2012."
2. "I did everything Judge Jefferson told me to do."
3. "I was not instructed to report on release of drug program."

III.

The Court should summarily dismiss this application for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may

institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

July 17, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2012-CP-23-3344

JAMES FRED MILLER, 259635)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

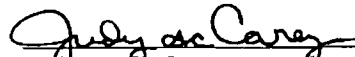
STATE OF SOUTH CAROLINA,)

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 and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James Fred Miller, 259635
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw SC 29067**

DATED this 17th day of July, 2012.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

James Fred Miller,
S.C.D.C. No. 259635,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-3344

CONDITIONAL ORDER OF DISMISSAL

FILED
2012 JUN 28 AM 10:30
CLERK OF COURT
GREENVILLE, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 17, 2012. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The Applicant waived presentment to the Greenville County Grand Jury on the charge of shoplifting, third offense or greater (2009-GS-23-9275). Susannah C. Ross, Esquire represented the Applicant.

On May 11, 2010, the Applicant pled guilty. The Honorable R. Lawton McIntosh sentenced the Applicant to ten (10) years suspended on service of three (3) years and five (5) years probation. Judge McIntosh ordered this sentence to be concurrent with the sentence the Applicant was already serving. The Applicant did not appeal.

On April 3, 2012, the Applicant appeared in court in Laurens County pursuant to a probation citation. He was represented by Tara Waters, Esquire. The Honorable Frank Addy revoked the Applicant's probation and levied a sentence of six (6) years imprisonment. The

Applicant did not appeal.

II.

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

1. "I was instructed to report on 3-6-2012."
2. "I did everything Judge Jefferson told me to do."
3. "I was not instructed to report on release of drug program."

III.

This Court finds the PCR application should be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

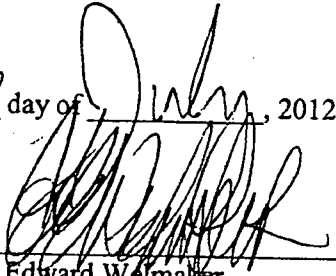
S.C. Code Ann. § 17-27-20(a) (2003).



IV.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 19 day of July, 2012.


G. Edward Weismaker
Chief Administrative Judge
Thirteenth Judicial Circuit


_____, South Carolina.

State of South Carolina
County of Greenville

James Fred Miller # 259635

☐ Plaintiff

v.

State of South Carolina

☒ Defendant

In the Court of Common Pleas
Case No. # 2012-CP-23-3344

Motion And order Information
Form and Cover Sheet

Responses to Conditional
order of Dismissal

FILED
CLERK OF COURT
JAN 16 AM 9:35

THAT There exists evidence of material facts, Not previously presented and heard that requires vacation of the Conviction or sentence IN the Interest of Justice.

ON November 7th. 2011, I was brought before your Honorable Judge D. L. Jefferson. for a probation violation Judge Jefferson ordered me to attend an in House Drug Program at Morris Village, 610 Faison Dr. Columbia, S.C. 29203. which I did: And successfully completed the program.

I've enclosed (2) Two legal copies from Morris Village stating I did successfully complete the program.

A Mr. Carlton Andrews, a Counselor at Morris Village gave me (2) Two Certificates stating I did complete the program. I ask my Attorney to subpoena Mr. Carlton Andrews as my witness, that I did complete the program. Ms. Tara Waters was my Attorney, Public Defender. She did not grant my request.

Ms. Eden Rose Nim Castillo did not present any legal documents from Morris Village stating I did not successfully complete the program.

Ms. Eden. Rose Nim Castillo, Did Not present Any official documents to the Honorable Judge Frank Addy, from The Honorable Judge D.L. Jefferson stating any special Conditional orders stating I had to do a follow up at Gate way drug Center, after completing the program at Morris Village or any other legal documents from Judge Jefferson where she ordered special Condition.

Ms. Castillo did not present Any statements or documents to the sentencing Judge Frank Addy showing she instructed me to report on 3-6-2012 to the probation office.

Ms. Castillo Never sent me to an orientation for probation advising me of what to do while on probation. She Ms. Castillo did not present Any legal documents to the fact that I was orientated to be placed on probation.

I am also sending a sentencing sheet from Judge Jefferson, And she did not order any special Condition or a follow up at Gate way Drug Center, Ms. Castillo did not present Any legal documents whatsoever! But I did.

Respectfully Submitted

S/James A. Miller #259625

James Fred Miller #259625

PA-17-Kershner Corr. Inst.

4848 Goldmine Hwy.

Kershner, S.C. 29060

August 17, 2012

Applicant Race

SCDMH DIVISION OF INPATIENT SERVICES
COLUMBIA HOSPITAL PROGRAM IDENTIFICATION AND SUMMARY SHEET
JUSTIFICATION FOR TWO OR MORE ANTIPSYCHOTIC MEDICATIONS:

Page 2 of 2

PHYSICIAN'S SIGNATURE:

Discharge Medications: see Orders for Pass / Discharge medications (M-208EEEEEE)

DISPOSITION & RECOMMENDATIONS FOR NEXT LEVEL OF CARE / GOALS & TREATMENT ISSUES (Include patient discharge address if different from information on page 1) AA, NA, Peer support, Social Work & benefits follow-up, follow-up on medical conditions):

Pt. successfully completed all tx goals + objectives. Pt. developed a detailed relapse prevention plan and a working knowledge of addiction as a disease.

CLINICIAN SIGNATURE:

DATE: 2/27/12

NEXT LEVEL OF CARE PROVIDER APPOINTMENT - document primary appointment here (if discharged to another inpatient facility, jail, or prison, the appointment date should match the discharge date.)

NAME: (Center/Case Manager) ADDRESS: PHONE:

APPT DATE: TIME: SIGNATURE:

PATIENT SIGNATURE: K James Miller DATE: 2-27-12

Document additional appointments as needed (A&D Commission, A&D Counselor, VR, etc):

NAME: 1. Antecur? A&D ADDRESS: Clinton SC PHONE #: 864-833-6500

APPT DATE: 2/27/12 TIME: 9:00 AM SIGNATURE: Carle A. H.

NAME: ADDRESS: PHONE #:

APPT DATE: TIME: SIGNATURE:

Items below are to be transmitted to the next Level of care provider (attach verification of transmission)

Continuing Care Plan documents transmitted:

1. Identification & Summary Sheet
2. Orders for Pass / Discharge Medications
3. Nursing Discharge Summary & Instructions
4. Universal Medication Sheet(s)

PATIENT ID LABEL

OTHER FLAGS



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
Joan Moore, Vice Chair
Jane B. Jones
Everard Rutledge, PhD
J. Buxton Terry

STATE DIRECTOR

John H. Magill

Division of Inpatient Services
Morris Village Alcohol and Drug
Addiction Treatment Center
610 Faison Drive
Columbia, SC 29203
Information: (803) 935-7100

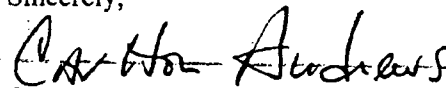
3/23/12

To Whom It May Concern,

Mr. James Miller completed the inpatient personal growth program at the South Carolina Department of Mental Health's Earl E. Morris Alcohol and Drug Abuse Facility in Columbia, S.C. Mr. Miller's participation was excellent. He actively participated in all scheduled groups, meetings, and activities. His investment in identifying the core issues concerning his difficulty in coping with daily stressors was sincere and appeared successful. Professionally, his prognosis for continued recovery is guarded. A Recovery Program to include 12-step meetings, sponsorship, service work, and reading recovery literature is imperative to facilitate and solidify the behavior change currently evolving. Treatment dates for Mr. Miller were 2/2/12 through 2/27/12

If I can be of further help please contact me by calling 803-935-7393.

Sincerely,


Carlton Andrews, MRC, LPC, NCAC

MISSION STATEMENT

To support the recovery of people with mental illnesses.



