

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

DEC 15 2014

S.C. Supreme Court

DONALD W. WICHMANN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001043

APPENDIX

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

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

KAREN RATIGAN
Senior Assistant Deputy Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

PROBATION VIOLATION HEARING TRANSCRIPT (February 17, 2012) 1

PROBATION CITATION6

PROBATION ARREST WARRANT # W-23-11-0904 (December 9, 2011).....8

ORDER REVOKING PROBATION (February 17, 2012).....9

PROBATION ARREST WARRANT # W-23-11-0002 (January 4, 2011) 10

ORDER REVOKING PROBATION (February 11, 2011).....11

PROBATION ARREST WARRANT # W-23-08-3100 (October 22, 2008).....12

ORDER REVOKING PROBATION (January 9, 2009).....13

APPLICATION FOR POST-CONVICTION RELIEF14

RETURN AND PARTIAL MOTION TO DISMISS.....38

POST-CONVICTION RELIEF HEARING TRANSCRIPT43

TESTIMONY

 DONALD WICHMANN

 Direct Examination by Ms. Horlbeck47

 ROBERT EUGENE IANUARIO

 Direct Examination by Ms. Ratigan.....58

 Cross- Examination by Ms. Horlbeck.....63

ORDER OF DISMISSAL68

INDICTMENT AND SENTENCING SHEET75

1 STATE OF SOUTH CAROLINA) GENERAL SESSION
 2 COUNTY OF GREENVILLE) Probation Violation
 3)
 4 State of South Carolina) TRANSCRIPT OF RECORD
 5)
 6 -vs-)
 7 Donald Wichmann)

8 February 17, 2012
 9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE EDWARD MILLER, Judge.

12 A P P E A R A N C E S

13 Robert Ianuario, Esquire
 14 Attorney for Mr. Wichmann

15 Tony Anderson
 16 Probation Officer

17
 18 CAROLINE HISKELL
 19 Thirteenth Circuit Court Reporter
 20
 21
 22
 23
 24
 25

I N D E X

(There were no exhibits or witnesses presented).

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Donald Wichmann, Probation Violation

1 P R O C E E D I N G S

2 THE CLERK: Donald Wichmann.

3 THE COURT: Raise your right hand.

4 DONALD WICHMANN, having been duly sworn,
5 testified as follows:

6 Have you had a chance to review this
7 violation report?

8 MR. WICHMANN: Yes, sir.

9 THE COURT: You admit the violations they
10 allege in here?

11 MR. WICHMANN: Yes, Your Honor.

12 THE COURT: Do you have a legal reason why
13 you violated?

14 MR. WICHMANN: Legal reason?

15 THE COURT: Do you have a lawful reason why
16 you violated?

17 MR. WICHMANN: No, sir.

18 THE COURT: I find that he's in willful
19 violation and this is his fifth violation.

20 What do y'all want to tell me?

21 MR. IANUARIO: I believe we've spoken with
22 Mr. Anderson on this one. We'd like to ask for five years
23 and terminate on this. He's not in agreement with the
24 termination part but we'd like to add it if we can.

25 My client is 34 years old. I would like to

Donald Wichmann, Probation Violation

1 note that the violations are not new crimes, just
2 violations of conditions which still count as a violation
3 but after dealing with a repeat offenders and career
4 criminals, this guy just made a couple of bad decisions.

5 He's been compliant with Mr. Anderson and
6 everything, willingly turned over his phone and admits
7 these violations. He's always reported as needed.

8 THE COURT: What do you want to do with him?
9 You want him back?

10 MR. ANDERSON: No, sir.

11 THE COURT: He's got 11 hanging over him,
12 right?

13 MR. ANDERSON: Yes, sir. It is a mandatory
14 GPS. He will come out on track and once he is released
15 from any incarceration period.

16 THE COURT: Six years and terminate. Good
17 luck.

18 MR. ANDERSON: The phone that's in question,
19 Judge, do you want ---

20 THE COURT: Give it back to his family. Is
21 that what you want?

22 MR. ANDERSON: We usually give it to the
23 troops or whatever.

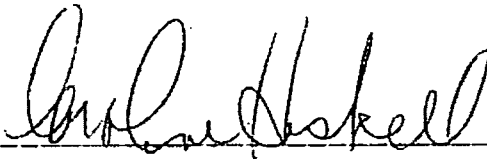
24 THE COURT: Okay.

25 MR. ANDERSON: Thank you.

Donald Wichmann, Probation Violation

1
2 I, the undersigned Caroline Hiskell, Official
3 Court Reporter for the Thirteenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript of
6 record of all the proceedings had and evidence introduced
7 in the trial of the captioned case, relative to appeal, in
8 the Court of General Sessions, Greenville, South Carolina
9 on the 17th day of February, 2012.

10 I do further certify that I am neither of
11 kin, counsel, nor interest to any party hereto.

12
13
14 A handwritten signature in cursive script, appearing to read "Caroline Hiskell", is written over a horizontal dashed line.

15 Caroline Hiskell
16
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PROBATION CITATION

ORIGINAL

No. C-23-10-1196

SOUTH CAROLINA V. DONALD WALTER WICHMANN, Donald Wichmann	COUNTY: GREENVILLE	
	SCDC #	SID # 00984019

TO: DONALD WALTER WICHMANN, Donald Wichmann

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

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

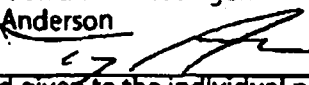
YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.

Violations Charged
By violating conditions of Probation 5, 7, 9, and 10 of his Probation conditions and 3, 12 of the GPS Monitoring Program conditions ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

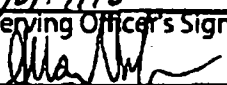
YOU ARE HEREBY NOTIFIED that you have the rights listed below.

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

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

GREENVILLE, South Carolina	Probation and Parole Agent Tony Anderson	Agent # 0422
Date 10/13/2010		

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

Place SC PROBATION, PAROLE & PARDON SERVICES 301 UNIVERSITY RIDGE, SUITE 6500 GREENVILLE, SC 29601	Date and Time 10/14/10 9:10 AM
	Serving Officer's Signature 

Sworn to and subscribed before me this 16 day of Dec 2010

Signature of Notary Public  My Commission Expires 09/10/20

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of GREENVILLE

Personally appeared before me, Tony Anderson, who first being duly sworn, deposes and says that DONALD WALTER WICHMANN, Donald Wichmann did within this county and State on the 13 day of October, 2010, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

By violating conditions of Probation 5, 7, 9, and 10 of his Probation conditions and 3, 12 of the GPS Monitoring Program conditions ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

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

The Defendant has violated his Probation in the following manner: By being \$50.10 in arrears toward his Surcharge account; By being \$105.00 in arrears toward his DACOR account; By being \$280.00 in arrears toward his Supervision Fee account; By being \$310.00 in arrears toward his Active GPS account; By failing to maintain gainful employment or show any proof thereof; By failing to respond to GOC after numerous attempts on his pager and his cell phone; By failing to respond to the oncall agents after numerous attempts, and by failing to charge his GPS unit as instructed; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 5, 7, 9, and 10 of his Probation conditions and 3, 12 of the GPS Monitoring Program conditions ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

Sworn to and subscribed
before me this 13 day of
October, 2010

[Signature]
Signature of Notary Public

[Signature]
Affiant

My Commission Expires: 10-26-2019

Form 18.1 - Arrest Warrant
Form Approved by
SC Attorney General
Section 17-3-160
March 15 1978

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ORIGINAL

Probation
ARREST WARRANT

Indictment Number 07-GS-23-02556
Warrant Number W-23-11-0904
State Identification No. (SID) 00884019

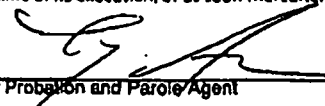
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF GREENVILLE, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that DONALD WALTER WICHMANN, Donald Wichmann, did on the 2 day of December, 2011 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions of Probation 7, 9, and 10 of the Standard Probation Conditions 6, of the Standard Sex Offender Conditions and 1, and 11 of the Computer Use Agreement for Sex Offenders ordered in cause number 07-GS-23-02556 in the Greenville County Court of General Sessions and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller and 2-11-11 by the Honorable Judge C. Victor Pyle.