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

IN THE COURT OF GENERAL SESSIONS

County of Laurens
 STATE VS.

FILED: CLERK OF
 GREENVILLE CO. S.C.
 PAUL B. WICKENS

INDICTMENT#:
09-GS-23-9275

Probation C/W#: W-30-11-0128 (9-16-11)

James Freddie Miller
 AKA: James Fred Miller 2011 DEC - 9 P
 Race: W Sex: M
 DOB: [REDACTED]
 SSN: [REDACTED]
 SID#: 00080158

Name of Original Offense: Shoplifting, 3rd
 Original AWW#: I519338
 Date of Original Offense: 9-19-09
 Conviction S.C. Code §: 16-13-110 (B)(1)
 Conviction CDR Code #: 2181717
 Original Sentence: 10 yrs; ss; 3 yrs; 5 yrs prob.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 5/11/10 in the Court of General Sessions of Greenville County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 9-16-11 as set forth in the attached warrant(s) or citation(s) dated 9-16-11. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 1, 3, 5, 6, 7, 9, 10, and special conditions

Therefore, IT IS ORDERED that:

- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years, the remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☒ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court: Subject to attend and complete in-patient substance abuse treatment program and to remain in custody until bedspace is available. Supervision fees assessed are satisfied by pre-trial detention time. Restructure all financial obligations. All other conditions previously imposed remain in full force and effect.

- ☐ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

- ☒ The defendant has previously served 3 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 17th day of November, 2011
Laurens

[Signature]
 Presiding Judge

[Signature]
 Eighth Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, 2011, at _____ SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-3344
COUNTY OF GREENVILLE	)	
	)	
James Fred Miller,	)	
S.C.D.C. No. 259635,	)	
	)	
Applicant,	)	
	)	AMENDED RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 17, 2012, the Respondent would show this Court:¹

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The Applicant waived presentment to the Greenville County Grand Jury on the charge of shoplifting, third offense or greater (2009-GS-23-9275). Susannah C. Ross, Esquire represented the Applicant.

On May 11, 2010, the Applicant pled guilty. The Honorable R. Lawton McIntosh sentenced the Applicant to ten (10) years suspended on service of three (3) years and five (5) years probation. Judge McIntosh ordered this sentence to be concurrent with the sentence the Applicant was already serving. The Applicant did not appeal.

On April 3, 2012, the Applicant appeared in court in Laurens County pursuant to a probation citation. He was represented by Tara Waters, Esquire. The Honorable Frank Addy

¹ The Respondent originally submitted a return and motion to dismiss on July 17, 2012.

revoked the Applicant's probation and levied a sentence of six (6) years imprisonment. The Applicant did not appeal.

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. The probation revocation transcript will be forwarded upon receipt.

II.

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

1. "I was instructed to report on 3-6-2012."
2. "I did everything Judge Jefferson told me to do."
3. "I was not instructed to report on release of drug program."

The Applicant subsequently added the following allegations:²

1. Ineffective assistance of probation revocation counsel:
 - a. Failed to subpoena a counselor from Morris Village as a witness.
 - b. Failed to subpoena "legal documents from the State of South Carolina" to confirm the State's argument that the in-house drug program was not completed.
 - c. Failed to subpoena mental health records from Morris Village.
 - d. Failed to file an appeal.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

² After a conditional order of dismissal was issued in this case, the Applicant filed a document captioned "Response to Conditional Order of Dismissal" on September 11, 2012 in which he raised these issues.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland

v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Amended 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
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

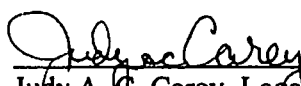
October 17, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2012-CP-23-3344
JAMES FRED MILLER, 259635	)	
	)	
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 **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James Fred Miller, 259635
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw SC 29067**

DATED this 17th day of October, 2012.


Judy A. C. Carey, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF COMMON PLEAS
3 COUNTY OF GREENVILLE)
4 James Freddie Miller,)
5) TRANSCRIPT OF RECORD
6) 2012-CP-23-03344
7 Applicant,)
8 -vs-)
9)
10 The State,)
11) October 22, 2013
12 Respondent.) Greenville, South Carolina

13
14
15 B E F O R E:

16 HONORABLE EDWARD W. MILLER, JUDGE
17

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

19 BRIAN P. JOHNSON, ESQUIRE
20 Attorney for the Applicant

21 KAREN C. RATIGAN, ESQUIRE
22 Attorney for the Respondent

23 Margaret A. Woods
24 Circuit Court Reporter
25

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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MOTIONS AND MATTERS

1 MS. RATIGAN: May it please the Court, Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. RATIGAN: This is the case of James Miller vs. the
4 State of South Carolina, the Docket Number is 2012-CP-23-3344.
5 Mr. Miller waived presite -- presentment to the Greenville
6 Grand Jury for shoplifting third or greater, he pled guilty to
7 that charge in fronta Judge McIntosh May 11th of 2010. He
8 received 10 years suspended on service of 3 years and 5 years
9 probation to be concurrent with the sentence he was already
10 serving. He did appear back in court, uh, April 3rd 2012
11 Laurens County to tend to a probation citation. He was
12 represented at the revocation hearing by Ms. Waters. Judge
13 Addy revoked his probation and levied a 6-year sentence, he
14 had not filed an appeal and the State's ready to proceed.

15 THE COURT: Okay.

16 MR. JOHNSON: Thank Your Honor, may it please the Court.
17 We're here before you today, uh, my client has a claim
18 ineffective assistance of counsel based on a probation
19 revocation. Uh, at this time I'd like to, uh, one second
20 please, Your Honor, he has something for me.

21 (Attorney/client discussion held off the record.)

22 MR. JOHNSON: Your Honor, at this time I'd I'd probly
23 like to to call my, uh, client first to the stand.

24 THE COURT: Okay, c'mon around.

25 (Whereupon, a discussion was held off the record.)

JAMES FRED MILLER - DIRECT EXAMINATION BY MR. JOHNSON

1 THE CLERK: Mr. Miller, please walk over here
2 (indicating) to the Bible, place your left hand on the Bible
3 and raise your right hand ---

4 THE APPLICANT: Alright.

5 THE CLERK: --- best ya can.

6 (Whereupon, the applicant came forward.)

7 JAMES FRED MILLER, having been
8 first duly sworn, testified as follows:

9 THE CLERK: Thank you. Please state your full name for
10 the record.

11 THE APPLICANT: James Fred Miller.

12 THE CLERK: Thank you, you may be seated.

13 DIRECT EXAMINATION BY MR. JOHNSON:

14 Q. Alright, James, do you know why we're here today?

15 A. Uh, for a PCR hearing.

16 Q. Alright, well let's, uh, what are the specifics of why
17 we're here is what I mean?

18 A. Uh, for ineffective counsel.

19 Q. Okay. Now who was your counsel, uh, regarding the, uh,
20 probation revocation hearing that we're here for today?

21 A. Ms. Tara Waters.

22 Q. Okay. And how did you come to, uh, meet and and and and
23 retain her or be appointed as -- her as your counsel?

24 A. She was appointed by the Court as a public defender
25 of ---

JAMES FRED MILLER - DIRECT EXAMINATION BY MR. JOHNSON

1 Q. Okay.

2 A. --- Laurens County.

3 Q. Do you remember about when that happened?

4 A. Uh, it happened November the 7th 2011. No, I can't
5 remember date. It was, uh, February -- April the 3rd, April
6 3rd two thousand ---

7 Q. Alright, alright. Now what were ya on probation for?

8 A. Shopliftin'.

9 Q. Do you remember when you got the sentence?

10 A. Uh, May the 11th of 2011 or '10, I can't remember.

11 Q. Okay. Would your sentencing date be May the 11th 2010?

12 A. Sir?

13 Q. May 11th 2010?

14 A. Yeah.

15 Q. And your judge was, uh, Judge McIntosh, wasn't it?

16 A. Yes.

17 Q. Now, uh, when you started probation, you were required to
18 at some point attend Morris Village, is that right right?

19 A. Uh, November the s -- August the 1st I got arrested for
20 disorderly conduct.

21 Q. Okay.

22 A. They tried me in my absence, gave me 30 days was 'cause
23 told violated my probation, took me in front of Judge D.L.
24 Jefferson, a lady judge. I asked for a in-house drug
25 treatment. She gave me a in-house drug treatment at Morris

JAMES FRED MILLER - DIRECT EXAMINATION BY MR. JOHNSON

1 Village, to remain in jail until a bed was available for me to
2 go to Morris Village. I was, November 7th I went in front of
3 her. February the 2nd of 2012 a bed became available and I
4 went completed a program, got written statement from the
5 counselor, was released. I a -- I asked Ms. Waters to
6 subpoena these things court, she didn't do it. I asked her to
7 subpoena my discharge papers ---

8 Q. Well let me, let me back ya up, let me back ya up. Uh,
9 let's talk about what you, what you said you asked Ms. Waters
10 to subpoena and and you're stating that you did ask her to do
11 these things.

12 A. Yes, I did.

13 Q. Now what did you ask her to do?

14 A. Asked her to subpoena Carlton Andrews the counselor who
15 gave me my little certificate from Morris Village.

16 Q. Now did he give you a certificate or did he give you a
17 letter, what did he give you?

18 A. He gave me a letter, a typewriter -- typewritten
19 letter and handwritten letter but it's got letterhead Morris
20 Village ---

21 Q. Okay.

22 A. --- and it it's got a little line down there that says,
23 If you have any questions, please contact me at this number.

24 Q. Mr. Miller, is that -- is this (indicating) the letter
25 that you're referrin' to?

JAMES FRED MILLER - DIRECT EXAMINATION BY MR. JOHNSON

1 A. Yes, sir. I have the original over there in my little --
2 yeah. Yes, sir, that's it right there.

3 Q. Okay. May I have that back, please.

4 A. Um-hum.

5 MR. JOHNSON: Your Honor, I'm gonna have this marked as,
6 uh, Applicant's Exhibit No. 1.

7 MS. RATIGAN: That's ---

8 THE COURT: You gonna ---

9 MS. RATIGAN: --- that's ---

10 THE COURT: --- offer it?

11 MS. RATIGAN: Is that the le -- is that a letter?

12 MR. JOHNSON: That's a letter.

13 MS. RATIGAN: Yeah, I have no objection.

14 THE COURT: Okay.

15 (Letter from Morris Village marked Applicant's Exhibit
16 No. 1 for identification and admitted into evidence.)

17 BY MR. JOHNSON:

18 Q. Now, Mr. Miller, do you recognize what this (indicating)
19 is?

20 A. Uh, I know what it is but I didn't get one a these.

21 Q. So are you stating that you have never seen this
22 document?

23 A. Nope.

24 Q. Would you believe it's the violation report from the
25 date, uh, that you went to court on a probation revocation?

JAMES FRED MILLER - DIRECT EXAMINATION BY MR. JOHNSON

1 A. I went to court, uh, Mar, uh, April the 3rd, I was
2 violated on March 12th.

3 Q. Yes, sir, yes, sir, but do you believe this is your
4 violation report?

5 A. Uh, let me look at again, only got the one eye and it's
6 hard.

7 Q. So you don't, you've never seen this before.

8 A. Um, nope. No.

9 Q. Ms. Waters didn't go over this document with you?

10 A. No.

11 Q. Alright.

12 A. She didn't go over anything.

13 Q. Did you get the chance to meet with Ms. Waters?

14 A. Uh, probly for about 30, 40 minutes maybe, not that long.

15 Q. And who was this in comparison to when your hearing
16 was?

17 A. A couple a days before my hearing.

18 Q. Alright, uh, ---

19 A. It mighta been a day before like it wasn't long.

20 Q. Now who got the letter? Is is this, is this a letter,
21 uh, that you already had that was provided by Mr. Andrews or
22 did Ms, uh, Waters get this letter for you?

23 A. I wrote and asked -- the first one, the handwritten, he
24 gave it to me the day I left.

25 Q. Okay.

JAMES FRED MILLER - DIRECT EXAMINATION BY MR. JOHNSON

1 A. The one that's typed I wrote and ask him, I told him had
2 me in jail, said I didn't complete the program, would he
3 please send me some kind of letter sayin' that I did and he
4 sent me that.

5 Q. He send it to you or did he send it to Ms. Waters?

6 A. He sent it to me.

7 Q. So you you had the letter.

8 A. Yeah.

9 Q. And then, uh, at what point in time and relative to
10 when you got the letter did you ask Ms. Waters to subpoena Mr.
11 Andrews?

12 A. When she came to see me?

13 Q. Yes.

14 A. I I I showed her those papers, I asked would she subpoena
15 the papers so she could get 'em and would she subpoena Carlton
16 Andrews testify that I did complete a program and that he did
17 write those letters, she said, We don't have to do that.

18 Q. When you went to your probation revocation hearing, what
19 was the, what was the important thing with regards to failure
20 to have Mr. Andrews there?

21 A. So he could tell Judge Addy that I did complete the
22 program ---

23 Q. Now ---

24 A. --- successfully and that I I attended all meetings, I
25 had excellent attendance, it's in that letter.

JAMES FRED MILLER - DIRECT EXAMINATION BY MR. JOHNSON

1 Q. Yes, sir.

2 A. And I, he wrote, he -- I was gonna be a speaker for NA &
3 AA people 'cause I really got somethin' outta there when I was
4 there.

5 Q. Now with regards to Judge Addy, did he, did he accept the
6 letter as, uh, ---

7 A. Yeah.

8 Q. --- as as, uh, proof that you completed the program?

9 A. He read it but he didn't accept it. He said, I'm readin'
10 what it says but I'm not sure that you did complete this
11 program so therefore the sentence of this court is 6-years.

12 Q. And obviously you're paraphrasing but that information be
13 in the transcript.

14 A. It should be. I didn't get, you know, I didn't get the
15 transcript ---

16 Q. Okay.

17 A. --- but it it should be in there.

18 Q. Yes, sir. Now with regards to, uh, after the hearing,
19 did you speak with Ms. Waters?

20 A. I asked, I said, I asked Ms. Waters, Why didn't you say
21 somethin'? She said, I gotta go. I said, What, I said, What
22 he say? He said 6 years, I gotta go, and she left.

23 Q. Did you ever speak to her again?

24 A. No.

25 Q. Did ya'll ever discuss the the possibility of either a

JAMES FRED MILLER - DIRECT EXAMINATION BY MR. JOHNSON

1 filing an appeal or a motion to reconsider, uh, uh, to the
2 judge?

3 A. No, I filed one myself but she didn't, it's in that, I
4 got it in that little thing.

5 Q. Yes, sir, you filed and then what was the reply?

6 A. He he said that, uh, they denied my request.

7 Q. Alright, now did Ms. Waters help assist you with with
8 filing, filing this, uh, document?

9 A. No. The day that I got sentenced to 6 years she turn
10 around and left and I hadn't saw her or spoke to her since.

11 Q. So you obv -- obviously ya'll didn't have these
12 conversations.

13 A. No.

14 Q. Alright.

15 MS. JOHNSON: Your Honor, I have nothin' further for this
16 witness at this time.

17 THE COURT: You have any cross?

18 MS. RATIGAN: I don't have any cross, Your Honor.

19 THE COURT: Let me look at the exhibits, exhibit there.
20 Did you run off with the violation report?

21 MR. JOHNSON: No, I had ---

22 THE COURT: Did you ---

23 MR. JOHNSON: --- I never ---

24 THE COURT: --- mark it as an exhibit?

25 MR. JOHNSON: Well I didn't put it in because he said he

MOTIONS AND MATTERS

1 didn't recognize it.