Now, therefore, you are empowered and directed to arrest the said defendant and bring DONALD WALTER WICHMANN, Donald Wichmann before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at GREENVILLE, S. C. this 2 day of December, 2011.



Signature of Probation and Parole Agent (L.S.)

County of GREENVILLE

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Tony Anderson, who, first being duly sworn, deposes and says that DONALD WALTER WICHMANN, Donald Wichmann did within this County and State on the 2 day of December, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

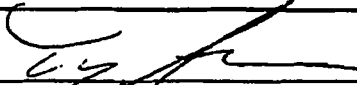
DESCRIPTION OF OFFENSE:

By violating conditions of Probation 7, 9, and 10 of the Standard Probation Conditions 6, of the Standard Sex Offender Conditions and 1, and 11 of the Computer Use Agreement for Sex Offenders ordered in cause number 07-GS-23-02556 in the Greenville County Court of General Sessions and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller and 2-11-11 by the Honorable Judge C. Victor Pyle.


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:

By failing to refrain from the possession of sexually explicit material per Standard Sex Offender Conditions in that the offender had a video saved on his phone in which his girlfriend is performing Oral Sex on subject; By failing to refrain from going on social sites in that subject's phone shows that he has been on Facebook; BY being \$160.00 in arrears toward his DACOR account as 12-9-11; B being \$180.00 in arrears toward his Supervision Fee account as of 12-9-11; By being \$460.00 in arrears toward his GPS account as of 12-9-11; And by failing to follow the advice and instructions of her Supervising Agent. Such actions constitute a willful violation of conditions 7, 9, and 10 of the Standard Probation Conditions 6, of the Standard Sex Offender Conditions and 1, and 11 of the Computer Use Agreement for Sex Offenders ordered in cause number 07-GS-23-02556 in the Greenville County Court of General Sessions and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller and 2-11-11 by the Honorable Judge C. Victor Pyle.

Sworn to and Subscribed before me
this 2 day of December, 2011.



Affiant



Signature of Notary Public (L.S.)

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

12-16-2011

My Commission Expires

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Greenville
STATE VS.

Indictment Number: 07-GS-23-0255-6
Probation CW#: W-23-11-0904

Donald Wickmann
AKA: _____
Race: W Sex: M
DOB: _____
SSN: _____
SID#: 00984019

Name of Original Offense: Lewd Act on a Child
Original A/W #: E 819 620
Date of Original Offense: 11/1/06
Conviction S.C. Code §: 16-15-140
Conviction CDR Code #: 2141618
Original Sentence: 15 yrs susp. 5 yrs Probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 6/10/09 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 1/9/09, 2/11/11, as set forth in the attached warrant(s) or citation(s) dated 12/9/11. 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, 9, and 10 and 1, and 11 SCL

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 \$ 0.
- 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 (arrears)
 - Fines and other fees (arrears/balance)
 - Restitution (and 20%) (arrears/balance)
 Civil Judgment:
 - Department fees
 - Fines and other fees
 - Restitution (and 20%)
- Additional Conditions ordered by the Court:
 - Terminate the balance
 - Donate Subject's phone to Agent direct.
- 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 4 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.

FEB 21 PM 3:31
CLERK OF COURT
SOUTH CAROLINA
CORRECTIONS

This 17th day of February, 2012
Greenville, SC

Ed W. Miller
Presiding Judge
13th Judicial Circuit

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

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

Offender's Signature _____ Witnessed by _____

Signed this _____ day of _____, _____ at _____ SC

I019020

Form Approved by
SG Attorney General
Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Probation
ARREST WARRANT

ORIGINAL

Indictment Number 07-GS-23-02556

Warrant Number W-23-11-0002

State Identification No. (SID) 00984019

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

It appearing from the attached affidavit that there are reasonable grounds to believe that DONALD WALTER WICHMANN, Donald Wichmann, did on the 4 day of January, 2011 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions of Standard Probation 1, 4, 10 and Standard Sex Offender Conditions 4, and 10 ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

Now, therefore, you are empowered and directed to arrest the said defendant and bring DONALD WALTER WICHMANN, Donald Wichmann before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at GREENVILLE, S. C. this 4 day of January, 2011.



Signature of Probation and Parole Agent (L.S.)

County of **GREENVILLE**

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Tony Anderson, who, first being duly sworn, deposes and says that DONALD WALTER WICHMANN, Donald Wichmann did within this County and State on the 4 day of January, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

By violating conditions of Standard Probation 1, 4, 10 and Standard Sex Offender Conditions 4, and 10 ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

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

The Defendant has violated his Probation in the following manner: By failing to refrain from the use of Alcohol in that subject had a 18 pack of Bud light in his possessions as well as a open beer verified by Home visit on 11-16-10; By failing to refrain from having contact with a person under the age of 18 in that we have an affidavit stating such; By failing to refrain from having contact with a person who has a criminal record in that he is residing with Dawn Legett in which she is on active Probation at this time; By testing positive for Opiates on 12-22-10 without having a prescription; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of standard conditions 1, 4, 10 and Standard Sex Offender Conditions 4, and 10 ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

Sworn to and Subscribed before me
this 4 day of January, 2011.



Affiant



Signature of Notary Public (L.S.)

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

09/20/10
My Commission Expires

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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Greenville
STATE VS.

INDICTMENT#:
07-GS-23-02556
Probation CW#s: C-23-10-1196
W-23-11-0002

Donald Wickman
AKA:
Race: W Sex: M
DOB: [REDACTED]
SSN: [REDACTED]
SID#: 00944019

Name of Original Offense: Lewd Act on a Child
Original A/W#: J 819 620
Date of Original Offense: 1/1/06
Conviction S.C. Code §: 16-15-140
Conviction CDR Code #: 21 41 618
Original Sentence: 15 yrs susp 5 yrs Probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 6/10/08 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 1-9-09 as set forth in the attached warrant(s) or citation(s) dated 6-10-3-10 W-1-9-11. After hearing the evidence and being duly advised, in the presence 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)
§ 7, 9 and 10, 312 GPS, 114, 10, 410 Sex Offender 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 1 months/years of the original sentence and/or pay \$ 0; 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: Times satisfies monetary obligation. SF, Fine Subject to be picked up by the Probation Office upon his release to be placed back on GPS monitoring. Restructure Restriction upon his release.
- The defendant is given credit for pre-revocation 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 11th day of February, 2011
Greenville SC

[Signature]
Presiding Judge C. D. [Signature]
Judicial Circuit

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

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

Offender's Signature _____

Witnessed by _____

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



I819620

Form 16.1 - Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-180
March 15, 1978

ORIGINAL

Probation

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ARREST WARRANT

Indictment Number 07-GS-23-02556

Warrant Number W-23-08-3100

State Identification No. (SID) 00984019

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

It appearing from the attached affidavit that there are reasonable grounds to believe that DONNY WALTER WICHMANN, Donald Wichmann, d'd on the 22 day of October, 2008 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By willfully violating conditions 7, 5, 10 and Sex Offender Condition 9 as ordered in cause number 07-GS-23-02556 by the Greenville County Court of General Sessions on 06/10/08.

Now, therefore, you are empowered and directed to arrest the said defendant and bring DONNY WALTER WICHMANN, Donald Wichmann before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at GREENVILLE, S.C. this 22 day of October, 2008.


Signature of Probation and Parole Agent (L.S.)

County of GREENVILLE

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Robbie Gilbert, Jr., who, first being duly sworn, deposes and says that DONNY WALTER WICHMANN, Donald Wichmann did within this County and State on the 22 day of October, 2008, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

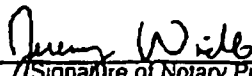
By willfully violating conditions 2, 5, 10 and Sex Offender Condition 9 as ordered in cause number 07-GS-23-02556 by the Greenville County Court of General Sessions on 06/10/08.

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:

By having changed his residence without the knowledge or consent of his agent on or about 10/07/08 and not notifying his agent that he had changed his residence until 10/17/08 verified by message left on agents voice mail on 10/17/08, home visit conducted on 10/31/08 and telephone contact with offenders previous landlord on 10/21/08. By failing to maintain a suitable residence which is approved by his agent by moving to an address without the knowledge and consent of the supervising agent which is within 1,000 feet of a school making it unsuitable and a violation of his Standard Sex Offender Conditions as verified by a home visit conducted on 10/21/08. By failing to work diligently at a lawful occupation. By failing to follow the advice and instructions of his supervising agent.