2 THE COURT: Oh, okay.

3 MR. JOHNSON: Uh, I I was gonna use Ms. Waters for that
4 at the appropriate time but . . .

5 THE COURT: Well show it to the State, let's see
6 what . . .

7 MR. JOHNSON: Alright.

8 (Whereupon, the attorney complied.)

9 MR. JOHNSON: Your Honor, I'd like to, uh, have this
10 marked as Applicant's Exhibit No. 2 and entered into evidence.

11 THE COURT: Okay, and no objection? Well ---

12 MS. RATIGAN: Just it can come in under Ms. Water's is my
13 only objection.

14 THE COURT: Okay, mark it for ID. Just wait, don't look
15 at it until then, ---

16 MR. JOHNSON: Alright.

17 THE COURT: --- State's bein' difficult to deal with.

18 (Laughter.)

19 (Probation violation report marked Applicant's Exhibit
20 No. 2 for identification.)

21 EXAMINATION BY THE COURT:

22 Q. Alright, Mr. Miller. You got put on probation by
23 McIntosh, right?

24 A. Yes, sir.

25 Q. And then after that you, let's see, you you got arrested

MOTIONS AND MATTERS

1 for disorderly conduct, ---

2 A. Yes, sir.

3 Q. --- child support bench warrant, you didn't do your
4 substance abuse counseling, you didn't report, uh, you tested
5 positive for marijuana and methamphetamine, ---

6 A. No, not meth.

7 Q. Huh?

8 A. I didn't test positive for methamphetamine.

9 Q. I'm readin' the record here.

10 A. Uh, it's ---

11 Q. And, uh, you had admitted that you were usin' marijuana.

12 A. Yes, sir.

13 Q. And Judge Jefferson revoked you.

14 A. Yes, that's why I went to a dr -- that's when I asked her
15 to send me to the drug center.

16 Q. She didn't send ya down the road, right?

17 A. No, sir, she ---

18 Q. She held ya, got ya into the Morris Village, right?

19 A. Yes, sir.

20 Q. Then you told 'em that your sister was havin' surgery.

21 A. No, that's -- my sister told them my daddy was havin'
22 surgery. I'm sorry to -- my -- he did.

23 Q. Well you asked to leave early, right, from Morris
24 Village.

25 A. I asked, uh, Mr. Carlton Andrews could I go home 'cause I

MOTIONS AND MATTERS

1 been there 27 days. I said my daddy's havin' surgery done, he
2 lives by hisself. My sister she got out in front of a car,
3 she she might, she exaggerate stuff but that's alright, she
4 got killed March a this year, she stepped out in front of a
5 car.

6 Q. Well I'm sorry to hear that.

7 A. But, uh, my, I was under impression my -- see he done had
8 two or three surgery, it was a blockage.

9 Q. Didn't report on March 6th, is that right?

10 A. Yes but, see, she told me to report on this, on my normal
11 day which was the second Monday of the month. March the 12th
12 was the second Monday of the month. She didn't say
13 anything to me 'bout a court on March the 6th. I didn't see
14 Ms. Costello from February the 2nd until March the 12th the
15 day I went and reported. She says she gave my sister a
16 message to tell me to report March the 6th.

17 Q. Well I can't really question you about what they charged
18 you with since that's not an exhibit yet. Okay, I don't have
19 any -- anything further, you step down. Thank you.

20 MR. JOHNSON: Your Honor, at this time well I would call
21 Mr. Andrews, uh, it's it's what we discussed.

22 THE COURT: Yeah, you got a employee of Morris Village
23 under subpoena?

24 MR. JOHNSON: Yes, sir, Your Honor.

25 THE COURT: And, uh, you have that affidavit of service

MOTIONS AND MATTERS

1 of the subpoena?

2 MR. JOHNSON: Yes, sir, Your Honor.

3 THE COURT: Let's make that an exhibit. He was noticed
4 about the date and time of the hearing, is that right?

5 MR. JOHNSON: Yes, sir, Your Honor.

6 THE COURT: He's not here.

7 MR. JOHNSON: He's not here, Your Honor.

8 THE COURT: I'm sure you'll find that what we discussed
9 in chambers was I -- was that we would hold the record open,
10 allow the State to speak with this, uh, uncooperative witness
11 and see if we could have a stipulation as to what his
12 testimony would be and perhaps consider it, uh, admitting an
13 affidavit in lieu of his testimony and I have asked you to
14 instruct him that very close to sending sheriff's deputies to
15 pick him up for his failure to abide by a valid subpoena.

16 MR. JOHNSON: Yes, sir, Your Honor.

17 THE COURT: Okay.

18 MR. JOHNSON: At this time applicant counsel would like
19 to sub -- submit it in evidence for the record.

20 THE COURT: Yes, sir. You can make that a Court's
21 Exhibit if you like or you can make it your own exhibit, ---

22 MR. JOHNSON: Uh, ---

23 THE COURT: --- I don't care.

24 MR. JOHNSON: --- I'll do as Court's Exhibit No. 1.

25 THE COURT: Okay.

TARA SCHULTZ WATERS - DIRECT EXAMINATION BY MS. RATIGAN

1 (Whereupon, a discussion was held off the record.)

2 (Subpoena and proof of service marked Court's Exhibit
3 No. 1 for identification.)

4 THE COURT: Alright, you have any other witnesses?

5 MR. JOHNSON: No, sir, Your Honor.

6 THE COURT: Alright.

7 MS. RATIGAN: Your Honor, the State would call
8 Ms. Waters.

9 (Whereupon, the witness came forward.)

10 THE CLERK: Ms. Waters, place your left hand on the
11 Bible, raise your right hand.

12 TARA SCHULTZ WATERS, having been
13 first duly sworn, testified as follows:

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

16 THE WITNESS: Tara, T-A-R-A, Schultz, S-C-H-U-L-T-Z,
17 Waters, W-A-T-E-R-S.

18 DIRECT EXAMINATION BY MS. RATIGAN:

19 Q. Ms. Waters, where were you employed on April 3rd a 2012?

20 A. The Eighth Circuit Public Defender's Office.

21 Q. And were you appointed through that office to
22 Mr. Miller's case?

23 A. I was.

24 Q. Did you receive the violation report and those associated
25 documents from probation?

TARA SCHULTZ WATERS - DIRECT EXAMINATION BY MS. RATIGAN

1 A. I did.

2 Q. Did you review those documents with Mr. Miller?

3 A. I did.

4 Q. Did he discuss with you this issue about Morris
5 Village?

6 A. Um, he did. Um, the the packet that I was provided from
7 probation contained the violation report, the warrant, uh,
8 the, uh, Defensive Indigents Form Number 1 and the, uh,
9 acknowledgement of his his hearing date, uh, and and that will
10 be important for another issue, uh, that that's the entire
11 packet that I received.

12 Uh, When I spoke with Mr. Miller, it was March 30th which
13 was several days before his violation hearing. Um, typically
14 we would only get assigned cases approximately one week before
15 the hearing was supposed to happen. Uh, he did speak with me
16 about successfully completing Morris Village and he did
17 provide me, uh, the letter that I believe has been entered
18 into evidence.

19 Q. Did you have any discussions with him about whether or
20 not, uh, you would also subpoena Carlton Andrews to come to
21 the hearing?

22 A. I don't specifically recall, uh, but having a letter that
23 sa -- stated that he successfully completed the program I felt
24 was solid enough evidence, uh, so if we had had any
25 discussions about subpoenaing any witnesses, um, I probly

TARA SCHULTZ WATERS - DIRECT EXAMINATION BY MS. RATIGAN

1 would have just opted to go with the letter because I I didn't
2 see how the evidence could get much more clear at that
3 point.

4 Q. And in addition to having not completed Morris Village
5 and not showing up for a subsequent follow-up, did he have any
6 other current violations upon which they were proceeding?

7 A. Um, the, uh, the violation at that time was failure to
8 report upon being released from Morris Village, failure to
9 report on March 6th, uh, failure to, uh, follow up with
10 Gateway on March 5th as a follow-up appointment and fol -- and
11 of course the failure to complete Morris Village.

12 Q. Okay. And you discussed all those violations with him?

13 A. I did.

14 Q. Okay. Did he explain to you about why he did not show up
15 for the follow-up?

16 A. The one with Gateway?

17 Q. Yes.

18 A. Um, he did not have transportation but I confirmed with
19 Gateway that he had called and rescheduled that appointment
20 for a later date.

21 Q. Okay. And did you relay that to Judge Addy?

22 A. I did.

23 MS. RATIGAN: I don't have any other questions, Your
24 Honor.

25 CROSS-EXAMINATION BY MR. JOHNSON:

TARA SCHULTZ WATERS - CROSS-EXAMINATION BY MR. JOHNSON

1 Q. So you'd recognize -- you have a copy of the, of the
2 violation report?

3 A. I do.

4 Q. Is this (indicating) it?

5 A. Yes.

6 MR. JOHNSON: Okay. Your Honor, I'd like to enter this
7 in evidence at this time.

8 MS. RATIGAN: No objection, Your Honor.

9 THE COURT: Without objection from the State.

10 MR. JOHNSON: It's -- I staple this?

11 (Applicant's Exhibit No. 2, probation violation report,
12 admitted into evidence.)

13 BY MR. JOHNSON:

14 Q. Alright, uh, now your testimony is that, uh, based upon a
15 violation report you have that his violations were failure to
16 complete Morris Village and then failure to, uh, follow up
17 with Gateway and then finally a failure to report on March
18 6th.

19 A. Well it was the failure to complete Morris Village as
20 well as the failure to report upon being released from Morris
21 Village and then along with the other two that you just noted.

22 Q. Now with regards to, uh, the reason for him goin' to
23 Mor -- Morris, uh, Village and I'm just goin', just gonna
24 kinda go over the evidence but, uh, he was, he was ordered to
25 go to Morris Village because Judge Jefferson had told him to

TARA SCHULTZ WATERS - CROSS-EXAMINATION BY MR. JOHNSON

1 do so, isn't that right?

2 A. Right, and I also, uh, have represented him on that
3 probation violation.

4 Q. Okay. So would you recognize this (indicating)?

5 A. Yes.

6 Q. And what is that?

7 A. Uh, this appears to be the, uh, order from the probation
8 violation that was held in November of 2011 signed by Judge
9 Jefferson.

10 Q. Okay. Now in that order, uh, I believe it states for him
11 to go to inpatient facility but it didn't -- but does that
12 order order him to to follow up with Gateway?

13 A. It does not.

14 Q. Okay. So the violation if if, obviously if, uh, if it
15 was ordered then it would obviously be a violation but if not
16 then it -- that's questionable, would you agree?

17 A. I don't recall if it was ordered in some other manner,
18 if, uh, if Morris Village had urged him to follow up with
19 Gateway, I don't, I don't recall how that came to be so I I
20 can't answer that question.

21 Q. But it, but it wasn't ordered by Judge Jefferson.

22 A. It wasn't on that order that you just showed me, no.

23 Q. Okay. Now with regards to after the hearing, you heard
24 my client's testimony, ---

25 A. Yes.

TARA SCHULTZ WATERS - CROSS-EXAMINATION BY MR. JOHNSON

1 Q. --- uh, is that, is that the -- consistent with your
2 recollection of events? Did, uh, ya'll speak a about the
3 sentence and then never to speak again?

4 A. Um, I do not recall specifically if we spoke after the
5 hearing. Um, I did do some research on filing a motion to
6 reconsider following the hearing but based on the case law
7 that I had found, um, I did not believe that it was, it was
8 something that, uh, would go anywhere.

9 Q. Could -- can you portray to the Court, uh, uh, uh, what
10 you, what you remember as far as the case law that you
11 investigated.

12 A. As far as I recall and, uh, I did not print the case and
13 and put it into my file but as far as I recall, uh, the judge
14 has great discretion in, uh, violating someone on probation
15 and imposing a suspended sentence and according to the case
16 law as long as there was any basis for the judge to find
17 violation he could do so, um, and it's up to the judge to
18 weigh the evidence and and assess credibility at that point.

19 Q. Now that's not something that you discussed with, uh,
20 Mr. Miller.

21 A. No.

22 Q. Okay. So ya'll didn't have conversation about, uh, about
23 what your research was.

24 A. I did not because I believe he had been shipped by that
25 point, uh, so he was no longer accessible to me.

TARA SCHULTZ WATERS - CROSS-EXAMINATION BY MR. JOHNSON

1 Q. Okay. Did you, uh, write him a letter?

2 A. I did not.

3 Q. Okay.

4 MR. JOHNSON: Your Honor, I have, uh, no further
5 questions for this witness.

6 THE COURT: You got anything?

7 MS. RATIGAN: No, Your Honor.

8 EXAMINATION BY THE COURT:

9 Q. Well so you don't know if the March 5th follow-up
10 appointment at Gateway would be part of his completion of the
11 Morris Village inpatient program that would -- wouldn't that
12 be part of his, part of his treatment plan? Seems like I read
13 that somewhere.

14 A. The information that's in my file, Your Honor, it it does
15 not, uh, it does not say where that condition came from.

16 Q. Okay. Well has it been your experience that people who
17 complete inpatient treatment are they follow up with
18 outpatient treatment?

19 A. Yes, Your Honor, uh, quite often it would be something
20 that the probation agent would, uh, have have their, uh,
21 probationers do.

22 Q. Okay. And you had no -- alright, also on the report
23 talks about his his, uh, failure where he he provided false
24 information to his counselor so that he could be released on
25 February 27th of 2012, you familiar with that?

MOTIONS AND MATTERS

1 A. I am, Your Honor. Uh, he had reported to me that his
2 sister was supposed to have surgery, um, I actually did
3 confirm that with his sister. She was ill at the time and
4 because of her blood counts the surgery was not able to be
5 completed but I did have in my file, uh, some medical records
6 that his sister provided to me that showed that she was
7 released from the hospital February 28th.

8 Q. Twenty-eighth or 22nd?

9 A. Twenty-eighth I believe. If you could give me just one
10 moment, I can double ---

11 Q. Yeah, ---

12 A. --- check that.

13 Q. --- check that out 'cause in the transcript it talks
14 about her being released on February 22nd.

15 A. Your Honor, I believe she was admitted on February 28th
16 and the discharge instructions are dated February 28th 2012 so
17 I believe that she may have been in the hospital for six days.

18 Q. Well you said admitted on the 28th or ---

19 A. I I'm sorry, admitted on the 22nd.

20 Q. Twenty-second. Okay, so somewhere in here talks
21 about -- alright, but she in fact never did have surgery, is
22 that right?

23 A. That's correct, Your Honor, she was not able to have the
24 surgery because her, uh, body wasn't able to handle it.

25 Q. Okay. Yeah, there it is at the bottom of Page 4. The

MOTIONS AND MATTERS

1 agent says he spoke to the sister, she stated she never had
2 the surgery, she was at the hospital and was released the 22nd
3 of February, then it continues on five days after the subject
4 was released from Morris Village, that doesn't make any sense,
5 does it?

6 A. No.

7 Q. Okay.

8 MS. RATIGAN: Judge, Ms. Waters actually put all this on
9 the record on the bottom of Page 6.

10 THE COURT: Why thank you for that. Okay. Alright, so
11 she cleared up the agent's misstatements of fact, okay. Got
12 any other questions you wanna ask her?