Sworn to and Subscribed before me
this 22 day of October, 2008.


Affiant


Signature of Notary Public (L.S.)
My Commission Expires
December 1, 2010
My Commission Expires

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

RJG

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

IN THE COURT OF GENERAL SESSIONS

County of Greenville
STATE VS.

INDICTMENT#:
07 -GS- 23 - 02556
Probation CW#: W-23-08-2928
W-23-08-3100
Name of Original Offense: Lewd Act on a Child
Original AN#: I 819630
Date of Original Offense: 1/1/2006
Conviction S.C. Code §: 16-15-140
Conviction CDR Code #: 2 14 16 18
Original Sentence: 15 years Susp 5 yrs Probation

Donald Wickham 35
AKA: _____
Race: W Sex: M
DOB: _____
SSN: _____
SID#: 00984019

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 6/10/08 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 10/22/08, as set forth in the attached warrant(s) or citation(s) dated 9/9/08. 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)
2, 3, 6, 7, 9, 10, 11 & special condition

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 3 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:
 - Time to Satisfy Supervision Fee appears. Restructure surcharge and Restitution
 - Mandatory GPS ordered this date.

- 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 0 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 9th day of January, 2009
Greenville SC

SC (U. MOE)
Presiding Judge
Edward W. Miller 13th Judicial Circuit

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

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

Offender's Signature _____ Witnessed by _____

Signed this _____ day of _____ at _____ SC

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Greenville)
)
Donald W. Wichmann, SCDC # 339554)
 Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

v.

State of South Carolina)
)
)
)

2012-CP-23-06896
 APPLICATION FOR
 POST-CONVICTION RELIEF

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSHER
 OCT 25 PM 2:48

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 Ridgeland Correctional Institution, Post Office Box 2039, Ridgeland, SC 29936-2039
2. Name and location of Court which imposed sentence Court of General Sessions, Greenville County Courthouse, 305 North Main Street, Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-05-23-025516 ; Original A/w # I819620
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11 February 2011 ; 6 years incarceration
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Plea Agreement - was told could not appeal
 - (b) _____

(c) _____

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

(a) Please see attached argument

(b) _____

(c) _____

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

(a) Please see attached argument

(b) _____

(c) _____

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

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

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

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

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

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. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No _____

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

- (a) this is Applicant's original Postconviction Relief Application
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

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. N.O.R.M.L. Legal Committee, Robert E. Januario - Esquire,
419 Varday Street, Greenville, SC 29601
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. through hearing and sentencing and plea
 - ii. _____
 - iii. _____

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

The Applicant is requesting time served on this sentence and the removal of the mandatory GPS monitoring program. Please see attached argument and brief

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Jasper)

I, Donald W. Wichmann, SCDC # 332554, 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.

Donald W. Wichmann

SWORN to and subscribed before me this 8 day of Oct., 2012.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

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

I, Donald W. Wirthmann, SCDC # 332554, 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.

Donald W. Wirthmann
Applicant

SWORN or affirmed to and subscribed before me this
8 day of Oct., 2012.

Virginia Bolmarin
Notary Public

My Commission Expires: May 20, 2021

Background:

The Applicant's original charge - Lewd Act Upon a Child, Indictment Number 2007-65-23-02556 - came before this Honorable Court on 10 June 2008.

The Applicant's plea of guilt was entered and the sentence was 15 years suspended to 5 years probation. The plea agreement's special conditions were restitution, and random Drug / Alcohol Testing. The Defense Attorney argued against mandatory GPS monitoring and the Court agreed. This plea was recommended by the State and so entered. (See, Exhibit A - Sentencing Sheet 10 June 2008.)

The Applicant then violated his probation on 09 January 2009 and was sentenced to 3 years incarceration with the South Carolina Department of Corrections; thereupon to be reinstated on probation. The Court also ordered mandatory GPS monitoring in violation of the original plea agreement. (See,

Exhibit B - Original Arrest Warrant and the Court's Order.)

The Applicant violated probation again and a Court Order was issued on 11 February 2011 where the Applicant was ordered to serve a sentence of 6 years in the South Carolina Department of Corrections and terminating his probation. The Court, however, reinstated the mandatory GPS monitoring upon the Applicant's release, again violating the original plea agreement.

(See, Exhibit C - Probation Citation - Arrest Warrant - Court's Order .)

Counsel was ineffective for failing to investigate case where Probation Citation and Arrest Warrant were different.

The Applicant's Probation Officer, Tony Anderson - Agent # 0422, prepared the Probation Citation on 14 October 2010 and then the Probation Arrest Warrant on 04 January 2011 with two totally different narratives; therefore, catching the Applicant off guard and unable to prepare for his defense. The Defense Counsel

made no objection to this and therefore did not defend the Applicant to the utmost of his ability. (See again, Exhibit C - Probation Citation and Arrest Warrant.)

Had counsel known the difference - objected to the admission of the information contained in the Warrant - he and the Applicant would have been able to prepare an adequate defense. Evidence that the Applicant's case was inadequately investigated by counsel related to claim of ineffective assistance of counsel and that the claim had to be reserved for postconviction relief. See State v. Elmore, 386 S.E. 2d 769, 300 S.C. 130 (SC 1989). Postconviction relief process is specifically designed to allow for inquiry into relevant facts surrounding adequacy of the Defendant's information . . . appropriate remedy is to remand for hearing . . . See, Cartrette v. State, 448 S.E. 2d 553, 323 S.C. 15 (SC 1994). Motion to vacate, set aside, or correct sentence was sole procedural vehicle by

by which defendant could challenge validity of [information] after entering a guilty plea. See United States v. Jensen, 716 Fed. Appx. 507 (C.A.4, 5c 2003).

Counsel was deemed ineffective for not objecting to the addition of mandatory GPS monitoring violating the terms of the original plea agreement.

The Applicant's original plea agreement was recommended by the State's Solicitor and negotiated with original counsel that the Applicant would agree to a plea agreement without the stipulation of mandatory GPS monitoring. This was argued in Court, all parties agreed to the omission of this monitoring and the Applicant agreed to the plea agreement.

Counsel did not object to the addition of the monitoring during the Applicant's Probation hearing and the Probation Officer had no jurisdiction in which to recommend or change the conditions of the original Sentencing Order signed 10 June 2008. (See, Exhibit A - Sentencing Sheet.) The goal of this

judicial review - in this case - is to place the Applicant in the position he would have been had this error not happened in the first place. See, United States v. Hadden, 475 F.3d 652 (C.A.4, SC 2007).

Conclusion:

Due to the fact that Counsel failed to adequately investigate the Applicant's case during his assignment to the Applicant; and failing to object to the changing of the original plea agreement by adding mandatory GPS monitoring; the Applicant is requesting that this Honorable Court issue an order as to time served on this sentence and remove the mandatory GPS monitoring program and whatever relief this Court deems necessary. The Applicant would like to thank the Court's diligence and time in this matter.

Respectfully submitted,

Donald W. Wichmann

Donald W. Wichmann, SCDC # 332554

Exhibit A
(Sentencing Sheet 10 June 2008)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS ²⁷

(8)

COUNTY OF Greenville
STATE VS.
Donald Wichmann
AKA: _____
Race: W Sex: M Age: 30
DOB: _____ SS#: _____
Address: _____
DL#: _____ SID#: _____

INDICTMENT/CASE#: 2007GS2302556
A/W#: 1819620
Date of Offense: 1/1/2006
S.C. Code § : 16-15-140
CDR Code #: 2468

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: LEWD ACT ON A CHILD < 16 YRS

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST:
[Signature] Solicitor
[Signature] Defendant
[Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5 years/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

- CONCURRENT or CONSECUTIVE to sentence on: _____
- The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
- The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered: PTUP 20

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

set by SCDPPPS Per Court

Recipient: _____

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

- 20 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: AE

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

Paul B. Wickham
Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]
prob begins today

PRESIDING JUDGE [Signature]
Judge Code: 2111310
Sentence Date: 6/10/08

Exhibit B
(Original Arrest Warrant & Order)

I819620²⁹ (27)

ORIGINAL

Form 15.1 - Arrest Warrant
Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Probation
ARREST WARRANT

Indictment Number 07-GS-23-02556
Warrant Number W-23-08-2928
State Identification No. (SID) 00984019

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

It appearing from the attached affidavit that there are reasonable grounds to believe that DONNY WALTER WICHMANN, Donald Wichmann, did on the 9 day of September, 2008 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions 6, 7, 9, 10 and 11 as ordered in cause number 07-GS-23-02556 by the Greenville County Court of General Sessions on 06/10/08.

Now, therefore, you are empowered and directed to arrest the said defendant and bring DONNY WALTER WICHMANN, Donald Wichmann before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at GREENVILLE, S. C. this 9 day of September, 2008.

Reeie Green (L.S.)
Signature of Probation and Parole Agent

County of **GREENVILLE**

STATE OF SOUTH CAROLINA **AFFIDAVIT**

Personally appeared before me, one Robble Gilbert, Jr., who, first being duly sworn, deposes and says that DONNY WALTER WICHMANN, Donald Wichmann did within this County and State on the 9 day of September, 2008, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

By violating conditions 6, 7, 9, 10 and 11 as ordered in cause number 07-GS-23-02556 by the Greenville County Court of General Sessions on 06/10/08.

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

There is probable cause to believe that the offender did commit the offense of CDV 2nd by causing harm to a family member one, Suzanne Bundberg, in that the offender first threw food at the victim while she was driving and then struck her in the back of the head with his fist and kept hitting her while she continued to try to drive. The offender later struck the victim with the rear view mirror that had broken off during the initial struggle and the offender continued to beat her all the way to a friends house on S. Franklin Road, causing her to fear for her safety. Evidence of the abuse were also noted by bruises and cuts on the victims right wrist and a couple of knots on the back on top of her head. Such probable cause is based on the statements of the victim and the observations of the responding officer detailed in incident report dated 09/06/08 by Deputy Kicklighter. This offense having occurred on 09/06/08 which is during the term of SCDPPPS supervision. - By being 6 payments (\$120.00) in arrears on his Supervision Fee. By being 2 payments (\$60.00) in arrears on his

Sworn to and Subscribed before me
this 9 day of September, 2008.

Reeie Green
Affiant

Robble Gilbert, Jr. (L.S.)
Signature of Notary Public
My Commission Expires
December 1, 2010
My Commission Expires

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

Addendum **ORIGINAL**

18191020 (23)

Restitution Payments. - By being 1 payment (\$25.00) in arrears on his Surcharge payments. -By failing to follow the advice and instructions of his supervising agent.

[Empty rectangular box for text entry]

Sworn to and Subscribed before me
this 9 day of September, 2008.

Kevin Ciescu
Affiant

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

RJG

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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Greenville
STATE VS.

INDICTMENT#: 07 -GS- 23 - 02556
Probation CW#: W-23-08-2928
W-23-08-3100

AKA: Donald Wickham J: 35
Race: W Sex: M
DOB: [REDACTED]
SSN: [REDACTED]
SID#: [REDACTED]

Name of Original Offense: Lewd Act on a Child
Original AWW#: I 819630
Date of Original Offense: 1/1/2006
Conviction S.C. Code #: 16-15-140
Conviction CDR Code #: 2141618
Original Sentence: 15 years sus 5 yrs Probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 6/10/08 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 10/22/08, as set forth in the attached warrant(s) or citation(s) dated 9/9/08. 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)
2, 5, 6, 7, 9, 10, 11 & special condition 5

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 3 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:
 - Time to satisfy supervision fee appears. Restructure surcharge and restriction
 - Mandatory GPS ordered this date.

- 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 0 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 9th day of January, 2009
Greenville SC

EC U. Miller
Presiding Judge
Edward W. Miller 13th Judicial Circuit

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

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

Offender's Signature _____ Witnessed by _____

Signed this _____ day of _____, _____ at _____ SC

Exhibit C

(Probation Citation - Arrest Warrant - Court's Order)

1819620

(2)

PROBATION CITATION

ORIGINAL

No. C-23-10-1196

SOUTH CAROLINA V. DONALD WALTER WICHMANN, Donald Wichmann	COUNTY: GREENVILLE	
	SCDC #	SID # 00984019

TO: DONALD WALTER WICHMANN, Donald Wichmann

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

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

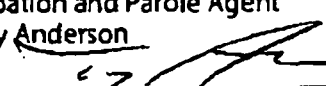
YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.

Violations Charged
By violating conditions of Probation 5, 7, 9, and 10 of his Probation conditions and 3, 12 of the GPS Monitoring Program conditions ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.


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

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

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

GREENVILLE, South Carolina	Probation and Parole Agent Tony Anderson	Agent # 0422
Date 10/13/2010		

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

Place SC PROBATION, PAROLE & PARDON SERVICES 301 UNIVERSITY RIDGE, SUITE 6500 GREENVILLE, SC 29601	Date and Time 10/14/10 9:10 AM
	Serving Officer's Signature 

Sworn to and subscribed before me this 16 day of Dec, 2010

Signature of Notary Public


My Commission Expires 09/10/20

34

I019020 (14)

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

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Probation
ARREST WARRANT

ORIGINAL

Indictment Number 07-GS-23-02558

Warrant Number W-23-11-0002

State Identification No. (SID) 00984018

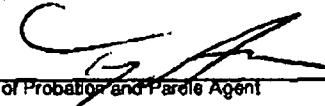
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF GREENVILLE AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that DONALD WALTER WICHMANN, Donald Wichmann, did on the 4 day of January, 2011 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions of Standard Probation 1, 4, 10 and Standard Sex Offender Conditions 4, and 10 ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

Now, therefore, you are empowered and directed to arrest the said defendant and bring DONALD WALTER WICHMANN, Donald Wichmann before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at GREENVILLE, S. C. this 4 day of January, 2011.



Signature of Probation and Parole Agent (L.S.)

County of GREENVILLE

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Tony Anderson, who, first being duly sworn, deposes and says that DONALD WALTER WICHMANN, Donald Wichmann did within this County and State on the 4 day of January, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

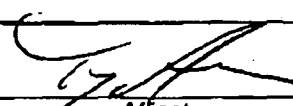
DESCRIPTION OF OFFENSE:

By violating conditions of Standard Probation 1, 4, 10 and Standard Sex Offender Conditions 4, and 10 ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

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

The Defendant has violated his Probation in the following manner: By failing to refrain from the use of Alcohol in that subject had a 18 pack of Bud light in his possessions as well as a open beer verified by Home visit on 11-16-10; By failing to refrain from having contact with a person under the age of 18 in that we have an affidavit stating such; By failing to refrain from having contact with a person who has a criminal record in that he is residing with Dawn Legette in which she is on active Probation at this time; By testing positive for Opiates on 12-22-10 without having a prescription; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of standard conditions 1, 4, 10 and Standard Sex Offender Conditions 4, and 10 ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

Sworn to and Subscribed before me
this 4 day of January, 2011.



Affiant



Signature of Notary Public (L.S.)

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

09/20/20
My Commission Expires

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of GREENVILLE

Personally appeared before me, Tony Anderson, who first being duly sworn, deposes and says that DONALD WALTER WICHMANN, Donald Wichmann did within this county and State on the 13 day of October, 2010, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

By violating conditions of Probation 5, 7, 9, and 10 of his Probation conditions and 3, 12 of the GPS Monitoring Program conditions ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

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

The Defendant has violated his Probation in the following manner: By being \$50.10 in arrears toward his Surcharge account; By being \$105.00 in arrears toward his DACOR account; By being \$280.00 in arrears toward his Supervision Fee account; By being \$310.00 in arrears toward his Active GPS account; By failing to maintain gainful employment or show any proof thereof; By failing to respond to GOC after numerous attempts on his pager and his cell phone; By failing to respond to the oncall agents after numerous attempts, and by failing to charge his GPS unit as instructed; And by failing to follow the advice and instructions of his Supervising Agent. Such actions constitute a willful violation of conditions 5, 7, 9, and 10 of his Probation conditions and 3, 12 of the GPS Monitoring Program conditions ordered in cause number 07-GS-23-02556 and continuation ordered on 1-9-09 by the Honorable Judge Edward W. Miller in the Greenville County Court of General Sessions.