13 MR. JOHNSON: Well, Judge, uh, ---

14 THE COURT: Well I'm just a -- you got ---

15 MR. JOHNSON: I ---

16 THE COURT: --- anything else?

17 MR. JOHNSON: Well I was gonna put -- let me, let me just
18 put this, maybe I didn't earlier but it's slightly marked up
19 but I'd like to make this part of the record, Judge. This is
20 the, uh, Judge Jefferson's, uh, orders, uh, from the
21 revocation that that that ordered him to go to Morris Village.

22 THE COURT: From his meth use and his marijuana use ---

23 MR. JOHNSON: Yes, sir, Your Honor.

24 THE COURT: --- while he was on probation?

25 MR. JOHNSON: Yes, sir, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Yeah, okay.

2 MR. JOHNSON: This was the violation before the one
3 that ---

4 THE COURT: Right.

5 MR. JOHNSON: --- was before the Court then, Your
6 Honor.

7 MS. RATIGAN: I have no objection to that, Your Honor.

8 THE COURT: Okay.

9 MR. JOHNSON: Like to mark this as Applicant's Exhibit I
10 believe 3, ---

11 THE COURT: Okay.

12 MR. JOHNSON: --- enter in evidence.

13 (Judge Jefferson's order marked Applicant's Exhibit No. 3
14 for identification and admitted into evidence.)

15 MR. JOHNSON: Hand up to to Your Honor.

16 THE COURT: That's all, thank you. Alright, anything
17 else? Any other questions?

18 MR. JOHNSON: No, sir, ---

19 MS. RATIGAN: No, Your Honor.

20 MR. JOHNSON: --- Your Honor.

21 THE COURT: Thank you, ma'am, you can step down.

22 THE WITNESS: I may be released?

23 THE COURT: I dunno. You want her re -- she wants to be
24 released from subpoena.

25 MS. RATIGAN: Please, Your Honor.

MOTIONS AND MATTERS

1 MR. JOHNSON: No objection.

2 THE COURT: I appreciate her, uh, recognizing the
3 importance of the subpoena. Thank you for coming.

4 (Laughter.)

5 (Whereupon, the witness left the stand.)

6 THE WITNESS: You have a good one, Your Honor.

7 THE COURT: You too, safe trip.

8 THE WITNESS: Thank you.

9 THE COURT: Alright, anything else?

10 MS. RATIGAN: The State would rest, Your Honor.

11 THE COURT: Any reply?

12 MR. JOHNSON: Uh, just at the appropriate time I probably
13 bring Mr. Andrews up.

14 THE COURT: Well ya'll, if if you talk to him I'll be
15 honest with ya, I mean, what, Mr. Miller, just so you know
16 I --- it, I don't know what he's gonna contribute but I'm
17 gonna let the State talk to him, uh, and, uh, tell me what it
18 is she did wrong.

19 MR. JOHNSON: Judge you're askin' me?

20 THE COURT: Yeah.

21 MR. JOHNSON: Yes, sir, Your Honor. Uh, Your Honor, my
22 client believes she's ineffective, uh, because she failed to
23 subpoena him as requested. If he was there, he coulda
24 verified, I mean, the judge woulda been able to question him
25 whether or not that that, uh, uh, he completed the program.

MOTIONS AND MATTERS

1 He woulda been able to question, put him under oath and he
2 could have said one way or another. The letter submitted it
3 was just a letter, it wasn't even an affidavit, the judge
4 didn't take it for what it's worth. Your Honor, after the
5 hearing ---

6 THE COURT: Okay, and how could she have done anything to
7 change that?

8 MR. JOHNSON: Well, Judge, she could have subpoenaed him
9 there. If he was under subpoena, he would've, uh, he would've
10 been there, the judge coulda questioned him under oath.

11 THE COURT: Okay. How is she ineffective for not, for
12 knowing that a -- having a premonition that a judge wouldn't
13 accept a letter about completion?

14 MR. JOHNSON: Well, Judge, generally, uh, you go to these
15 rehab programs they'll offer you either c -- either c -- or a
16 certificate and and also, uh, obviously ---

17 THE COURT: Well your client asked to be released early
18 so maybe that's why he didn't get the certificate.

19 MR. JOHNSON: No, Judge, I I think my -- Mr. Mr. Andrew's
20 testimony would debunk that theory as as because he says that
21 they actually do not, uh, give certificates but he can supply
22 one to the Court if if the Court so requests so that's
23 actually something if she spoken with him, uh, that they could
24 have, coulda been something like that's just evidence that we
25 wanna submit, Your Honor, that ---

MOTIONS AND MATTERS

1 THE COURT: Okay.

2 MR. JOHNSON: --- fully support my client's, uh, ---

3 THE COURT: Alright, ---

4 MR. JOHNSON: --- application.

5 THE COURT: --- she is serving, oh, well. Let's see what
6 the guy said but I just, Mr. Miller, I I don't, uh, I'm just
7 tellin' ya it's a judge's decision in your case. Uh, I don't
8 know what, uh, your lawyer could've done to impact that more
9 than what she did or how she fell below an objective standard
10 of reasonableness in her, uh, representation but we're gonna
11 wait and see what he says, okay. Alright.

12 MR. JOHNSON: Thank Your Honor.

13 (Whereupon, a discussion was held off the record.)

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 22, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 29, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

May 21, 2014

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
Joan Moore, Vice Chair
Jane B. Jones
Everard Rutledge, PhD
J. Buxton Terry

STATE DIRECTOR
John H. Magill

Division of Inpatient Services
Morris Village Alcohol and Drug
Addiction Treatment Center
610 Faison Drive
Columbia, SC 29203
Information: (803) 935-7100

3/23/12

To Whom It May Concern,

Mr. James Miller completed the inpatient personal growth program at the South Carolina Department of Mental Health's Earl E. Morris Alcohol and Drug Abuse Facility in Columbia, S.C. Mr. Miller's participation was excellent. He actively participated in all scheduled groups, meetings, and activities. His investment in identifying the core issues concerning his difficulty in coping with daily stressors was sincere and appeared successful. Professionally, his prognosis for continued recovery is guarded. A Recovery Program to include 12-step meetings, sponsorship, service work, and reading recovery literature is imperative to facilitate and solidify the behavior change currently evolving. Treatment dates for Mr. Miller were 2/2/12 through 2/27/12

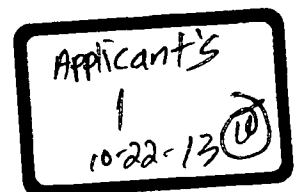
If I can be of further help please contact me by calling 803-935-7393.

Sincerely,

Carlton Andrews
Carlton Andrews, MRC, LPC, NCAC

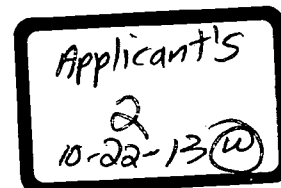
MISSION STATEMENT

To support the recovery of people with mental illnesses.



South Carolina Department of Probation, Parole and Pardon Services

Violation Report

Offender's Name: **JAMES FREDDIE MILLER, James Fred Miller**State of South Carolina, County of: **LAURENS**SID#: **00080158**Warrant#: **W-30-12-0030**Date of Birth: **[REDACTED]**SCDC#: **259635****Indictment Numbers:****09-GS-23-09275****Offense and Offense Code:****2877 - Enhancement for 3rd or sub. offense.****Value \$2000 or less (see 16-01-0057)**Supervision Program: **Probation**Begin Date: **7/1/2011**End Date: **6/30/2016**Supervision Level: **Institutionalized**Sentencing Judge: **2155 - McIntosh, R. Lawton**Sentencing County: **GREENVILLE**Sentencing Date: **5/11/2010**Location (Bold Response): **Jail****Sentence:**

Shoplifting - 16-13-0110(B)(1) (I519338) - 10 yrs susp on ser 3 yrs & 5 yrs prob.

11/07/2011: Judge Jefferson ordered Attend/complete in-patient SAT program and remain in custody until bedspace available. SF arrears are satisfied by pre-trial detention. Restructure all financial obligations. All other conditions previously imposed remain in full force and effect.-dba

Special Conditions:

FINE - Pay Surcharge

Current Address and Summary of Residence:

[REDACTED] LAURENS, SC 29360, USA,

Reporting:

Subject have problem with reporting.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Unemploy	11/6/2006 -		\$1.00

Unemployed

Financial Conditions:

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Fees						
DrugTest	\$20.00	\$20.00/M	\$0.00		\$20.00	\$20.00
Regular Supervision	\$200.00	\$50.00/M	\$0.00	7/13/2011	\$200.00	\$200.00
Fines						
Surcharge	\$133.90	\$5.00/M	\$0.00		\$40.00	\$133.90

Prior Violation Dates	Prior Violations	Prior Violation Disposition
11/7/2011	Excessive use of alcoholic beverages (per police report), He was arrested for disorderly conduct 8/25, arrested for child support BW 8/26. Behind	

South Carolina Department of Probation, Parole and Pardon Services

Violation Report

Offender's Name: **JAMES FREDDIE MILLER, James Fred Miller**

on all accounts. Incomplete SAC. Failed report 8/31,9/2,9/6,9/14. UNKWN LOCATION		Warrant/Court-Attend/complete in-patient SAT program and remain in custody until bedspace available. SF arrears are satisfied by pre-trial detention. Restructure all financial obligations. All other conditions previously imposed remain in full force and effect.
8/24/2011	Subject positive with cocaine on 24 Aug (admitted to using cocaine on 22 Aug). Arrested for shoplifting in Laurens and BW from Lexington County. Failed to notify Agent regarding his arrest. Behind on SPV fee \$50.00, DT fee \$20.00 and Surcharge \$5.00	1182-Subject is to complete SAC through VOC-Rehab and to include inpatient if deem necessary by the counselor. Must pay fees to current within 90 days.
7/20/2011	on 7/20 subject stated that he did not use any illegal drugs. RDT was conducted with positive result on THC and Meth. Subject then admitted to using marijuana 20 days prior his report and used meth 1 week prior his Office visit	1217- Referred to VOC REHAB to complete SAC and Verbal reprimand

Details of the Present Violation:

Violation of Probation conditions 1, 10 and Special Condition(s) and additional conditions for cause 09-GS-23-09275 pursuant to Section 24-21-430 and 24-21-450 of the South Carolina Code of Laws.

- Condition 1 Subject failed to report upon released from Morris Village Facility on 27 Feb 2012.
- Subject failed to report as instructed by his Agent on 6 March 2012.
- Condition 10 Failed to follow advice from his agent by not reporting as instructed on 6 March 2012.
- Subject failed to complete Morris Village In-patient Program as ordered by Judge Jefferson on 11/7/2011.
- Subject failed to report to Gateway on 5 March for follow-up appointment.

Such actions constitute a violation of conditions 1, 10 and Special Condition(s) and additional conditions imposed by the releasing authority of the Department under authority given by the South Carolina Code Case number 09-GS-23-09275 in the Greenville County Court of General Sessions on 07/01/2011.

Agent's Recommendation:

Full revocation

Agent's Justification:

Mr. Miller has proven time and time again that he is not suitable for probation. He has been under our supervision nine times, and has criminal records spanning over 37 years. He was given another chance by Judge Jefferson on 11/7/2011 to complete Inpatient program and to continue abide by his conditions.

Subject failed to complete Morris Village In-patient Program, by providing false information to the counselor so that he can be released on 27 February 2012. Further he failed to report to his Agent upon his release from the Center. Subject also failed to report to Gateway on 5 March for his follow-up appointment.

He also failed to report on 6 March 2011 after he was instructed by his Agent.

Therefore, it is the recommendation of his agent that the offender be revoked.

Eden Rose Castillo

Agent

Date: 3/13/2012

Supervisor's Signature

Date: 3/13/12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Laurens
STATE VS.

FILED: CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS

INDICTMENT#:

09 GS- 23 - 9275

Probation C/W#s: W-30-11-0128 (9-16-11)

James Freddie Miller

AKA: James Fred Miller 2011 DEC - 9 P

Race: W Sex: M

DOB: [REDACTED]

SSN: [REDACTED]

SID#: 00080158

Name of Original Offense: Shoplifting, 3rd

Original AWW#: I 519338

Date of Original Offense: 9-19-09

Conviction S.C. Code §: 16-13-110 (B)(1)

Conviction CDR Code #: 2181717

Original Sentence: 10 yrs; as; 3 yrs; 5 yrs prob.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 5/11/10 in the Court of General Sessions of Greenville County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on _____, as set forth in the attached warrant(s) or citation(s) dated 9-16-11.

After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)

1, 3, 5, 6, 7, 9, 10, and special conditions

Therefore, IT IS ORDERED that:

- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years, the remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☒ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court: Subject to attend and complete in-patient substance abuse treatment program and to remain in custody until bedspace is available. Supervision fee amounts are satisfied by pre-trial detention time. Restructure all financial obligations. All other conditions previously imposed remain in full force and effect.

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

This 17th day of November, 2011.

Laurens

A.R. Jeff
Presiding Judge

Eighth Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, 2011, at _____ SC

Applicant's
3
10-22-13 (w)

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE

JAMES FREDDIE MILLER, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

STATE OF SOUTH CAROLINA, Defendant

Case Number: 2012-CP-23-03344

Pending in GREENVILLE County

TO: CARLTON ANDREWS

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , PM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

All records: the certificate of completion of any rehabilitative program by James Freddie Miller.

PLACE

Law Office of Brian P. Johnson

522 North Church St.

Greenville, SC 29601

DATE AND TIME October 22, 2:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :

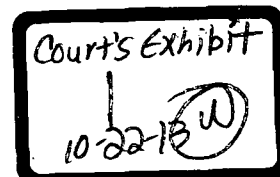
10/14/13
Date

Brian P. Johnson, Esquire

Print Name

522 North Church Street

Greenville, SC 29601



Greenville, SC 29601

77

864-331-1630

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE <u>Oct 15, 2013</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON <u>Carlton Andrews</u>	MANNER OF SERVICE <u>Certif. Mail</u>	
SERVED BY	TITLE	

DECLARATION OF SERVER

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

Executed on 10/15/13

[Signature]
SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-3344
COUNTY OF GREENVILLE	)	
	)	
James Fred Miller,	)	
S.C.D.C. No. 259635,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUN 27 AM 11 47

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 17, 2012. The Respondent filed a return and motion to dismiss dated July 17, 2012 and an amended return dated October 17, 2012. An evidentiary hearing into the matter was convened on October 22, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, 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 was the Applicant's probation revocation counsel, Tara Waters, Esquire. The Court had before it the transcript of the probation revocation hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the amended return, and the Applicant's Exhibits 1-3.¹

PROCEDURAL HISTORY

The Applicant waived presentment to the Greenville County Grand Jury on the charge of

¹ At the conclusion of the hearing, this Court left the record open in order to allow the Respondent to obtain a statement from Carlton Andrews. Andrews' letter is attached to this Order as Court's Exhibit 1.

shoplifting, third offense or greater (2009-GS-23-9275). Susannah C. Ross, Esquire represented the Applicant.

On May 11, 2010, the Applicant pled guilty. The Honorable R. Lawton McIntosh sentenced the Applicant to ten (10) years suspended on service of three (3) years and five (5) years probation. Judge McIntosh ordered this sentence to be concurrent with the sentence the Applicant was already serving. The Applicant did not appeal.

On April 3, 2012, the Applicant appeared in court in Laurens County pursuant to a probation citation. He was represented by Tara Waters, Esquire. The Honorable Frank Addy revoked the Applicant's probation and levied a sentence of six (6) years imprisonment. The Applicant did not appeal.