Sworn to and subscribed
before me this 13 day of
October, 2010

[Signature]
Signature of Notary Public

[Signature]
Affiant

My Commission Expires: 10-26-2013

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

IN THE COURT OF GENERAL SESSIONS

County of Greenville
STATE VS.

INDICTMENT#: 07-GS-23-02556
Probation CW#: C-23-10-1196
W-23-11-0002

AKA: Donald Wickman
Race: W Sex: M
DOB: [REDACTED]
SSN: [REDACTED]
SID#: 00944019

Name of Original Offense: Lewd Act on a Child
Original AW#: J819620
Date of Original Offense: 1/1/06
Conviction S.C. Code §: 16-15-140
Conviction CDR Code #: 21 41 618
Original Sentence: 15 yrs susp 5 yrs Probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 6/10/06 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 1-9-09 as set forth in the attached warrant(s) or citation(s) dated 6-10-3-10 W-1-4-11. After hearing the evidence and being duly advised, in the presence (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)
5, 7, 9 and 10; 312 GPS; 1, 4, 10; 4110 Sex Offender 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 1 months/years of the original sentence and/or pay \$ 0; 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: Times satisfies monetary obligation. SF, fine
Subject to be picked up by the Probation Office upon his
release to be placed back on GPS monitoring.
Restructure Restriction upon his release.
- 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 11th day of February, 2011
Greenville SC

[Signature]
Presiding Judge C. Victor Hyde Jr.
Judicial Circuit

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

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

Offender's Signature _____ Witnessed by _____

Signed this _____ day of _____ at _____ SC

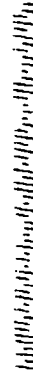
Donald W. Wichmann, SCDC # 332554
Ridgeland C.I. / CS-54
Post Office Box 2039
Ridgeland, SC 29936-2039



Greenville Co. Clerk of Court
Attn: PCR Application
Greenville County Courthouse
305 North Main Street
Greenville, SC 29601

2012-CP-23- 06896

RIDGE LAND CORRECTIONS
INSTITUTION
OCT 08 2012
MAIL ROOM



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2012-CP-23-6896
COUNTY OF GREENVILLE)	
)	
Donald W. Wichmann,)	
S.C.D.C. No. 332554,)	
)	
Applicant,)	
)	RETURN AND PARTIAL MOTION TO DISMISS
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed October 25, 2012, the Respondent would show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the March 2007 term of the Greenville County Grand Jury for lewd act upon a child (2007-GS-23-2556). He was represented by Stephen J. Henry, Esquire.

On June 10, 2008, the Applicant pled guilty. He was sentenced by the Honorable Edward W. Miller to fifteen years suspended to five years probation. The Applicant did not appeal.

On February 17, 2012, the Applicant appeared in court pursuant to a probation citation. He was represented by Robert Ianuario, Esquire. The Honorable Edward W. Miller revoked the Applicant's probation and levied a sentence of six years. 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, the Applicant's records from the South Carolina Department of Corrections, and the probation revocation transcript.

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel was ineffective for failing to investigate case where Probation Citation and Arrest Warrant were different."
 - b. "Counsel was deemed ineffective for not objecting to the addition of mandatory GPS monitoring violating the terms of the original plea agreement."

III.

The Respondent submits all issues related to the Applicant's guilty plea hearing must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant pled guilty to the offense he challenges in this application on June 10, 2008. The Applicant was therefore required to file his application before June 10, 2009. This application was filed on October 25, 2012, which was more than three years and four months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it

appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Respondent asserts the Applicant’s allegation that his probation revocation counsel 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.

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 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)).

V.

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

VI.

WHEREFORE, having made its Return and Partial Motion to Dismiss, the Respondent requests: (1) all issues related to the June 10, 2008 be dismissed as untimely and (2) that a hearing be held and counsel appointed to represent the Applicant on the issues related to the February 17, 2012 probation revocation hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

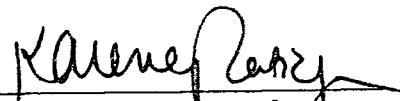
JOHN W. McINTOSH
Chief Deputy Attorney General

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

May 2, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 DONALD W. WICHMANN, 332554)
)
) Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
) Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

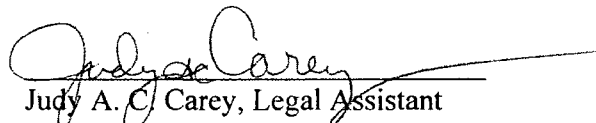
2012-CP-23-6896

AFFIDAVIT OF SERVICE BY MAIL

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

**Donald W. Wichmann, 332554
 Ridgeland Correctional Institution
 Post Office Box 2039
 Ridgeland SC 29936-2039**

DATED this 2nd day of May, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

DONALD W. WICHMANN,)
)
 PLAINTIFF,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)
 _____)

2012-CP-23-06896

FEBRUARY 21, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

CAROLINE HORLBECK, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

1

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Donald H. Wichmann Horlbeck Ratigan	5			
Robert E. Ianuario Ratigan Horlbeck	16	20		
				PAGE
Certificate of Reporter				25

Donald W. Wichmann -vs- State of South Carolina (2012-CP-23-06896)
Exhibit List

3

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1

FEBRUARY 21, 2014

2

(WHEREUPON, court convened with all parties

3

present and the following proceedings were had.)

4

THE COURT: Ms. Ratigan.

5

MS. RATIGAN: Thank you, Your Honor. May it

6

please the court. This is the case of Donald Wichmann

7

versus the State of South Carolina. Docket number is

8

2012-CP-23-6896. Applicant was indicted for a lewd act

9

upon a child back in 2007. He pled guilty to that

10

charge June 10th of 2008 before Judge Miller. He

11

received a sentence of fifteen years suspended to five

12

years probation. He had a partial probation revocation

13

January 9th of 2009. He had another partial revocation

14

February 11th of 2011.

15

We're here today, Your Honor, on the matter of the

16

February 17th, 2012 probation revocation hearing. At

17

that point Judge Miller revoked Mr. Wichmann's

18

probation and levied a six year sentence. He did not

19

file an appeal. The state has filed a return and

20

partial motion to dismiss in this matter. We would

21

argue that any issues related to the guilty plea from

22

2008 or either of the partial revocations from 2009 or

23

2011, these are all untimely at this point. The

24

application was filed October 25th of 2012. So we

25

would argue the only matter before the court would be

1 issues related to the February 17th, 2012 probation
2 revocation.

3 THE COURT: Ms. Horlbeck.

4 MS. HORLBECK: Judge, we agree with that.
5 That's all we're pursuing today. And we're prepared to
6 call Mr. Wichmann to the stand.

7 THE COURT: All right. If you'll come around
8 and be sworn, please, sir.

9 THE CLERK: Mr. Wichmann, please place your
10 left hand on the bible and raise your right hand.

11 You do solemnly swear or affirm that the testimony
12 you're about to give in this case will be the truth,
13 the whole truth and nothing but the truth, so help you
14 God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. You may be seated.
17 Please state your full name for the record.

18 THE WITNESS: Donald Walter Wichmann.

19 **DONALD WALTER WICHMANN,**

20 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

21 **DIRECT EXAMINATION**

22 **BY MS. HORLBECK:**

23 Q. Mr. Wichmann, you attended a probation violation
24 hearing; is that correct, in 2012?

25 A. Yes, ma'am.

- 1 Q. Who represented you at that hearing?
- 2 A. Robert Ianuario.
- 3 Q. Was he retained or was he appointed?
- 4 A. I retained him.
- 5 Q. All right. How long did he represent you?
- 6 A. A week, two weeks. It was right before the case.
- 7 Q. All right. How many times did you meet with him
- 8 to discuss your probation violation case?
- 9 A. One time.
- 10 Q. As part of your -- during your discussions with
- 11 your attorney, did you and he review the violation
- 12 report submitted by the probation agent?
- 13 A. We didn't get those until right before the case.
- 14 Q. Okay. When you say right before the case, when
- 15 did you get those -- when did you get that violation
- 16 report?
- 17 A. We had one report that we didn't get until the
- 18 day of the case.
- 19 Q. Okay. All right. And did you review that report
- 20 with him?
- 21 A. Yes, ma'am.
- 22 Q. Okay. What were the -- to your knowledge or
- 23 recollection, what were the reasons the agent was
- 24 trying to violate you?
- 25 A. I had a video on my phone in discussion with my

1 girlfriend and then I had a lot of conditions of my GPS
2 monitor as far as charging and as far as calling back
3 the GPS, and some money being short.

4 Q. Okay. Now, you said there was a video on your
5 phone. Did that video involve any minors?

6 A. No, ma'am.

7 Q. Okay. What was -- just without getting graphic,
8 who did the video involve? Did it involve adults or
9 what?

10 A. It was my girlfriend. Yes, an adult.

11 Q. And did your agent -- how did your agent find
12 that video? Did you admit it or was your phone
13 confiscated?

14 A. I had handed him my phone because I had a
15 computer use agreement with my probation. And it
16 happened to be on the phone.

17 Q. Okay. All right. But the video just consisted
18 of adults; correct?

19 A. Yes, ma'am.

20 Q. And the next violation was you said you were
21 being -- the agent wanted to violate you because you
22 had not been charging your GPS monitor correctly?

23 A. Yes, ma'am. Well, when you plug it in,
24 sometimes it charges and sometimes it doesn't charge.
25 And then you would get called to plug in or -- you

1 could be at work and then you have to go home and
2 charge. So ...

3 Q. Okay. All right.

4 A. There was also a FaceBook -- right before I went
5 into probation, my roommate had looked on -- I thought
6 she was looking on North Greenville for her grades, but
7 actually she went through FaceBook. And he realized it
8 wasn't me, but it was on my phone. So ...

9 Q. So the third violation is that your roommate had
10 used your phone and checked her FaceBook account?

11 A. Uh-huh (affirmative).

12 Q. Is that -- answer out loud?

13 A. Yes, ma'am.

14 Q. All right. Did you discuss all these violations
15 with your attorney?

16 A. I did.

17 Q. All right. Did you and he discuss ways to show
18 that the FaceBook account was not yours, ways to show
19 the court that that was not your FaceBook account?

20 A. We had discussed it, but none of that came about
21 through the -- during my hearing or anything.

22 Q. Okay. What did you and your attorney discuss?

23 A. Well, I had told him, I had told him what had
24 happened.

25 Q. Right.

1 A. And it was just left at that. I mean, he didn't

2 ---

3 Q. Did your attorney contact your roommate to maybe
4 get an affidavit or a statement or get your roommate to
5 show up in court and admit that your roommate was the
6 one that checked the FaceBook account and not you?

7 A. No, ma'am.

8 Q. Okay. Did you give your attorney the name of
9 that roommate?

10 A. Yes, ma'am.

11 Q. All right. And to your knowledge was your
12 roommate ever contacted?

13 A. He was not.

14 Q. All right. Were you out -- were you in jail at
15 the time of this revocation hearing or had you been
16 released on bond?

17 A. Oh, I had been bonded out.

18 Q. All right. Did you talk to your roommate about
19 coming to court?

20 A. They were willing to come, but it -- we -- it
21 didn't happen.

22 Q. Did you not tell your roommate, please come to
23 court or why don't you come to court?

24 A. Well, the roommate ended up being -- I mean, he
25 just wasn't able to come.

1 Q. All right. Was a subpoena ever issued?

2 A. No, there wasn't.

3 Q. All right. And the -- did you and your attorney
4 discuss the video, the nature of the video that was
5 found on your phone?

6 A. Yes, we did.

7 Q. Okay. All right. And did you and your attorney
8 discuss the mandatory GPS condition?

9 A. I discussed it with him. It was never brought up
10 in court.

11 Q. Okay. And you were already on GPS monitoring
12 from previous violations; correct?

13 A. Yes, ma'am. What had happened was when I had
14 taken my original plea, they had had other pleas before
15 then ---

16 Q. Well, you weren't originally ordered to -- let's
17 just leave it at that. We're not going to talk too
18 much about the plea here today. But originally when
19 you were sentenced you were not placed on monitoring?

20 A. Yes.

21 Q. All right. And did your attorney discuss with
22 you, though, that you -- that even if your probation
23 got terminated, you would still be ordered by the judge
24 to be monitored via GPS for the rest of your life?

25 A. I had no idea until, until -- see, I thought it

1 was just -- they decided to -- I thought it was part of
2 my probation because it wasn't part of my original, my
3 original -- I mean, my original plea. I thought, okay,
4 I'd been given this time because it was my original
5 sentence. But this wasn't part of my original
6 sentence. I thought this was just part of my
7 probation.

8 Q. All right. When did you find out that you could
9 be put on GPS for the rest of your life?

10 A. When we were in the courtroom and they said to be
11 put back on GPS ---

12 Q. When you say they, who do you mean?

13 A. I'm sorry. When the judge was pronouncing his
14 sentence, he added a year, so instead of five there was
15 six years. And then he said to be put back on the GPS.
16 And that's when I ---

17 Q. That's when you learned of it?

18 A. Yes, ma'am.

19 Q. Okay. All right. And prior to the judge making
20 that ruling regarding GPS was there any evidence
21 presented that you were at risk of re-offending?

22 A. No, ma'am.

23 Q. Did the probation agent, you know, present any
24 evidence or testimony that you were at high risk of re-
25 offending?

1 A. No. No.

2 Q. Did you have -- did any of the current violations
3 that day, did they involve minors at all?

4 A. No.

5 Q. Okay. Had you had any contact with minors ---

6 A. No.

7 Q. --- you were being violated on? All right. And
8 were you being violated because you had pictures of
9 minors?

10 A. No.

11 Q. And you've already testified you didn't have
12 videos involving minors. Did you have any new
13 convictions involving minors?

14 A. No.

15 Q. Okay. All right. And did your attorney point
16 any of those factors out to the court?

17 A. No.

18 Q. Okay. And did your attorney make any kind of
19 objection to the GPS and say that the state had not met
20 their burden of showing that you were at risk of re-
21 offending?

22 A. They did not.

23 Q. Okay. All right. Now, you mentioned that the
24 judge added on a year. Tell me a little bit about
25 that. Explain why you -- was there an agreement to

1 five years or tell me about that?

2 A. Originally I talked to Agent Anderson on two
3 different occasions and he was already telling me that
4 he was planning on asking for three years. And that
5 was on two different occasions. Then the day of court
6 when Robert went to talk to Mr. Anderson, I don't know
7 if Robert was trying to get a new agreement or
8 whatever. But when he came back, for some reason,
9 Agent Anderson had changed and said that the plea was
10 now going to be five years. Which I agreed to, because
11 that was the position I was in. So I agreed to the
12 five years. And while we were in court, Judge Miller
13 added a year and gave me six.

14 Q. Okay. To your recollection, at the probation
15 hearing were the actual violations, were they ever
16 placed on the record or discussed by the agent?

17 A. No.

18 Q. Okay. All right. If I -- do you remember
19 whether or not the judge addressed the actual
20 violations at all?

21 A. No, he did not.

22 Q. All right. Did the judge ask you only if you've
23 reviewed the report and whether you admitted the
24 violations?

25 A. He asked me if there was a legal reason for what

1 I had done, and I got confused on what he was asking.

2 But that's the only real question I had gotten.

3 Q. But the actual violations themselves were never
4 preserved on the record?

5 A. No, ma'am.

6 Q. Okay. All right. Is there anything else -- any
7 other allegations you have regarding your attorney's
8 performance?

9 A. I just -- I feel that his interaction with my
10 probation officer -- because Anderson has always been
11 if he says he's going to do something, that's what he's
12 going to do. When he was asking for three years, then
13 that was on two different occasions, so I had no -- I
14 don't believe he just changed his -- I mean, I believe
15 something happened between my lawyer and him. But ...

16 Q. Was there any allegation that the contact via
17 FaceBook; was that with a minor?

18 A. No, no. See, my probation officer, he knew what
19 happened. Right before I came in, he knew that there
20 was -- because they had looked in my phone and he could
21 tell it wasn't my FaceBook account and he could tell
22 someone was looking up their grades from North
23 Greenville. That's the only reason why I let them use
24 the phone, I thought they were going straight to North
25 Greenville's website to get their grades. And they --

1 I guess they have an app on their FaceBook account. So
2 he was aware that it wasn't my account. But he had
3 already told me that I'm responsible because it was my
4 phone. That was part of the computer use agreement, is
5 you can't let other people use your computer.