ALLEGATIONS

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

1. "I was instructed to report on 3-6-2012."
2. "I did everything Judge Jefferson told me to do."
3. "I was not instructed to report on release of drug program."

The Applicant subsequently added the following allegations as to why he believes he is entitled to relief:²

1. Ineffective assistance of probation revocation counsel:
 - a. Failed to subpoena a counselor from Morris Village as a witness.
 - b. Failed to subpoena "legal documents from the State of South Carolina" to confirm the State's argument that the in-house drug program was not completed.
 - c. Failed to subpoena mental health records from Morris Village.
 - d. Failed to file an appeal.

² These allegations were contained in a document captioned "Response to Conditional Order of Dismissal" filed on September 11, 2012.

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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 each witness who testified at the hearing, and to closely pass upon their 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).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of probation revocation counsel. 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). Allegations of ineffective assistance of probation revocation counsel are evaluated under the Strickland standard. See, e.g., United States v. Wren, 682 F. Supp. 1237 (S.D. Ga. 1988). However, since a probation hearing is not a formal adversarial proceeding, "the Court must review counsel's performance in light of the particular type of proceeding involved." Id. at 1241-42.

The Applicant stated he and counsel only had one meeting and that they did not discuss the probation violation report. The Applicant stated Judge Jefferson ordered him to complete in-

patient treatment at Morris Village in November 2011 and that he completed treatment and was released. The Applicant stated he asked counsel to subpoena Carlton Andrews (his counselor at Morris Village) and his paperwork. The Applicant stated he had a letter from Morris Village and that counsel said they did not need to subpoena Andrews. The Applicant stated Andrews could have explained that he completed the treatment program. The Applicant stated counsel never discussed an appeal.

Counsel testified she received numerous documents (including the probation violation report, arrest warrant, defense of indigents form, and acknowledgement of hearing date) and that she reviewed these items with the Applicant. Counsel testified she did not recall speaking with the Applicant about subpoenaing Andrews. Counsel testified she believed his letter was solid enough evidence for the revocation hearing. Counsel testified the allegations were that the Applicant did not complete treatment at Morris Village (or report after release) and did not appear for his follow-up at Gateway. Counsel testified the Applicant had also given false information about needing to leave Morris Village early because his sister had surgery on a certain day (and that the sister did not have her surgery on that day). Counsel testified she researched whether to file a motion to reconsider, but that she ultimately felt it would not have been successful.

This Court finds the Applicant failed to meet his burden of proving counsel should have subpoenaed Andrews to testify at the revocation hearing. At the probation revocation hearing, the Applicant's probation agent relayed the previous and current probation violations to the judge. (Transcript, pp.2-5). Regarding the current violations, the agent stated the Applicant

failed to report upon release from Morris Village facility on 27th of February . . .
failed to report as instructed by agent 6th of March, failed to follow advice of
agent by not reporting, failed to complete Morris Village inpatient program as

ordered by Judge Jefferson on November 7th and failed to report Gateway 5th of March for his follow-up.

(Transcript, pp.3-4). The agent stated she had contacted Morris Village and they stated they released him in order to care for his sister after her surgery and then confirmed the surgery had not occurred. (Transcript, p.4-5). The agent also stated the Applicant made threatening comments when the warrant was served on him and that he also had an active bench warrant. (Trial transcript, p.5). During the mitigation portion of the hearing, probation revocation counsel made an extensive argument on the Applicant's behalf. Counsel also presented a letter (from Morris Village) to the judge indicating the Applicant had completed the program (Transcript, p.8). The judge confirmed with the probation agent that she had received this letter and then the judge reviewed it. (Transcript, p.9). In revoking the Applicant's probation, the judge found the Applicant was:

in willful violation of his probationary terms and that he failed to report when instructed, he did not follow up with Gateway when he was supposed to have followed up with them and I am not convinced that he completed the program at Morris Village despite what has been provided to me by counsel for the defendant and so I do find that he is in willful violation of his probation and he should not have left when he left. He should have stuck around, he should have gotten a certificate, he should have graduated and he definitely should have followed up with Gateway.

(Transcript, p.13). This Court notes that Court's Exhibit 1 indicates the Applicant did complete treatment at Morris Village. This Court, however, does not find counsel was deficient in failing to have Andrews present at the revocation hearing. First, this Court agrees with counsel that the letter she handed up to the judge (Applicant's Exhibit 1) appeared to be sufficient proof of completion on its face. This Court finds counsel was not deficient in failing to anticipate the judge would not give more credence to that letter. This Court also finds the Applicant failed to demonstrate any prejudice from Andrew's failure to testify at the revocation hearing. While the

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issue of whether the Morris Village treatment had been completed was a basis for revocation, the Applicant accrued numerous other probation violations. The judge had the Morris Village letter before him and still chose to terminate the Applicant's probation based upon several different probation violations. See State v. Herndon, 403 S.C. 84, 89, 742 S.E.2d 375, 378 (2013) ("The determination to revoke probation is within the discretion of the circuit court."). This Court cannot speculate that Andrews' testimony at the probation violation hearing would have yielded a different result.

This Court finds the Applicant failed to meet his burden of proving counsel should have filed a notice of appeal. This Court notes probation revocation counsel is not required to discuss the right to appeal. See Turner v. State, 384 S.C. 451, 456-57, 682 S.E.2d 792, 795 (2009). This Court finds the Applicant has failed to demonstrate either that he told counsel that he wanted to appeal or that there were any appealable issues from his revocation hearing. This Court finds the Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding a PCR applicant bears the burden of proving the allegations in their application).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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 before or during his probation revocation hearing. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be 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.

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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 23 day of January, 2014.

Edward W. Miller
Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Gunnville, South Carolina.



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
Joan Moore, Vice Chair
Leverly Cantwell
Jane B. Jones
Leverard Rutledge, PhD
J. Ruxton Terry
Sharon L. Wilson

STATE DIRECTOR

John H. Magill

Division of Inpatient Services
Morris Village Alcohol and Drug
Addiction Treatment Center
610 Faison Drive
Columbia, SC 29203
Information: (803) 935-7100

1/6/14

To Whom It May Concern:

My name is Carlton Andrews. I am an Addictions Specialist III employed by the South Carolina Department of Mental Health. Mr. James P. Miller was assigned to my caseload on February 2, 2012 and successfully completed his treatment at Morris Village on March 1, 2012. If it is true Mr. Miller's probation was revoked on April 3, 2012 then he was in fact violated after successfully completing his court ordered inpatient treatment episode.

If I can be of further help please contact me by calling 803-935-7393.

Sincerely,

Carlton Andrews, MRC, LPC, NCAC

MISSION STATEMENT

To support the recovery of people with mental illnesses.



WITNESSES

R Frady

Greenville County Sheriff's Office

9/19/2009

ARREST WARRANT NUMBER

1519338

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

LBP

The State of South Carolina

000275

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS.

JAMIES FRED MILLER

SCC

Indictment for

2877

SHOPLIFTING THIRD OR ABOVE

VIOLATION § 16-13-0110 and §16-1-57

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

0-1045

COUNTY OF Greenville)
STATE VS.)

James Fred Miller

AKA:

Race: W Sex: M Age: 56

DOB: SS#:

Address:

City, State, Zip: Laurens, SC 29360

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

INDICTMENT/CASE#: 2009GS2309275

A/W#: 1519338

Date of Offense: 9/19/2009

S.C. Code § : 16-13-0110(B)(1)

CDR Code #: 2877

SENTENCE SHEET

TO: Shoplifting / Enhancement for 3rd or sub. offense. Value \$1000 or less (see 16-01-0057)

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-13-0110(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2877

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

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Paulette Leigh B.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of 3 days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5 yrs

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 47.12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$100 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§ 90.7 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: Tollison

SCCA/217 (11/2009)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code: 2153

Sentence Date: 3-11-10

Probation begins after completion of any early release program.