6 Q. So at that point you knew ---

7 A. I knew I was -- I mean, I'm not really trying to
8 say -- I mean, I was wrong. I've made plenty of
9 mistakes on probation, but there were conditions and
10 sometimes it was -- it's that gray area where I was
11 wrong and I should have been a lot more careful. I
12 mean, I wish I had at this point, obviously.

13 Q. All right. Please answer any questions that the
14 -- that Ms. Ratigan may have for you.

15 MS. RATIGAN: I don't have any questions,
16 Your Honor.

17 THE COURT: All right. Thank you. You may
18 step down.

19 MS. HORLBECK: Judge, that's all we have.

20 THE COURT: Anything from the state?

21 MS. RATIGAN: Yes, Your Honor, we would call
22 Mr. Ianuario.

23 THE CLERK: Please place your left hand on
24 the bible and raise your right hand.

25 You do solemnly swear or affirm that the testimony

1 you're about to give in this case will be the truth,
2 the whole truth and nothing but the truth, so help you
3 God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Thank you. Please state your
6 full name for the record.

7 THE WITNESS: Robert Eugene Ianuario.

8 THE CLERK: Thank you. You may be seated.

9 **ROBERT EUGENE IANUARIO,**

10 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

11 **DIRECT EXAMINATION**

12 **BY MS. RATIGAN:**

13 Q. Do you recall representing Mr. Wichmann for his
14 probation issues?

15 A. Yes, ma'am.

16 Q. And were you, in fact, retained?

17 A. Yes, ma'am.

18 Q. And did you receive the warrant and violation
19 report from his agent?

20 A. Yes, ma'am. I received it from the agent and
21 also he had a copy when he came in for his initial
22 consultation on January the 31st of 2012.

23 Q. All right. And Mr. Wichmann has stated that you
24 did not receive one violation report until the day of
25 the hearing. Does that sound accurate?

1 A. Yeah, that is correct. But the summary, the fax
2 and everything was the same as the copy of the report
3 that he had given me on our initial consultation. I
4 had also gotten a fax report from Agent Anderson looks
5 like about a week before. February 6th or 7th is when
6 that came in.

7 Q. So was there anything that you received the day
8 of the hearing that you were unprepared for?

9 A. No, ma'am. At least not on the reports.

10 Q. Now, did you review the violations with your
11 client?

12 A. Yes, ma'am.

13 Q. Did he tell you about this FaceBook matter?

14 A. Yes, ma'am, he did.

15 Q. Did you ever speak with his roommate about that?

16 A. No, ma'am.

17 Q. Did Mr. Wichmann ever tell you he wanted you to
18 speak with his roommate?

19 A. Looking back on my notes from that day, I have no
20 indication of it being a roommate. It was just he let
21 somebody borrow his phone. And I do not have a name
22 provided.

23 Q. Did he ever provide you a name of someone to talk
24 to about this FaceBook issue?

25 A. Not that I recall.

1 Q. No notes in your file about that?

2 A. No, ma'am.

3 Q. Okay. And did you discuss with Mr. Wichmann that
4 he was in arrears on some of his fees?

5 A. Yes, ma'am.

6 Q. Did you also discuss with him some of these GPS
7 monitor conditions that had been violated?

8 A. I don't recall that ever being much of an issue.

9 I don't have it in my notes. The issue that we
10 discussed most was the content on the cell phone.

11 Q. So you knew from the warrant there had been some
12 sexual content on his phone?

13 A. Yes, ma'am.

14 Q. Were you ever able to view that content for
15 yourself?

16 A. Yes, ma'am. Agent Anderson showed it to me
17 right before the hearing.

18 Q. Was there any way to argue that was not your
19 client?

20 A. I didn't want to get into the level of detail
21 necessary, but he admitted that he had the video on his
22 phone and that was his phone. And it sounded like his
23 voice.

24 Q. And did you discuss with Mr. Wichmann this
25 particular violation, how it was a violation of his

1 conditions?

2 A. Yes, ma'am.

3 Q. Now, Mr. Wichmann has testified that the agent
4 had always said he was going to recommend three years,
5 but then after you spoke to the agent that the three
6 years had increased to five years. Can you shed any
7 light on why that would have happened?

8 A. Okay. I think this hearing was February the
9 18th, so we had a little over two weeks to prepare for
10 everything. I had spoken with Agent Anderson
11 beforehand and it was three years. And then the
12 morning of the hearing, I come in and I'm meeting him
13 beforehand and he asked me to step back into a
14 conference room. We do and he shows me this video and
15 he says he's now going for five years because in the
16 video Mr. Wichmann can be heard clearly saying
17 something to the effect of: Man, Agent Anderson would
18 be pissed if he ever saw this. And Agent Anderson said
19 that shows he knowingly violated it and knew what he
20 was doing, but it was also very disturbing that Agent
21 Anderson was on his mind at that particular point in
22 time.

23 Q. And did you explain -- after you spoke to Agent
24 Anderson, did you explain to Mr. Wichmann that he was
25 now going to offer the -- ask for five instead of

1 three?

2 A. Yes, ma'am.

3 Q. Did you tell him why?

4 A. Yes, ma'am.

5 Q. Did you ever discuss with Mr. Wichmann that he
6 would be on mandatory GPS?

7 A. No, ma'am. That was never made an issue. When
8 he came into my office he was already on GPS, so I
9 wasn't aware that it was part of the original plea. It
10 hadn't come up.

11 Q. And you just got involved with the case about two
12 weeks prior to the revocation?

13 A. Yes, ma'am. January 31st was the date that he
14 came into my office for the consultation and retained
15 me. And I think the hearing was set for February the
16 10th, and it was postponed by a week. I don't remember
17 what the reason for the postponement was.

18 Q. Are you aware whether lewd act upon a child
19 carries mandatory GPS?

20 A. Yes, ma'am.

21 Q. In your opinion would there have been any basis
22 to challenge the position of mandatory GPS at the point
23 of that February revocation hearing?

24 A. No, ma'am.

25 MS. RATIGAN: That's all I have, Your Honor.

1 THE COURT: Cross examination?

2 MS. HORLBECK: Yes, sir.

3 **CROSS EXAMINATION**

4 **BY MS. HORLBECK:**

5 Q. You said that you had been retained in this and
6 you had about two weeks to prepare for the case?

7 A. Yes, ma'am.

8 Q. Okay. All right. And you watched the video; is
9 that correct?

10 A. Yes, ma'am.

11 Q. You knew -- obviously knew and saw that it was
12 sexual in content. Did it involve minors?

13 A. No, ma'am.

14 Q. Okay. And you also -- you did not discuss the
15 mandatory GPS condition with Mr. Wichmann; that's
16 correct?

17 A. That's correct. It was never made an issue.

18 Q. I'm sorry. Go ahead.

19 A. I said it had never been an issue up to that
20 point in time. We were more concerned about the video.
21 Agent Anderson said he wasn't that concerned about the
22 FaceBook issue, but the sexual content on there. And
23 then when he actually listened to it with audio the
24 night before, that changed his whole stance.

25 Q. All right. Do you know whether or not Mr.

1 Wichmann had been arrested on any new charges involving
2 minors?

3 A. Not that I was aware of.

4 Q. All right. Did the contact on the FaceBook
5 account; was that with a minor?

6 A. Not that I'm aware of.

7 Q. And did the agent have any evidence whatsoever to
8 present that Mr. Wichmann had been in contact with a
9 minor?

10 A. Not that I'm aware of.

11 Q. Okay. All right. And when the agent suggested
12 the GPS, the mandatory GPS condition, that the judge
13 order that, did you object and say that the agent had
14 not provided the evidence to show that Mr. Wichmann was
15 at risk to re-offend and that GPS was necessary in his
16 case?

17 A. I didn't object. My prior crimes involving GPS
18 or sex offender registration, mandatory has always been
19 mandatory.

20 Q. Okay. All right. Then you didn't object just
21 because that was ---

22 A. I did not object.

23 Q. All right. That's all I have. Thank you.

24 THE COURT: Any redirect?

25 MS. RATIGAN: I have no redirect. The state.

1 would rest and ask that the witness be released.

2 THE COURT: Thank you. You may be released.

3 You may step down.

4 I've reviewed the file, the transcript. I've
5 reviewed the prior sentencing sheet and the prior
6 revocations. Of course, the first revocation in 2009
7 talked about the GPS and we're not here on that one
8 today, so it was in effect as of '09. And then in
9 2011, another revocation for a one year sentence
10 references the GPS monitoring again in that order. I
11 fail to see how that is a factor to show in this case
12 that the attorney varied from the standard that
13 *Strickland* requires.

14 As far as the other matters, the attorney has
15 explain how the three to five went. Of course, the
16 judge has his discretion to not even go by the
17 recommendation of the attorney or the agent. Went with
18 the six years instead of the five, but did terminate
19 the probation so that there would not be any other
20 sentence. So rather than the fifteen years originally,
21 I guess overall it was down to ten years based on the
22 -- unless there's more in there. I fail to see how the
23 applicant has met the burden of proof under the
24 standard -- the requirement of *Strickland* or the
25 prejudicial effect from this. The judge obviously

1 heard the case and adequate explanation has been given
2 as to how the agent changed his mind about the
3 recommendation. Obviously the judge didn't go with
4 that recommendation either. The judge saw something
5 that increased that to another year.

6 If you would prepare me an order to that effect
7 with the *Marler versus State* criteria being met.

8 MS. RATIGAN: Thank you, Your Honor.

9

10 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 21st day of
10 February, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 August 9, 2014

16

17

18

19

A handwritten signature in cursive script that reads "Danette P. Hanks". The signature is written in black ink and is positioned above a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Donald W. Wichmann,)
 S.C.D.C. No. 332554,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-6896

ORDER OF DISMISSAL

FILED CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSJUNIOR
 2014 APR -9 P 3:06

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 25, 2012. The Respondent made its return and partial motion to dismiss on May 2, 2013. An evidentiary hearing into the matter was convened on February 21, 2014 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, 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, Robert Ianuario, Esquire. The Court had before it the probation revocation hearing transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, documents from the South Carolina Department of Probation, Parole, and Pardon Services, the PCR application, and the return and partial motion to dismiss.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted

[Handwritten signature]

at the March 2007 term of the Greenville County Grand Jury for lewd act upon a child (2007-GS-23-2556). He was represented by Stephen J. Henry, Esquire.

On June 10, 2008, the Applicant pled guilty. He was sentenced by the Honorable Edward W. Miller to fifteen years suspended to five years probation. The Applicant did not appeal.

On February 17, 2012, the Applicant appeared in court pursuant to a probation citation.¹ He was represented by Robert Ianuario, Esquire. The Honorable Edward W. Miller revoked the Applicant's probation and levied a sentence of six years. The Applicant did not appeal.

ALLEGATIONS

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

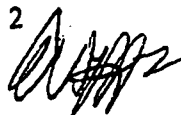
1. Ineffective assistance of counsel.
 - a. "Counsel was ineffective for failing to investigate case where Probation Citation and Arrest Warrant were different."
 - b. "Counsel was deemed ineffective for not objecting to the addition of mandatory GPS monitoring violating the terms of the original plea agreement."

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).

¹ The Applicant's probation had been partially revoked at hearings on January 9, 2009 and February 22, 2011.

²


Partial Motion to Dismiss

This Court finds all issues related to the Applicant's guilty plea hearing must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

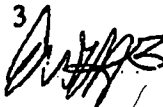
The Applicant pled guilty to the offense he challenges in this application on June 10, 2008. In order to challenge this guilty plea, the Applicant was required to file his application before June 10, 2009. This application was filed on October 25, 2012, which was more than three years and four months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent's partial motion to dismiss is granted.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of 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

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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 retained counsel shortly before the revocation hearing and that they had one meeting. The Applicant stated he and counsel discussed his probation violations. The Applicant stated he gave counsel his roommate's name (who could testify that he was the one who accessed Facebook on the Applicant's phone). The Applicant stated he and counsel discussed mandatory GPS but that he did not realize it was lifetime GPS. The Applicant stated there was no evidence presented that he was at risk of reoffending and that he had no probation violations involving minors. The Applicant stated the probation agent had said he would recommend a three year revocation but that counsel said the agent changed his mind and would ask for five years.

Counsel testified he was retained on January 31, 2012. Counsel testified he received the warrant and violation report from the probation agent and reviewed them with the Applicant. Counsel testified they discussed that the Applicant was in arrears. Counsel testified they discussed that the Applicant's phone had been used to access Facebook but that he had no notes to corroborate the Applicant's assertion that he said to contact his roommate about this. Counsel testified the Applicant admitted he had a sexually explicit video on his phone and that counsel



had viewed the video. Counsel testified the probation agent planned to ask for a three year revocation until he viewed the video (which underscored the willfulness of the violation). Counsel stated he explained this to the Applicant and that the agent would ask for a five year revocation. Counsel stated there was no way to challenge the mandatory GPS.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding counsel's testimony is credible. This Court further finds counsel adequately conferred with the Applicant and was competent in his representation. The Applicant admitted his probation violations and that there was no legal reason for the violations. (Probation revocation transcript, p.3).

This Court finds the Applicant failed to meet his burden of proving counsel was ineffective. Counsel testified he and the Applicant reviewed the probation documents and discussed the violations. Counsel testified he has no notes in his file that the Applicant asked him to contact his roommate about the probation violation involving Facebook. This Court finds counsel's testimony is credible. This Court notes that it cannot speculate as to what the Applicant's roommate could have added to his case because that person did not testify at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). This Court also finds there was no basis for counsel to have challenged the probation agent's decision to recommend a five year revocation instead of a three year revocation. Counsel testified he explained the reason behind the agent's decision to the

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Applicant. Regardless, it is the judge – not the parties – who decides sentencing. See In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (“A trial judge has broad discretion in sentencing within statutory limits.”). This Court further finds there was no basis for counsel to have challenged the imposition of mandatory GPS, as it is mandated by statute for the offense of lewd act up on a child. S.C. Code Ann. § 24-3-540(C) (Supp. 2011).

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 his 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

⁶


dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the Respondent's partial motion to dismiss is granted.
2. That the issues related to the Applicant's probation revocation are denied and dismissed with prejudice; and
3. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31 day of March, 2014.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

G Rhinehart

Brown / S

Greenville Police Department

9/18/2006

ARREST WARRANT NUMBER

1819620

ACTION OF GRAND JURY

Billy Murphy
BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-
JDN 002556
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2007

THE STATE

vs.

DONALD WALTER WICHMANN

PLEAD GUILTY

Indictment for

✓ 2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

123

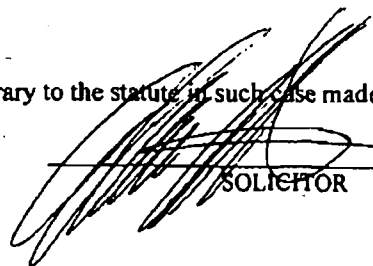
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on MARCH 28, 2007 the Grand Jurors of Greenville
County present upon their oath:

That DONALD WALTER WICHMANN did in Greenville County, between the 1st day of January, 2006, and
September, 2006, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and
lascivious act upon or with the body, or its parts, of K.S.R., a child under the age of sixteen years, with the intent
of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in
violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

Donald Wichmann

AKA:

Race: W Sex: M Age: 30

DOB: SS#:

Address:

DL#: SID#:

INDICTMENT/CASE#: 2007GS2302556

A/W#: 1819620

Date of Offense: 1/1/2006

S.C. Code §: 16-15-140

CDR Code #: 2468

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: LEWD ACT ON A CHILD < 16 YRS

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury (Defendant initial)

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

ATTEST:

Solicitor: Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 35.13 (Public Def/Prob) \$500, § 73.3, 1B TP (Law Enforce. Funding) \$25, § 33.7, 1B TP (Drug Court Surcharge) \$100, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$, TOTAL \$

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, §35.13 TP Requires \$500 be paid to Clerk during probation.

Paul B. Winkelman
Clerk of Court/ Deputy Clerk

Court Reporter: Prob begins today

PRESIDING JUDGE Judge Code: Sentence Date: