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**S.C. Supreme Court**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Lexington County

R. Markley Dennis, Jr., Circuit Court Judge

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Opinion No. 2015-UP-039 (S.C. Ct. App. filed 1/21/2015)

07-GS-32-01387

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THE STATE,

RESPONDENT,

V.

BRAD ALAN DAY,

PETITIONER

---

APPENDIX

---

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Brad Alan Day, Appellant.

Appellate Case No. 2013-002558

---

Appeal From Lexington County  
R. Markley Dennis, Jr., Circuit Court Judge

---

Unpublished Opinion No. 2015-UP-039  
Submitted November 1, 2014 – Filed January 21, 2015

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**AFFIRMED**

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Appellate Defender Lara Mary Caudy, of Columbia, for  
Appellant.

Assistant General Counsel Tommy Evans, Jr., of the  
South Carolina Department of Probation, Parole and  
Pardon Services, of Columbia, for Respondent.

---

**PER CURIAM:** Brad Alan Day contends the trial court erred in concluding he was subject to a community supervision program (CSP) because he served the five-year unsuspended portion of his sentence and ruling he could be re-

incarcerated for violations of his CSP. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In criminal cases, the appellate court sits to review errors of law only."); *id.* (stating an appellate court "is bound by the trial court's factual findings unless they are clearly erroneous"); S.C. Code Ann. § 24-13-100 (2007) ("For purposes of definition under South Carolina law, a 'no parole offense' means a class A, B, or C felony . . . ."); S.C. Code Ann. § 16-1-20(A)(3) (2003) (stating a person convicted of a Class C felony must be imprisoned no more than twenty years); S.C. Code Ann. § 16-3-655(D)(3) (Supp. 2014) (stating a person convicted of CSC of a minor in the second degree is guilty of a felony and "must be imprisoned for not more than twenty years in the discretion of the court"); S.C. Code Ann. § 24-21-560(A) (2007) ("[A]ny sentence for a 'no parole offense' as defined in Section 24-13-100 must include any term of incarceration and completion of a [CSP] operated by the Department of Probation, Parole, and Pardon Services."); S.C. Code Ann. § 24-21-560(D) (Supp. 2014) ("The maximum aggregate amount of time a prisoner may be required to serve when sentenced for successive revocations [of CSP] may not exceed an amount of time equal to the length of incarceration imposed limited by the amount of time remaining on the original 'no parole offense[.]' The prisoner must not be incarcerated for a period longer than the original sentence. The original term of incarceration does not include any portion of a suspended sentence."); *State v. Picklesimer*, 388 S.C. 264, 268, 695 S.E.2d 845, 848 (2010) (stating "the 'original sentence,' as referenced in section 24-21-560(D), includes both the suspended and unsuspended portions of a circuit court's sentence; it is, in fact, the total sentence handed down by the court"); *State v. Blakney*, 410 S.C. 244, 251, 763 S.E.2d 622, 626 (Ct. App. 2014) (stating *Picklesimer's* interpretation of section 24-21-560(D) applies "to all CSP revocations, whether or not the individual subject to a CSP is also subject to a term of regular probation").

**AFFIRMED.**<sup>1</sup>

**FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

THE STATE,

RESPONDENT,

V.

BRAD ALAN DAY,

APPELLANT

APPELLATE CASE NO. 2013-002558

---

Appeal from Lexington County

R. Markley Dennis, Jr., Circuit Court Judge

---

Opinion No. 2015-UP-039

---

PETITION FOR REHEARING

---

Appellant, Brad Alan Day, by and through his undersigned counsel, respectfully petitions this Court for rehearing pursuant to Rule 221(a), SCACR. Appellant seeks rehearing of the Court's conclusion that Appellant continues to be subject to a community supervision program (CSP) even though he has served the entire five-year unsuspended portion of his sentence day for day. Respectfully, this Court misapprehends S.C. Code Ann. § 24-21-560(D). Under the plain language of § 24-21-560(D), Appellant is not required to serve the suspended portion of his sentence.

On October 29, 2007, Appellant pled guilty to second degree criminal sexual conduct and was sentenced by the Honorable Kenneth Goode to ten years suspended upon the service of five years imprisonment. Appellant was not sentenced to a probationary term to follow the five year term of incarceration. R. 5, ll. 16-23; R. 46. On April 29, 2011, after serving eighty-five percent of his five year sentence (four years and sixty-nine days), Appellant was released from incarceration and placed in a CSP. R. 6, ll. 1-2. He was twice found in violation of the CSP and sentenced to ninety days and one year respectively. After each violation, Appellant was continued on the CSP after he served the revoked sentence. R. 6, ll. 1-10.

At a third CSP violation hearing before the Honorable R. Markley Dennis, Jr., Appellant argued he was no longer subject to a CSP because he had served the five year unsuspended portion of his sentence day for day and had thus satisfied his sentence. R. 6, l. 19 – 7, l. 1. Judge Dennis continued Appellant on the CSP and ruled he could be re-incarcerated for subsequent violations of the CSP until he served ten years in prison. R. 7, l. 18 – 8, l. 1.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Id. (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)) (internal quotation marks omitted). Additionally, “[p]enal statutes are strictly construed against the State and in favor of the defendant.” State v. Morgan, 352 S.C. 359, 365, 574 S.E.2d 203 (Ct. App. 2002) (citing State v. Fowler, 322 S.C. 157, 470 S.E.2d 393 (Ct. App. 1996)).

Section 24-21-560(D) reads in relevant part:

The maximum aggregate amount of time a prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed limited by the amount of time remaining on the original “no parole offense.” **The prisoner must not be incarcerated for a period longer than the original sentence. The original term of incarceration does not include any portion of a suspended sentence.**

(emphasis added).

As defense counsel argued below, the emphasized language above clearly states that a defendant may not be incarcerated on successive community supervision revocations for a period longer than the original sentence and the original sentence “**does not include any portion of a suspended sentence.**” S.C. Code Ann. § 24-21-560(D) (emphasis added). Therefore, Appellant’s original sentence under the statute was the unsuspended five years, which Appellant had already served day for day during his initial period of incarceration and his two previous CSP revocations. Because Appellant had satisfied the sentence imposed by Judge Goode, he could not be continued on a CSP nor could he be re-incarcerated for any alleged violations of the CSP.

This case is distinguishable from State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010). In Picklesimer, our Supreme Court held “that the ‘original sentence’ as referenced in § 24-21-560(D), includes both the suspended and unsuspended portions of the circuit court’s sentence . . .” 388 S.C. at 268, 695 S.E.2d at 848. However, Picklesimer dealt with a situation where the defendant was sentenced to ten years imprisonment suspended upon the service of five years imprisonment **and five years probation**. Appellant, on the other hand, was not sentenced to serve a probationary term after he served his five year unsuspended sentence. Because of this distinction, the specific holding in Picklesimer does not apply to this case and defense counsel’s argument below that Appellant had satisfied the sentence imposed by Judge Goode by serving the entire five

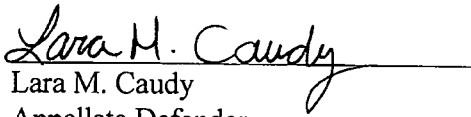
year unsuspended portion of his sentence is correct. Again, **once Appellant served the five year unsuspended portion of his sentence, the suspended portion of his sentence was discharged, leaving no additional revocable time to serve on CSP violations.**

Despite what Judge Dennis maintained below, Judge Goode could not have intended Appellant to serve more than the unsuspended five years in prison since he imposed a sentence of ten years suspended upon the service of five years imprisonment **with no probation to follow.** See State v. DeAngelis, 257 S.C. 44, 50, 183 S.E.2d 906, 909 (1971). If Judge Goode had intended Appellant to serve more than five years, he would have imposed a probationary term to follow the five year unsuspended sentence. The remainder of Appellant's five year unsuspended sentence (about 296 days) was the sentence he had to serve if he violated the CSP and Appellant served this remaining time during his two previous revocations.

Our Supreme Court has previously said, "Because the CSP program is a more stringent program than traditional probation, we believe the Legislature did not intend for this form of supervision to have the effect of increasing an inmate's original sentence for a 'no parole offense.'" State v. McGrier, 378 S.C. 320, 331, 63 S.E.2d 15, 21 (2008) (citing State v. Dawkins, 352 S.C. 162, 167, 573 S.E.2d 783, 785 (2002)). If Appellant had **originally served the entire unsuspended portion of his sentence day for day before being released from prison, the suspended portion of his sentence would have been discharged** and he would never have had to serve any additional time beyond the unsuspended five years. Therefore, requiring Appellant to serve the suspended portion of his sentence for successive CSP violations effectively increases his original sentence. This is not what the Legislature intended. See Id.

Because this Court overlooked the plain language of S.C. Code Ann. § 24-21-560(D), rehearing should be granted.

Respectfully submitted,

  
Lara M. Caudy  
Appellate Defender

This 27th day of January, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Lexington County

R. Markley Dennis, Jr., Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

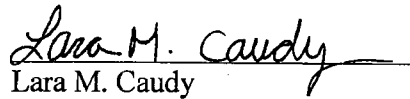
BRAD ALAN DAY,

APPELLANT

APPELLATE CASE NO. 2013-002558

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Tommy Evans, Jr., Esquire, at the South Carolina Department of Probation, Parole and Pardon Services, P.O. Box 50666, Columbia, SC 29250, this 27th day of January, 2015.



Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 27th day  
of January, 2015.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 24, 2022.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions  
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

---

Opinion No. 2015-UP-039

---

THE STATE, .....RESPONDENT

v.

BRAD ALAN DAY, .....APPELLANT

---

RETURN TO PETITION FOR REHEARING

---

The Respondent, the State of South Carolina by and through its attorney does hereby make this return to the Appellant’s January 27, 2015, petition for rehearing. The State respectfully requests that the Appellant’s petition for rehearing be denied and dismissed.

Pursuant to the Appellant Court Rules a party is only entitled a rehearing if there are points that have been overlooked or misapprehended by the Court. Rule 221(a), SCACR. The Respondent contends that the Court has applied the law, and has not overlooked nor misapprehended any law or issue that was necessary to make a valid decision in this case.

**1. This Court did not err in deciding that the Appellant's sentence was not completed, so he is subject to a revocation of Community Supervision.**

The Appellant was convicted of committing criminal sexual conduct with a minor in the second degree (CSC 2<sup>nd</sup> w/minor). He was sentenced to a ten (10) year period of incarceration suspended upon the service of five (5) years. At the time of this conviction, CSC 2<sup>nd</sup> w/minor was classified as a c-felony, making this a no parole offense.<sup>1</sup> Pursuant to South Carolina law the Appellant was required to serve eight-five (85%) of five years, then released and placed on a community supervision program. (CSP) He violated CSP twice and given sentences of ninety (90) days and one (1) year. The Appellant now argues that upon his final revocation his sentence was completed, so he should no longer be on community supervision. The Appellant argues that the legislature did not wish for the Appellant to continue his sentence, and this Court overlooked the plain language under the law so this case should be reheard.

The Appellant argues that pursuant to South Carolina law the suspended portion should not be included in a CSP revocation. Section 24-21-560(D) states: "the prisoner must not be incarcerated for a period longer than the original sentence. The original term of incarceration does not include any portion of a suspended sentence." S.C. Code Ann. §24-21-560(D)(Supp. 2012). However, the South Carolina Supreme Court decided in *State v. Picklesimer*, 388 S.C. 264, 695 S.E.2d 845 (2010), that the total sentence handed down by the Court includes both the suspended and unsuspended portions of the original sentence. *Id.*, at 268.

The Appellant argues that the original sentence does not include any portion of the suspended sentence, and that his total sentence is five years which he has already served. Recently in the case of *State v. Blakney*, 410 S.C. 244, 763 S.E.2d 622 (2014), this Court decided that this situation is

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<sup>1</sup> For purposes of definition under South Carolina law a no parole offense means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more. S.C. Code Ann. §24-21-100(Supp. 2001).

not distinguishable from *Picklesimer*. That the total aggregate sentence does include the suspended and unsuspended portions, regardless if the suspended portion does or does not include probation.

The Appellant also argues that the sentencing Judge wished for the Appellant to not serve more than five years. They argue that if he wished for him to serve more time he would have given him a longer sentence. The Appellant was convicted of committing CSC 2<sup>nd</sup> w/minor, an offense that carries a maximum sentence of twenty (20) years; however, there exist no minimum. The sentencing Judge could have just given him a straight five year sentence; however, he sentenced him to a ten (10) year sentence, with five (5) years incarceration. It is the belief of the Respondent that the sentencing Judge did not give the Appellant a probationary period due to the South Carolina Supreme Court decision of *State v. Dawkins*, 352 S.C. 162, 573 S.E.2d 783 (2002). In *Dawkins*, the Supreme Court ruled that a Defendant is discharged from a sentence after the successful completion of CSP, including a probationary term. Due to this decision, the Appellant would either successfully complete CSP which would discharge probation, or complete his ten (10) year sentence in one (1) year increments. The sentencing Court never sentenced probation due to the fact he would never serve it, so a probationary sentence is meaningless.

The Appellant argues that allowing him to serve CSP makes him serve his sentence beyond his original sentence, which was not the intent of the legislature. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 476 S.E.2d 690 (1996). It is the opinion of the Appellant that the above referenced statute does not allow for him to remain on CSP, past the five (5) year incarcerated portion; however, the Supreme Court in *Picklesimer*, and later interpreted by this Court in *Blakney*, state, that the "original sentence" included "both the suspended unsuspended

portions of a circuit court's sentence." *Blakney*, at 250, quoting, *Picklesimer*. *Picklesimer*, also states:

Under no circumstances shall a defendant be incarcerated or forced to participate in mandatory CSP or residual probation stemming from the same conviction, outside of the time given by the trial judge in the original sentence, which encompasses both the suspended and unsuspended portions of the sentence.

*Picklesimer*, at 270. (emphasis added)

The Appellant was convicted and given a ten (10) year sentence on October 29, 2007; therefore, he should not remain on CSP past October 29, 2017. This statute does not mean that the Appellant should not be on CSP past the incarcerated portion of his sentence, it means that he cannot be remain on CSP past the length of his "original sentence" which in this case is ten (10) years.

Pursuant to the rules, this Court cannot hear a rehearing unless it has been shown to the Court that points were overlooked or misapprehended. The Appellant has not shown that this court has misapprehended or overlooked any law so this petition should be subject to dismissal.


**CONCLUSION**

For all the reasons set forth above, the Respondent submits this Court should deny the petition for rehearing and allow the case to remain properly decided by this Court.

Respectfully submitted,

Tommy Evans, Jr.  
Assistant General Counsel

South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 50666  
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(803) 734-9220

BY:   
Tommy Evans, Jr.  
Assistant General Counsel

Columbia, South Carolina  
February 4, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions  
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

---

Opinion No. 2015-UP-039

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THE STATE, .....RESPONDENT

v.

BRAD ALAN DAY, .....APPELLANT

---

**CERTIFICATE OF SERVICE**

---

I, Dawn K. Nichols, Executive Administrative Assistant, certify that I have served the within Return to Petition for Rehearing, dated February 4, 2015, by depositing a copy of the same in the United States mail, postage prepaid, this 4th day of February, 2015, addressed to:

Lara Caudy, Appellate Defender  
S.C. Commission on Indigent Defense  
Post Office Box 11589  
Columbia, S.C. 29211-1589

I further certify that all parties required by Rule to be served have been served.



---

**Dawn K. Nichols**  
**Executive Administrative Assistant**

# The South Carolina Court of Appeals

The State, Respondent,

v.

Brad Alan Day, Appellant.

Appellate Case No. 2013-002558

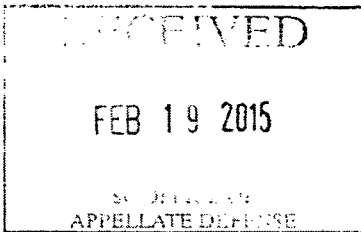
ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

*John Carmona* C.J.

*W. Ke* J.

*James E. ...* J.



Columbia, South Carolina

cc: Lara Mary Caudy, Esquire  
Tommy Evans, Jr., Esquire  
The Honorable R. Markley Dennis, Jr.

FILED

Feb 19, 2015 jak

STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

BRAD ALAN DAY,

APPELLANT

APPELLATE CASE NO. 2013-002558

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RECORD ON APPEAL

---

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I N D E X

WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

(There were no witnesses.)





1           **DEFENDANT:** Yes, sir, Your Honor.

2           **THE COURT:** I find him to be in technical  
3 violation of the terms and conditions of the  
4 community supervision program, so it's appropriately  
5 before me. I'll be happy to hear from you, Mr.  
6 Mauldin.

7           **MR. MAULDIN:** Yes, sir, Your Honor. First, we  
8 have a legal argument before we present mitigation  
9 for Mr. Day. The legal argument would be that  
10 Mr. Day actually should not be participating in the  
11 community supervision program anymore. And I'm  
12 going to give the Court a way of background as far  
13 as his sentence and what has transpired.

14           **THE COURT:** Sure. Take your time.

15           **MR. MAULDIN:** He was arrested in February 20th  
16 of 2007, and pled guilty on October 29th of 2007 to  
17 a charge of criminal sexual conduct with a minor in  
18 the second degree. Judge Goode was the sentencing  
19 judge, sentenced Mr. Day to ten years suspended to  
20 five years and registry as a sex offender. I note  
21 to the Court that the sentence did not include a  
22 probationary term subsequent to the five-year  
23 incarceration term.

24           **THE COURT:** So he did not put probation in?

25           **MR. MAULDIN:** That is correct.

1           Mr. Day was released April 29th of '11 to  
2           community supervision. He was arrested in January  
3           11th of '12 for a violation of that, went to court  
4           on February 10th of 2012, and received a sentence of  
5           90 days and continued with supervision. He was  
6           released from that period of incarceration and was  
7           arrested May 15th of 2012, went to court on June the  
8           22nd, 2012, and received a sentence of one year.  
9           And he was released from that sentence on May 1st,  
10          2013.

11           So in totaling up the amount of days that  
12          Mr. Day has served on the sentence, he served 1529  
13          days on the original incarceration sentence of  
14          around about 90 days, I don't have the exact number  
15          for that one, and a sentence of 361 days on the 2012  
16          revocation. And the total would be 1980 days with  
17          the 90-day revocation. And even without the 90-day  
18          revocation, the sentence would be 1890 days.

19           Now, a five-year sentence, multiplying 365  
20          times five, would be 1825 days. And in either of  
21          those numbers I gave the Court, Mr. Day has exceeded  
22          an incarceration term for that five years.

23           Now, our position is is that the ten years was  
24          suspended upon the service of five years and that  
25          Mr. Day has actually served that five years and,

1 therefore, satisfied that sentence.

2 **THE COURT:** Actually served a little more than  
3 that.

4 **MR. MAULDIN:** That is correct, and that he had  
5 satisfied that sentence.

6 **THE COURT:** Let me interrupt you there so that  
7 we can be on the same page. In 2007, we hadn't had  
8 a decision yet and unless -- they changed how --  
9 they changed the portion that was available that  
10 reduced it from the -- was -- which now deals with  
11 15 percent remaining controlling the community  
12 supervision --

13 **MR. MAULDIN:** Correct, and --

14 **THE COURT:** -- but they also, at that point,  
15 the decision had been handed down, which we all  
16 knew, and Judge Goode was a good judge and I'm sure  
17 he knew too, that he was playing -- because as I  
18 understand it, I'm -- this is paraphrasing it -- I  
19 could revoke him in one-year increments up to the  
20 amount of his actual sentence, the sentence that was  
21 imposed, which, in that case, in taking what you  
22 said, he's served five, but in Judge Goode's mind  
23 for the community supervision, he still would have  
24 the balance of that and the five that he hadn't  
25 served because he could serve him up to ten because

1           that was the sentence.

2                   **MR. MAULDIN:** That's Your Honor's  
3           interpretation.

4                   **THE COURT:** No, no. I think that's what Judge  
5           Goode, because I don't think he was clairvoyant. I  
6           don't think he knew that, wait a minute, this thing  
7           is going to change and judge -- what's ultimately  
8           going to happen is Judge Pleicones' dissent is going  
9           to become the majority, and that's what happened. I  
10          don't think he could foresee that. We all -- all of  
11          us wanted that because we thought it was unfair. I  
12          thought it was grossly unfair originally, but  
13          they've corrected that. But I understand your  
14          argument. I understand your position.

15                   **MR. MAULDIN:** Thank you, Your Honor. And, of  
16          course, obviously since then, cases like the Mills  
17          case, 378 S.C. 320, and the Picklesimer case, 388  
18          S.C. 264, have come out to the Court's  
19          interpretation of the statute as far as what the  
20          definition of the original sentence or original term  
21          of incarceration was under that section  
22          24-21-560(D).

23                   The Mills case was a three-year flat sentence.  
24          And they objected that any sentencing beyond three  
25          years violated his criminal rights under the Sixth

1 Amendment; Article 1, Section 14; and South Carolina  
2 Constitution in the Fifth and Fourteenth Amendment  
3 of the U.S. in Article 1, Section 3. And we make  
4 the similar objection and argument as to Mr. Day for  
5 this portion.

6 We understand as far -- the Picklesimer case  
7 was ten years suspended to five years and five years  
8 probation. And we think there's a factual  
9 distinction in this case in that there was not a  
10 probationary term to be served after the five years.  
11 And, obviously, when a judge is sentencing somebody  
12 to probation, they're assuming that the ten years --  
13 that the remaining time would be revoked if they  
14 were on probation. And it's my, you know, and Your  
15 Honor believes that Judge Goode intended the ten  
16 year --

17 **THE COURT:** No. I think -- I think he didn't  
18 intend any probation. He knew he couldn't do  
19 probation because we all knew that it was -- well,  
20 first of all, I don't know what he knew, that's  
21 presumptuous of me. He did whatever rationalization  
22 he wanted. But from the standpoint of what he  
23 imposed, and I've done it not even with -- well,  
24 I've suspended a sentence and put him on probation,  
25 but when you impose a sentence, the sentence that is

1 imposed is the sentence that's written the first  
2 thing, that's the sentence, that's the punishment  
3 for the crime.

4 The other part is how do you resolve that  
5 punishment in my mind? And the judge said five  
6 years and then you're going to do a community  
7 supervision. And the problem that your argument has  
8 is there's still five years that's a potential  
9 punishment under the community supervision  
10 construing the law as it exists now, because we can  
11 -- he certainly didn't serve day for day when he was  
12 released, the five-year sentence. He served 85  
13 percent, and then you came out. And then you  
14 started dealing with what Picklesimer, I think was  
15 the case, that reduced it to 15 percent. I believe  
16 that was the one, it may have been, whichever one  
17 was the first one.

18 **MR. MAULDIN:** And I'll elucidate that as far as  
19 the Picklesimer case is concerned, there is a  
20 factual distinction for Mr. Day, although it appears  
21 that we are arguing against the holding of  
22 Picklesimer, and if I may, arguing against  
23 precedent. And the holding of Picklesimer that I  
24 think the probation department is relying on, and  
25 I'll quote it here for the Court, it says, We now

1 definitively state that the, quote/unquote, original  
2 sentence as referenced in section 24-21-560(D)  
3 includes both the suspended and unsuspended portions  
4 of the circuit court sentence. It is, in fact, the  
5 total sentence handed down by the court.

6 And the part of our argument, I guess, against  
7 the precedent is that if you actually look at the  
8 definition in the statute, the term, quote/unquote,  
9 original sentence is not used in the statute.

10 **THE COURT:** All right. I appreciate that and  
11 that's wonderful argument, but it's not going to fly  
12 for me. You've made your basis for it. You're  
13 relying on that he's maxed -- he's completed his  
14 sentence as the statute allows. He's served more  
15 than five years, and, therefore, he cannot continue  
16 in his supervision, correct?

17 **MR. MAULDIN:** Well, correct --

18 **THE COURT:** I mean, the bottom line here,  
19 seriously, for purposes of review, that's what your  
20 argument is.

21 **MR. MAULDIN:** Yes.

22 **THE COURT:** You just throw away the other five  
23 years, it doesn't matter.

24 **MR. MAULDIN:** Well, yes, but going back, that's  
25 their interpretation of the statute.

1           **THE COURT:** That's my construction of the law.

2 Thank you.

3           **MR. MAULDIN:** And that the statute actually  
4 says that the original term of incarceration does  
5 not include any portion of the suspended sentence.

6           **THE COURT:** Mr. Mauldin, I appreciate it.  
7 There's a great argument and I -- you and I talked  
8 about it. And I sincerely meant what I said, I  
9 thought it was a grave injustice what was done until  
10 they changed it, putting -- because it can basically  
11 double your sentence is what it amounted to, and --  
12 but this one you're not because this one you've  
13 served five, but you've still got -- your sentence  
14 was ten, so you're not even close yet. So I  
15 appreciate it. It's a legal argument. They can  
16 change it if they want my -- I'm sorry. Do you wish  
17 to be heard?

18           **MR. BUCHANAN:** Your Honor, generally, when the  
19 Judge is agreeing with you, it's generally advisable  
20 to stay quiet.

21           **THE COURT:** I understand, but I didn't want to  
22 preclude you wanting to put something else on the  
23 record that has not been addressed.

24           **MR. BUCHANAN:** Your Honor, the quote that I was  
25 going to relay to was just what Mr. Mauldin informed

1 the Court, so that's --

2 **MR. MAULDIN:** And as an officer of the court, I  
3 thought it appropriate to quote that.

4 **THE COURT:** And I think you're right. And I  
5 think you're -- substantively, I don't have a  
6 problem with it, but they're going to have to change  
7 the law in my opinion, and I don't do that, that's  
8 up to them to do that. They can modify their  
9 decision just as they did, they finally adopted  
10 Justice Pleicones' dissent and it became the  
11 majority.

12 They may change this law, but they'll have to  
13 do it there because right now it makes perfect sense  
14 to me based on just my knowledge of what I've done  
15 over the years. I used to do it not before we ever  
16 -- I did it for how much of a sentence somebody  
17 would have to actively do, because before they got  
18 into the 85 percent, you could sentence somebody a  
19 hundred years, the max they were ever going to serve  
20 was ten. It didn't matter because that was it.

21 So you played little mathematical games of  
22 trying to get a sentence that a person would be  
23 punished for -- and this doesn't apply to you, I'm  
24 just talking about the rationale -- So I used the  
25 ending sentence because I knew that it changed the

1 max-out dates. And the max-out date that he could  
2 never get to a parole situation because he'd have to  
3 reach his max-out date on the active sentence. And  
4 so that's what we did for purposes of sentencing.

5 But I understand it. Clearly, you've presented  
6 it clearly. I'm going to respectfully deny the  
7 motion based on the legal argument that you've made.

8 Do you have any further argument you wish to  
9 make?

10 **MR. MAULDIN:** Not as far as that issue, Your  
11 Honor, but since you have ruled against us, I will  
12 now address the violation.

13 **THE COURT:** Sure.

14 **MR. MAULDIN:** Thank you, Your Honor.

15 Mr. Day was released in May of 2013. I think  
16 his family home he was not allowed to live at  
17 because it was near a church that had a day care and  
18 so he had to live in one of those No-Tel Motels for  
19 a period of time. And he obtained a job at one of  
20 the chicken processing plants here at Columbia  
21 Farms, and he worked that job for a period of time.  
22 Apparently, the chemical solvents that they used to  
23 clean the chickens kind of burned his skin. And his  
24 mother showed me several pictures that he was  
25 receiving chemical burns while at work. And he did

1 quit his job as the warrant stated.

2 Mr. Day tells me he had some discussion with  
3 Ms. Baker regarding the chemical burns, thought he  
4 had the blessing, but he did not tell her the day he  
5 quit. He did tell her at the meeting on the 24th,  
6 as stated in the warrant, which is the same day that  
7 he tested positive for the drugs mentioned.

8 In talking to Mr. Day about the positive drug  
9 test on that day and the two subsequent days in the  
10 warrant, he said he had been doing good when he had  
11 been working. Basically, his mother would pick him  
12 up, take him to work, he would come back and go to  
13 bed and get up and go to work the next day. But  
14 when he wasn't at work, he had to basically, because  
15 of his GPS monitoring, stay at that hotel, and  
16 obviously it was one of those No-Tel Hotels, there  
17 are people involved in drugs around it.

18 Mr. Day, as the 1106 reflects, has a long  
19 criminal record and he says that he has had a  
20 long-standing cocaine and crack cocaine problem.  
21 And during that period of time, I think he also  
22 learned that his sister had been diagnosed with  
23 cancer. He's around this element in the hotel, he  
24 relapsed and did use cocaine for that period of  
25 time.

1           He tried to pay the financials as he could,  
2           Your Honor. I don't know if you care for me to  
3           address that issue. But that addresses the quitting  
4           the job, not telling the agent and the testing  
5           positive for drugs.

6           I would note that he had been on since May and  
7           the bulk of these violations occurred basically from  
8           October the 12th forward, which is a period of about  
9           two or three weeks that he has been messing up.

10          Your Honor, he's 46, from Columbia, has a GED.  
11          When he didn't work at the chicken plant, he was  
12          mainly doing floor work and mechanic work in his  
13          life. He's single. He has two grown children.

14          He does have a medical issue with some disks in  
15          his back when he was injured during the department  
16          of corrections while doing flooring work for them.  
17          He didn't seek Workers Comp because he wanted to  
18          keep the job and not be kept on lockdown, so he kept  
19          pursuing the job. He's been seeing a doctor here.  
20          And he takes a number of pain medications involved  
21          with the slipped disk and the torn rotator cuff that  
22          he has.

23          Your Honor, the materials reflect that he does  
24          report as instructed. We believe that he's had a  
25          slip as far as this drug abuse is concerned. He

1 would like to try to find another job that wouldn't  
2 cause him to have these chemical burns and be able  
3 to successfully complete this program, obviously put  
4 this behind him. We would hope that Your Honor  
5 would perhaps continue him on supervision and  
6 recommend some kind of drug treatment or some kind  
7 of inpatient drug treatment to address the issue  
8 which would be the most concern, which was the  
9 positive drug test.

10 **THE COURT:** Okay. Mr. Day, is there anything  
11 you wish to add further?

12 **DEFENDANT:** He's pretty much covered it.

13 **THE COURT:** Thank you, sir.

14 Your recommendation?

15 **PROBATION AGENT:** Yes, sir, my name is Lisa  
16 Baker for the State.

17 **THE COURT:** Yes, ma'am.

18 **PROBATION AGENT:** I apologize. There is one  
19 warrant that was not added to the violation report  
20 first. I told his attorney about it. It was  
21 W-32130304 and that was that he failed to refrain  
22 from testing positive for cocaine on 11/1/2013 and  
23 11/7/2013.

24 **THE COURT:** So an additional dirty --

25 **PROBATION AGENT:** Exactly, Your Honor. And he

1 did have a previous violation on 6/13/2013, but  
2 those were just monies. And we -- we've exempted  
3 quite a bit on him. We exempted \$260. We exempted  
4 \$540. We reduced his fees to 25 -- I mean, we've  
5 really, really tried to help him. I am recommending  
6 the one-year revocation for the CSP.

7 **THE COURT:** Is it part of the community  
8 supervision program ordinarily, and I understand --  
9 my thought is it probably isn't because he can't do  
10 any drugs, that would be a violation, but there's no  
11 component of the community supervision that deals  
12 with substance abuse counseling?

13 **PROBATION AGENT:** No. I would --

14 **THE COURT:** It's strict -- and I understand  
15 that. I understand where you're coming from. I  
16 understand where he's coming from. You've got a law  
17 that you've got to comply with and I understand  
18 that.

19 The problem that we all have here, and it's the  
20 elephant in the room and nobody wants to address it,  
21 I understand about protecting children, in fact,  
22 that's probably one area where I'm going to come  
23 down harsh in sentencing, when you harm children,  
24 but the bottom line is we create this law, and I've  
25 asked -- you have removed, really and truly, not

1       you, but the law and the conditions on the sex  
2       offender, he's registered, so -- I mean, that's a  
3       given. He can't work in probably about 80 percent  
4       of the jobs that may be available and he can't  
5       live -- I mean, one of the frightening things, I  
6       remember seeing it several years ago in Florida  
7       where they were living under an overpass because  
8       that was the only place they could find that they  
9       would meet the law, that's the problem, that's the  
10      elephant in the room.

11               I'm sorry. You don't have to agree with me.  
12      Y'all appeal it. We'll talk about it. I'm going to  
13      ask you to make a component for this man because of  
14      the -- his problems deal with the restrictions that  
15      are placed on him. He can't work everywhere. So  
16      I'm going to continue him on probation -- I'm going  
17      to continue him on supervision. Thank you.

18               And the rationale is we've got to work harder  
19      when we have -- when you're presented with this kind  
20      of situation where this man, by virtue of the rules,  
21      is eliminated from much of the work force.

22               **PROBATION AGENT:** So you want him to  
23      continue --

24               **THE COURT:** I want him to continue, and I want  
25      you to make a component part that he participate in

1 substance abuse counseling. If he doesn't, now  
2 we're getting into a situation, now we can talk  
3 about something that says it doesn't relate to  
4 anything. We're going to try to help him, that's  
5 what I'm talking about.

6 **PROBATION AGENT:** My question is is he also has  
7 to pay for sex offender treatment which he cannot  
8 pay for.

9 **THE COURT:** Well, I understand it. You're  
10 telling me there's no sex offender treatment  
11 anywhere in the State of South Carolina that doesn't  
12 have -- that requires full payment -- that doesn't  
13 require full payment?

14 **PROBATION AGENT:** Not that I am aware of.

15 **THE COURT:** Well, let's see if we can find  
16 something, okay. If he gets employed, we're fine,  
17 but until he gets employed, we've got to work with  
18 him is what I'm saying.

19 **PROBATION AGENT:** Okay. Thank you, Your Honor.

20 **THE COURT:** Okay. Thank you.

21 **DEFENDANT:** Thank you, Your Honor.

22 **AGENT RINSE:** And restructure his money?

23 **THE COURT:** And restructure the money, yes,  
24 sir. Thank you so much.

25 **END OF PROCEEDINGS**

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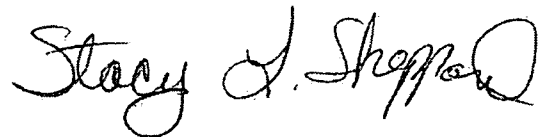
C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 21 of November, 2013.

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

January 30, 2014



Stacy L. Sheppard, RPR  
Circuit Court Reporter

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IN THE COURT OF GENERAL SESSIONS

No. 07 -GS- 32 - 01387  
Count

STATE OF SOUTH CAROLINA  
COUNTY OF [County]

Community Supervision  
CONTINUATION ORDER

STATE  
-vs-  
Brad Day  
Defendant  
00457830  
SID #  
12/16/66  
SCDC# or DOB

This matter was brought before me on the 21 day of November, 2013, pursuant to a [warrant or citation] charging the Defendant with violating the Defendant=s Community Supervision Program and asking the Court to revoke the Defendant=s community supervision. I find:

1. The terms of the Community Supervision Program are fair and reasonable;
2. The Defendant has not complied with all terms of the Community Supervision Program;
3. The Defendant has willfully violated terms of the Community Supervision Program;
4. The Defendant should be continued in the Community Supervision Program under its current terms or under other terms and conditions;

The Defendant is ordered continued on Community Supervision subject to all conditions not inconsistent with this order. The Court orders the following additional Conditions:

SUBSTANCE ABUSE counseling  
RESTRUCTURE FINANCIAL OBLIGATIONS

TRUE COPY  
Lex. Co. C.C.P., C.S. & F.C.

This 21 day of November, 2013

R. Muller  
Presiding Judge  
11th Judicial Circuit

LEXINGTON S. C.

This is to certify that I have read or have had read to me the Continuation Order and the Conditions set out therein. I agree to comply with such conditions and the conditions of my supervision order not inconsistent with this order during the period of my supervision. I have received a copy of this court order.

Offender=s  
Signature \_\_\_\_\_

Witnessed by \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_, SC

**South Carolina Department of Probation, Parole and Pardon Services  
GPS Monitoring Program - Participant Rules Acknowledgment and Agreement**

Failure to comply with the following conditions may result in a violation and you may be sentenced to a term of incarceration:

1. I will not tamper with the GPS equipment in any manner.
2. If the agent places equipment in my residence, I will not disconnect or move the GPS equipment unless I am approved to do so.
3. I will charge the equipment as instructed.
4. I will submit schedules for approval to my Agent.
5. I will allow Probation and Parole Agents to inspect the equipment at any time.
6. I acknowledge that intentional damage to the GPS equipment may result in a felony conviction of a fine of not more than \$5,000.00 or not more than five years. I agree to take responsibility and care of the equipment.
7. I will not intentionally block the GPS component of equipment.
8. I acknowledge that if I am indoors I may be instructed to go outside and acquire GPS.
9. I acknowledge when outside my residence, the tracking unit will be carried at all times in the pouch provided, unless otherwise instructed by the Agent (applies to two piece GPS unit only).
10. I will follow all established GPS Monitoring Program rules and schedules. Failure to do so may result in a violation.
11. I will not enter areas that are defined to be off-limits (exclusion zones). Entering an exclusion zone may result in the issuance of a warrant for my arrest.
12. If I receive a page from the Agent, I will call the number on the pager immediately or follow the instructions below:  
 "1" received on the pager- plug in device (applies to one piece GPS device)  
 "2" received on the pager- go outdoors in clear sky for 10 minutes
13. I agree to pay all fees associated with GPS, which may include a supervision fee and monitoring fee.
14. I agree to return all equipment issued to me when instructed to do so by the Agent.

Homeowner's Name: _____
Address: _____
Telephone Number: _____

15. I acknowledge that during times of an emergency I will go to a shelter designated by SCDPPPS when the first evacuation notice is given.
16. I agree that any data or information gathered or recorded by my Department issued GPS equipment shall be admissible as evidence in any hearing concerning the violation of the conditions of my supervision, or any criminal action brought against me pursuant to Section 23-3-540 (M) of the South Carolina Code

*Inclusion Zone Schedule (if applicable) – Time period that Offender may be away from residence:*

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Leave	9-3	9-3	9-3	9-6	9-3		
Enter							

*Change time:  
8 PM  
- 10 PM*

**NOTE: Do not provide the pager phone number to the offender, please document the number in OMS and the G.P.S. vendor website(s).**

I acknowledge that I have received a copy of this agreement and that the terms of the agreement have been explained to me. I understand that I must comply with these rules and that violation of the terms of this agreement will constitute a violation of the conditions of my supervision, or a felony if I have completed my term of supervision.			
Offender's Signature <i>[Signature]</i>	Date	Agent's Signature <i>[Signature]</i>	Date <i>5-13</i>
Offender Name (Printed) <i>X Braul Dy</i>	SID <i>[Signature]</i>		
The undersigned represents that he or she is the owner or tenant of the above identified residence and has voluntarily signed this consent to allow SCDPPPS personnel to enter the residence to install, maintain or collect the above identified monitoring equipment. The Undersigned also understands that the participant must comply with all terms of this agreement. This consent may not be revoked until SCDPPPS regains possession of said equipment.			
Owner/Tenant Signature	Date	Agent's Signature	Date





COMMUNITY SUPERVISION PROGRAM CERTIFICATE

Know all men by these presents:

It having been made to appear to the satisfaction of the SOUTH CAROLINA DEPARTMENT OF PROBATION PAROLE AND PARDON SERVICES that the offender mentioned below who was convicted of the offense(s) indicated below on said date(s) and in said county(ies) meets the requirements for Community Supervision Program as provided for in §24-21-560 of the South Carolina Code of Laws 1976, as amended.

It is therefore ORDERED that the said prisoner enter the Community Supervision Program at the end of his or her active sentence under supervision subject to the specific conditions listed below until the expiration of this Community Supervision Program as indicated below.

This release shall not prevent the delivery of the prisoner to authorities of the Federal Government or any state otherwise entitled to his or her custody.

In witness whereof, this Certificate bearing the approval of the South Carolina Department of Probation, Parole and Pardon Services is issued on the date below.

By Order of: South Carolina Department of Probation, Parole and Pardon Services
By: Katherine G. Moore
Katherine G. Moore, Coordinator, Community Release and Programs

Offender/Prisoner's Name: DAY, BRAD
Supervision Beginning Date: May 1, 2013
State Identification # (SID): 00457830
SC Dept. of Corrections # (SCDC): 00226463
Supervision Ending Date: April 30, 2015

Table with 8 columns: Offense(s), CDR, Indictment #(s), Conviction Date(s), County of Conviction(s), Incarceration Termination Date, Restitution Ordered (\$), Probation to Follow. Row 1: Criminal sexual conduct with minor or Attempt - victim under 16 yrs of age - Second degree (SR unless ordered not, 397, 07GS3201387, 6/22/2012, LEXINGTON, 5/1/2013, No

CONDITIONS OF SUPERVISION

Additional Offenses or Notes Page 2

Violation of any of these conditions may result in the immediate revocation of supervision.

- 1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my release or not later than 8:30 AM on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent. Please report to the office in the County of: LEXINGTON Phone: (803) 359-2551
2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing.
4. I shall not possess or purchase any firearms, knives, or dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or local laws and I shall contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise be entitled to and agree to return to South Carolina when directed by my Agent, the court, or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its' Agents.
11. Unless I was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to search or seizure, without a search warrant, with or without cause, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer.

ADDITIONAL CONDITIONS:

04 Must have no contact with the Victim and/or Victim's family for duration of supervision.

23 Residence Plan Rejected.

27 GPS Monitoring Not Less than 6 Months. If I am unable to report on the day of release I understand that I will be confined to my home until I report to SCDPPPS at 8:30 AM the next business day.

I hereby certify that the conditions listed above have been read and explained fully to me and in agreement thereto, I attach my signature.

Offender Signature Address: 105 W Ball Park Rd,GASTON, SC 29053,LEXINGTON,USA

Phone: (803) 238-1196

Date

I hereby certify that this Statement of Conditions has been read and explained to the offender and he/she has agreed to them.

Witness Signature

Date



South Carolina Department of Probation, Parole and Pardon Services  
COMMUNITY SUPERVISION PROGRAM CERTIFICATE

Page 2

Offender/Prisoner's Name: DAY, BRAD  
Supervision Beginning Date: May 1, 2013  
State Identification # (SID): 00457830  
SC Dept. of Corrections # (SCDC): 00226463  
Supervision Ending Date: April 30, 2015

Offense(s)	CDR	Indictment #(s)	Conviction Date(s)	County of Conviction(s)	Incarceration Termination Date	Restitution Ordered (\$)	Probation to Follow
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**ADDITIONAL CONDITIONS:**

31 Attend Sex Offender Counseling.

**ADDITIONAL CONVICTIONS:**

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

Community Supervision

**STATE OF SOUTH CAROLINA**

**ARREST WARRANT**

COUNTY OF LEXINGTON

Indictment Number 07-GS-32-01387

Warrant Number W-32-13-0318

State Identification No. (SID) 00457830

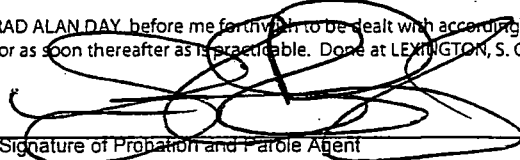
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF LEXINGTON, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that BRAD ALAN DAY, did on the 5 day of December, 2013 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Violation of Community Supervision pursuant to Section 24-21-560.

Now, therefore, you are empowered and directed to arrest the said defendant and bring BRAD ALAN DAY 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 LEXINGTON, S. C. this 5 day of December, 2013.

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

County of LEXINGTON

**STATE OF SOUTH CAROLINA**

**AFFIDAVIT**

Personally appeared before me, one Lisa S. Baker, who, first being duly sworn, deposes and says that BRAD ALAN DAY did within this County and State on the 5 day of December, 2013, violate the criminal laws of the State of South Carolina in the following particulars:

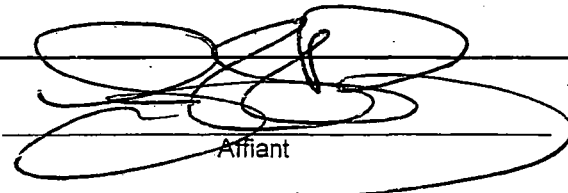
DESCRIPTION OF OFFENSE:

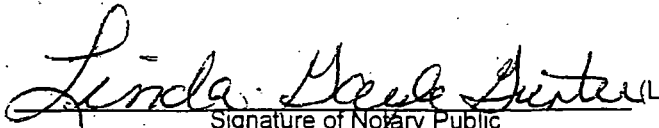
Violation of Community Supervision pursuant to Section 24-21-560.

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:

Subject has violated his Community Supervision in the following manner: By failing to refrain from using illegal drugs by admitting to using Cocaine use on 12/1/2013. Such actions constitute a violation of Sections 3 and 10 of the original release agreement dated 5/1/2013.

Sworn to and Subscribed before me  
this 5 day of December, 2013.

  
\_\_\_\_\_  
Affiant

  
\_\_\_\_\_  
Signature of Notary Public

Address: 605 West Main Street  
Suite 104  
LEXINGTON, SC 29072  
LEXINGTON  
USA  
(803) 359-2551

4-24-2017  
My Commission Expires

RETURN

STATE OF SOUTH CAROLINA

COUNTY OF

LEXINGTON

THE STATE

against

BRAD ALAN DAY

INFORMATION ON DEFENDANT

Name BRAD ALAN DAY
Address [REDACTED]
WEST COLUMBIA, SC 29170
Phone (000) 000-0000
Sex Male Race White Height 600
Weight 250 Birth date [REDACTED]
Social Security Number [REDACTED]

Constable or Law Enforcement Officer

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

ARREST WARRANT

Offense: Violation of Conditions of Community Supervision Supervision

Offense Section: 24-21-560

Date: 12/5/2013

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

Lisa S. Baker

INFORMATION ON WITNESSES

Name
Address
Phone
Name
Address
Phone
Name
Address
Phone
Name
Address
Phone

on the 5 day of December 2013

[Signature]

Constable or Law Enforcement Officer

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

ENTERED

(L.S.)

Signature of Judge

Disposition

Sentence

Co-Defendants

PRELIMINARY HEARING held by

Magistrate on with Attorney for the Defendant.

Decision BAIL

Date Set
Magistrate
Amount
Surety

**CITATION**

Indictment Number(s):  
07-GS-32-01387

No. C-32-13-0263

SOUTH CAROLINA  V.  BRAD ALAN DAY	County LEXINGTON		
	SCDC # 00226463	SID # 00457830	
	Citation for Violation of		<input checked="" type="checkbox"/> Community Supervision
<input type="checkbox"/> Parole		<input type="checkbox"/> Emergency Powers Act Release	<input type="checkbox"/> Supervised Re-entry Program
		<input type="checkbox"/> Supervised Furlough	

TO: BRAD ALAN DAY

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

Place General Sessions Court	Room
	Date and Time 12/20/2013 8:30 AM

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

Violations Charged Violation of Community Supervision pursuant to Section 24-21-560.
---

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

List of Rights: You have the right at the preliminary hearing to question any person who appears as a witness against you and to have witnesses appear on your behalf. You may present evidence on your behalf. You may have an attorney represent you at the hearing at your expense. An attorney may be appointed to represent you in extraordinary circumstances. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.
---

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

LEXINGTON, South Carolina	Probation and Parole Agent	Agent #
Date 12/12/2013	Sandra Young	0812

PROOF OF SERVICE

Date Served: 12/12/13	Place: Lex PPP
Served On: (Print Name) Brad Day	
Served By: (Print Name) Justin Price	Title: Agent

DECLARATION OF SERVER

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

Executed on: 12/12/13 DATE	Signature of Server		
Address of Server	City	State	Zip

**SCDPPPS**

605 West Main Street, Ste#104  
Lexington, SC 29072

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of LEXINGTON

Personally appeared before me, Sandra Young, who first being duly sworn, deposes and says that BRAD ALAN DAY did within this county and State on the 12 day of December, 2013, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

Violation of Community Supervision pursuant to Section 24-21-560.

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:

Subject has violated his Community Supervision in the following manner. He has failed to pay Intensive Fees being a total in arrears of \$120.00. He has failed to pay GPS fees being a total in arrears of \$440.00 in arrears. Subject has failed to charge his GPS unit as instructed. He has been instructed to charge his unit for 2 hours everyday. He was released from LCDC on 12/6/2013 at 6:42 pm and did not charge his unit until 12/8/2013 at 11:27 pm. This caused the unit to lose power and the subject was untracked for 51 hours and 45 minutes. He failed to call the GOC as previously instructed for 24 hour assistance on his GPS unit. He was given their phone number. He admitted that he stayed with his mother at 301 Taylor Street, West Columbia SC 29169. This residence has been unapproved for him to reside as it is within 1000 feet of a school. Subject has failed to follow the advice and instructions of the agent. Such actions constitute a violation of Sections 7, 10, and special conditions of the release certificate dated 5/1/2013 and Sections 3, 10, 11, 13, of the Participant Rules Acknowledgment and Agreement, and Sections 10 and 12 of The Standard Sex Offender Conditions signed by subject dated 5/2/13. This citation is in addition to warrant W-32-13-0318 issued on 12/5/2013 and served on 12/5/2013.

Sandra Young  
Affiant

Sworn to and subscribed before me this  
12 day of December, 2013

Clare D. [Signature]  
Signature of Notary Public

May 29 2018  
My Commission Expires

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

LD

Offender's Name: **BRAD ALAN DAY**

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

SID#: **00457830**

Warrant#: **W-32-13-0318; C-32-13-0263**

Date of Birth: [REDACTED]

SCDC#: **00226463**

**Indictment Numbers:**

**07-G5-32-01387**

**Offense and Offense Code:**

**397 - Criminal sexual conduct with minor or Attempt - victim under 16 yrs of age - Second degree (SR unless ordered not by judge)**

**GPS DISCRETIONARY**

Supervision Program: **Community Supervision** Begin Date: **4/29/2011** End Date: **4/30/2015**

Supervision Level: **Institutionalized**

Sentencing Judge:

Sentencing County: **LEXINGTON**

Sentencing Date: **4/29/2011**

Location (Bold Response): **Community**

**Sentence:**

\*\*9/12/2011 FORM 9B MUST RESPOND TO ALL ALERTS/CONTACTS FROM MONITORING CENTER, AGENT TO ADJUST SCHEDULE AS DEEMED NECESSARY \*\*2/10/12 FORM 1152 REVOCATION 90 DAYS NO GPS DISCRETIONARY \*\*RELEASED TO CSP 5/1/13 \*\*6/21/13 FORM 1182 EXEMPT \$120 INTEN FEES AND \$240 GPS, MOVE DRUG TEST FEE TO THE END OF SUPERVISION \*\*9/24/13 FORM 9B CONT ON SUPERVISION, EXEMPT ARREARS \$260 & GPS ARREARS \$540, REDUCE SF TO \$25/MTH FOR REMAINDER OF SUPERVISION, WAIVE DRUG TEST FEES (\$20) \*\*11/21/13 FORM 1151 CONT, SA COUNSELING, RESTR FINANCIAL OBLIGATIONS

**Special Conditions:**

F1151 - \*\*11/21/13 FORM 1151 CONT, SA COUNSELING, RESTR FINANCIAL OBLIGATIONS; F1182 - \*\*6/21/13 FORM 1182 EXEMPT \$120 INTEN FEES AND \$240 GPS, MOVE DRUG TEST FEE TO THE END OF SUPERVISION; F9B - \*\*9/24/13 FORM 9B CONT ON SUPERVISION, EXEMPT ARREARS \$260 & GPS ARREARS \$540, REDUCE SF TO \$25/MTH FOR REMAINDER OF SUPERVISION, WAIVE DRUG TEST FEES (\$20); FORM9B - \*\*9/12/2011 FORM 9B MUST RESPOND TO ALL ALERTS/CONTACTS FROM MONITORING CENTER, AGENT TO ADJUST SCHEDULE AS DEEMED NECESSARY; NEW CSP - RELEASED 5/1/13 NEW CSP:  
 NO CONTACT W/VIC &/OR VIC'S FAMILY FOR DURATION, RESIDENCE PLAN REJECTED, GPS NLT 6MTHS, IF UNABLE TO REPORT DAY OF RELEASE I WILL BE CONFINED TO HOME UNTIL I REPORT TO SCDPPPS AT 8:30AM NEXT BUSINESS DAY, ATTEND S/O COUNSELING; Other1 - MUST HAVE NO CONTACT W/VICT AND/OR VIC'S FAMILY FOR DURATION OF SUPERVISION, RESIDENCE PLAN REJECTED, GPS MONITORING NLT 6MTHS, IF UNABLE TO REPORT ON DAY OF RELEASE, I WILL BE CONFINED TO MY HOME UNTIL I REPORT TO SCDPPPS AT 8:30AM THE NEXT BUSINESS...; Other2 - ...DAY, ATTEND SEX OFFENDER COUNSELING

**Current Address and Summary of Residence:**

[REDACTED], CAYCE, SC 29033, LEXINGTON, USA,  
 [REDACTED], WEST COLUMBIA, SC 29169, LEXINGTON, USA; [REDACTED], GASTON, SC 29053, LEXINGTON, USA, [REDACTED]  
 [REDACTED], WEST COLUMBIA, SC 29169, LEXINGTON, USA; [REDACTED], KNIGHTS INN, COLUMBIA, SC 29210, LEXINGTON, USA; ;  
 [REDACTED], WEST COLUMBIA, SC 29169, LEXINGTON, USA; [REDACTED], WEST COLUMBIA, SC 29170,  
 LEXINGTON, USA; ; SAME, , SC, USA,

Subject does lives at The Masters Inn located at Commerce Drive, Cayce SC 29033 Room [REDACTED]

**Reporting:**

He usually reports as scheduled.

**Employment Records While Under Supervision:**

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
SHARPE'S BODY SHOP TOWING	12/5/2013 -		\$0.00
SHARPE'S BODY SHOP & TOWING	4/29/2011 - 1/11/2012		\$800.00
COLUMBIA FARMS	5/20/2013 - 10/11/2013		\$0.00
	10/12/2013 - 12/5/2013		\$0.00

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

Offender's Name: **BRAD ALAN DAY**

He has just started back work at "Sharpes Body Shop and Towing"

**Financial Conditions:**

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Fees						
Drug Test Fee	\$20.00	\$20.00/M	\$0.00		\$0.00	\$20.00
GPS Active	\$200.00	\$40.00/W	\$0.00		\$200.00	\$200.00
GPS Active	\$80.00	\$40.00/W	\$0.00		\$80.00	\$80.00
GPS Active	\$120.00	\$40.00/W	\$0.00		\$120.00	\$120.00
GPS Active	\$840.00	\$40.00/W	\$800.00	10/2/2013	\$40.00	\$40.00
Intensive Supervision	\$25.00	\$25.00/M	\$0.00		\$25.00	\$25.00
Intensive Supervision	\$420.00	\$20.00/W	\$400.00	10/2/2013	\$20.00	\$20.00
Intensive Supervision	\$25.00	\$25.00/M	\$0.00		\$25.00	\$25.00
Intensive Supervision	\$50.00	\$25.00/M	\$0.00		\$50.00	\$50.00

His monies are in arrears. \$440.00 in arrears on GPS. \$400.00 on Intensive Fees. \$20.00 on Drug Testing Fee.

Prior Violation Dates	Prior Violations	Prior Violation Disposition
6/13/2013	Failed to pay his gps fees and intensive fees.	6/13/2013-Exempted \$120.00 on Intensive Fees and \$240.00 on GPS fees.
10/24/2013	Failed to follow the advice and instruction of the agent. Failed to pay fees. Failed to work at a lawful occupation. Testing positive for cocaine, methamphetamines, and amphetamines and opiates on 10/24/2013.	9/24/2013-Continue on Supervision. Exempt Arrears of \$260.00 and GPS arrears \$540.00. Reduce SF to \$25.00 for remainder of supervision.
11/7/2013	Failing to refrain from the use of illegal drugs by testing positive for Cocaine on 11/1/2013 and 11/7/2013	11/21/2013-Subject was continued. Substance abuse counseling. Restructure financial obligations.

**Details of the Present Violation:**

W-32-13-0318

By failing to refrain from the use of illegal drugs by admitting to using Cocaine on 12/1/2013.

C-32-13-026

Subject has failed to pay Intensive Fees being a total in arrears of \$120.00. He has failed to pay GPS fees being \$440.00 in arrears. Subject was released on LCDC on 12/6/2013 at 6:42 pm and did not charge until 12/8/2013 at 11:27 pm. This caused the unit to lose power and the subject was untracked for 51 hours and 45 minutes. He failed to call the GOC as previously instructed for 24 hour assistance on his GPS unit. He was given their phone number. He admitted that he stayed with his mother at [REDACTED], West Columbia SCSC 29179. This residence has been unapproved for him to reside as it is within 1000 feet of a school. Subject has failed to follow the advice and instructions of the agent. Such actions constitute a violation of Sections 7, 10, and special conditions and the release certificate dated 5/1/2013 and Sections 3, 10, 11, 13 of the Participant Rules Acknowledgement and Agreement, and Sections 10 and 12 of The Standard Sex Offender Conditions signed 5/2/2013. This citation is in addition to Warrant W-32-13-0318

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

Offender's Name: **BRAD ALAN DAY**

**Agent's Recommendation:**

Revoke 1 year.

**Agent's Justification:**

Subject cannot do this community supervision. He has violated his CSP on many occasions. Just 10 days after being continued from his last violation he violated again in the same manner. He doesn't have money for treatment but he can afford a \$19.00 drug test before he reports to try and make sure he is clean. He also has someone drive his mother's car around for dealers to get drugs or get money for drugs. He continues to use drugs and he was not tracked by GPS for 51 hours because he didn't charge his unit (even though the unit speaks to him outloud and tells him that he needs to charge his unit because it's low on the battery. He has shown over and over that he is not a good candidate for community supervision. Subject is a threat to the community. He has a serious rap sheet. He should be revoked for 1 year.

Note: This is his 7th case under supervision. His record consists of:

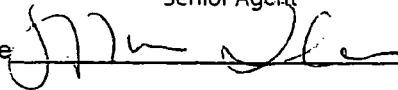
- 1984 Simple assault and battery
- 1988 Criminal Domestic Violence and Public Drunk
- 1990 Breaking into MV, Hit and Run, DUI
- 1991 DUS more than 1st and DUI more than first, Simple Assault
- 1992 False information to police, DUS more than first, DUI 2nd
- 1993 Breaking into MV, Criminal Domestic Violence, Disorderly
- 1995 DUS 3rd offense, DUI second, DUS 6th offense
- 1996 DUS 3rd, Grand Larceny, Assault and Battery of High and Aggravated Nature
- 2000 DUS
- 2001 7 counts of fraudulent check
- 2003 Burglary 3rd
- 2007 Breach of Peace, Grand Larceny, CSC with minor

Lisa S. Baker

Senior Agent

Date: 12/13/2013

Supervisor's Signature



Date: 12/16/2013

FILED

ORIGINAL

2013 DEC 20 AM 11:04

BETH A. CARRIGG  
CLERK OF COURT

STATE OF SOUTH CAROLINA ) LEXINGTON COUNTY COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON )

ORDER REVOKING BOND

THE STATE, )

vs. )

WARRANT(S) OR INDICTMENT #

W-32-13-0318

BRAD DRY  
DEFENDANT )

The above named Defendant's bond is hereby revoked. The defendant is remanded to the custody of the Lexington County Detention Center.

It is further ordered

That: THE LEXINGTON COUNTY PUBLIC DEFENDER'S OFFICE  
IS APPOINTED TO REPRESENT SUBJECT. SUBJECT IS TO  
BE RETURNED TO COURT ON 1/7/14 FOR HIS VIOLATION  
HEARING.

AND IT IS SO ORDERED.

THIS 20 DAY OF

DECEMBER 2013

PRESIDING JUDGE

1569

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
STATE OF SOUTH CAROLINA )  
VS. )

IN THE COURT OF GENERAL SESSIONS  
DOCKET NO \_\_\_\_\_ -GS-32-\_\_\_\_\_  
WARRANT # Probation Violation  
ORDER  
OF APPOINTMENT OF  
LEGAL COUNSEL OF INDIGENT DEFENDANT

BRAD DAY  
DEFENDANT

THE DEFENDANT CONTENDS THAT HE IS INDIGENT AND IN NEED OF SERVICE OF AN ATTORNEY AS CONTEMPLATED BY LAW. THEREFORE, Public Defender 785-8823, ATTORNEY-AT-LAW, IS APPOINTED FOR THE DEFENDANT UNDER THE AUTHORITY OF THE CHIEF JUDGE FOR ADMINISTRATIVE PURPOSES ISSUED TO THE CLERK OF COURT FOR LEXINGTON COUNTY TO APPOINT ATTORNEY FOR INDIGENT DEFENDANTS.

IT IS SO ORDERED:

THIS 20 DAY OF December 20 13  
AT 10:00 (A.M)

[Signature]  
BETH A. CARRIGG, CLERK OF COURT  
LEXINGTON COUNTY, ELEVENTH JUDICIAL CIRCUIT

per Judge Hood

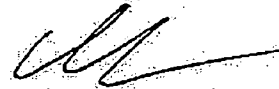
Bond Revoked case continued until 1-17-13



However, the Supreme Court in State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010), ruled that CSP is to use both the suspended and unsuspended portions of the sentence when determining the maximum amount of time a defendant is to be on CSP. "We now definitively state that the 'original sentence,' as referenced in section 24-21-560(D), includes both the suspended and unsuspended portions of a circuit court's sentence; it is, in fact, the total sentence handed down by the court." Id. at 268, 848. Picklesimer also ruled that CSP is either completed through two continuous years of CSP without violations, or the expiration of the original sentence, which includes both suspended and unsuspended portions of the sentence. Id. at 270, 848-849.

Because Defendant Day's original sentence was ten years suspended to the service of five years, the total sentence is ten years. Therefore, Mr. Day has not yet fully completed his sentence. He is to be sentenced to one year incarceration for the violation of the conditions of CSP and is to return to CSP when he is released from incarceration.

It is so ordered.



Donald B. Hocker  
Presiding Judge  
Eleventh Judicial Circuit

This 5th day of February, 2014.

*DBH*  
\* *Mr. Day shall receive credit for 37 days served.*

# *2*

A TRUE COPY  
*DBH*  
Lex. Co. C.C.P., G.S. & F.C.

ORIGINAL

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions

HONORABLE DONALD B. HOCKER, CIRCUIT COURT JUDGE

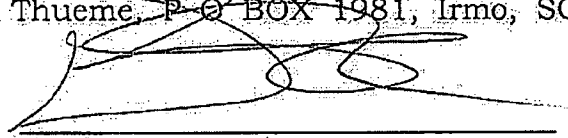
Citation No.: 32-13-0263

Probation C/W No.: W-32-13-0318

The State,.....Respondent.  
v.  
Brad Alan Day,.....Appellant.

NOTICE OF APPEAL

Brad Alan Day, had a community supervision violation hearing in front of the Honorable Donald B. Hocker on January 31, 2014. The Honorable Donald B. Hocker ruled on this case February 5, 2014. The Order was filed on February 7, 2014. He appeals the Court's finding that he had not satisfied his sentence and was still required to participate in the community supervision program. The court reporter was Carol Thueme, P-O BOX 1981, Irmo, SC 29063.



David M. Mauldin  
Assistant Public Defender  
407 1/2 W. Main Street  
Lexington, SC 29072  
(803) 785-8873

**OTHER COUNSEL OF RECORD:**  
Matthew C. Buchanan, General Counsel for Probation  
S.C. Dept of Probation, Parole and Pardon Services  
P.O. Box 50666  
Columbia, SC 29250

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions

HONORABLE DONALD B. HOCKER, CIRCUIT COURT JUDGE

Citation No.: 32-13-0263

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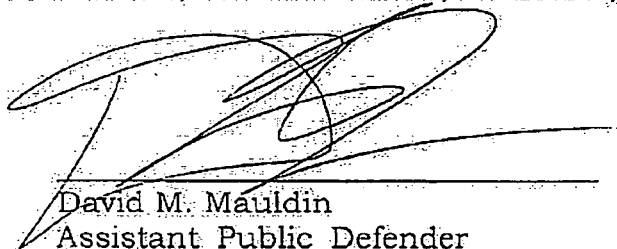
The State, ..... Respondent.

v.

Brad Alan Day, ..... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Matthew C. Buchanan, by depositing a copy of it in the United States Mail, postage prepaid, on February 10, 2014, addressed to Matthew C. Buchanan, General Counsel for Probation, S.C. Dept of Probation, Parole and Pardon Services, P.O. Box 50666, Columbia, SC 29250.



David M. Mauldin  
Assistant Public Defender  
407 1/2 W. Main Street  
Lexington, SC 29072  
(803) 785-8873

WITNESSES

LCSD  
Russell, E.

DOCKET NO. 2007-GS-32-1387

The State of South Carolina  
County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2007

THE STATE  
vs.  
Brad Alan Day  
AKA Brad A Day

A-2007-32-00687

4/18/2007 10:37 AM

ARREST WARRANT NUMBER

J056445

ACTION OF GRAND JURY  
**TRUE BILL**

*[Signature]*

Foreman

Foreperson of Grand Jury

Date: 4-30-07

VERDICT

Foreperson of Petit Jury

Date:

CDR# 0397

Indictment for

Criminal Sexual Conduct with Minor 2nd  
Degree 14 to 16 and or Position of familial,  
custodial, etc.

§16-3-655(C)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

INDICTMENT FOR  
Criminal Sexual Conduct with Minor 2nd Degree 14 to  
16 and or Position of familial, custodial, etc.

§16-3-655(C)

At a Court of General Sessions, convened on APRIL, 2007, the Grand Jurors of Lexington County present upon their oath:

That Brad Alan Day, did in Lexington County on or about February 19, 2007, commit a sexual battery upon and with the body of Minor being a child of at least fourteen (14) years of age but who is less than sixteen (16) years of age, and Brad Alan Day was in a position of familial, custodial, or official authority to coerce the victim to submit or was older than the victim, to wit: the defendant and victim did engage in sexual intercourse in violation of § 16-3-655 (C) [formerly section 16-3-655(3) of the Code of Laws of South Carolina, 1976, as amended.

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

  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington  
STATE

Brad Alan Day

AKA:

Race:

Sex: m

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

AWW#

Date of Offense:

S.C. Code §

CDR Code #

07-GS-32-1317  
5056445  
2-19-07  
16-3-655  
0397

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO:

in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 397

NON-VIOLENT

VIOLENT

SERIOUS

MOST SERIOUS

Mandatory GPS (CSC w/minor 1<sup>st</sup> or Lewd Act)

§17-25-45

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

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 10 days/months/years or  under the Youthful Offender Act not to exceed     years and/or to pay a fine of \$    ; provided that upon the service of 5 days/months/years and/or payment of \$    ; plus costs and assessments as applicable\*; the balance is suspended with probation for     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. FEBRUARY 20, 2007 - CREDIT TIME SERVED

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

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered

Total: \$     plus 20% fee: \$    

Payment Terms:

set by SCDPPPS

Recipient:

\*Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§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	\$25.00
§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		\$125.00

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: must register as sex offender

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

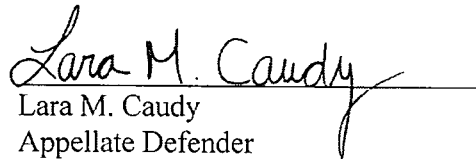
Beth A. Carrig  
Clerk of Court/ Deputy Clerk  
Court Reporter: Carol Thorne

PRESIDING JUDGE  
Judge Code:  
Sentence Date: October 29, 2007

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 14th, 2014

  
Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Lexington County

R. Markley Dennis, Jr., Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

BRAD ALAN DAY,

APPELLANT

APPELLATE CASE NO. 2013-002558

---

FINAL BRIEF OF APPELLANT

---

LARA M. CAUDY  
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by continuing Appellant on community supervision and ruling he could be re-incarcerated for violations of his community supervision until he served ten years in prison where Appellant was sentenced to ten years imprisonment, suspended upon the service of five years, with no probation and where Appellant had already served the maximum five year sentence day for day?<sup>1</sup>

---

<sup>1</sup> This Court may take judicial notice that a similar issue was raised in State v. Anthony K. Blakney, Appellate Case No. 2012-207286, which is still pending on appeal. An oral argument was held in Blakney on June 2, 2014, the same day this brief was filed.

## STATEMENT OF THE CASE

A Lexington County Grand Jury indicted Appellant at the April 30, 2007 term of General Sessions for second degree criminal sexual conduct with a minor. R. 44 – R. 45. Appellant pled guilty on October 29, 2007 before the Honorable Kenneth Goode. Judge Goode sentenced him to ten years imprisonment suspended upon the service of five years. The sentence did not include a probationary term after the service of the five years imprisonment. Appellant was also required to register as a sex offender. R. 5, ll. 16-23; R. 46.

Appellant was released from incarceration on April 29, 2011 and placed on community supervision. R. 6, ll. 1-2. On November 21, 2013, Appellant appeared before the Honorable R. Markley Dennis, Jr. for a third community supervision violation hearing. David Mauldin represented Appellant. Matthew Buchanan represented the Department of Probation, Parole, and Pardon Services. R. 1.

Despite Appellant's argument that he had served the maximum five year sentence imposed by Judge Goode and should no longer be on community supervision, Judge Dennis continued Appellant on community supervision and added the condition that he attend substance abuse counseling. R. 6, l. 23 – 7, l. 1; R. 19, l. 16 – 20, l. 1; R. 26. Judge Dennis also ruled Appellant could be re-incarcerated for subsequent violations of his community supervision until he served ten years in prison. R. 7, l. 18 – 8, l. 1.

Appellant appeals this ruling.

## ARGUMENT

The court erred by continuing Appellant on community supervision and ruling he could be re-incarcerated for violations of his community supervision until he served ten years in prison where Appellant was sentenced to ten years imprisonment, suspended upon the service of five years, with no probation and where Appellant had already served the maximum five year sentence day for day.

### **Relevant Facts**

Appellant was sentenced by Judge Goode to ten years imprisonment suspended upon the service of five years for second degree criminal sexual conduct, with **no probation** to follow the five year term of incarceration. R. 5, ll. 16-23; R. 46.

Appellant appeared before Judge Dennis for a third community supervision violation hearing on November 21, 2013. R. 1. Defense counsel argued at this hearing that Judge Goode had sentenced Appellant to a maximum of five years imprisonment - - “ten years suspended to five years and registry as a sex offender. I note to the Court that **the sentence did not include a probationary term subsequent to the five-year incarceration term.**” R. 5, ll. 18-25 (emphasis added).

Defense counsel explained to Judge Dennis that Appellant was released from prison on April 29, 2011 after serving one thousand five hundred twenty-nine days (four years and sixty-nine days) “on the original incarceration sentence.” On February 10, 2012, Appellant had a community supervision violation hearing, was found to be in violation, and sentenced to ninety days imprisonment. On June 22, 2012, Appellant had a second community supervision violation hearing, was again found to be in violation, and sentenced to one year

imprisonment. At each of these hearings, Appellant was continued on community supervision after he served the revoked sentence.<sup>2</sup> R. 6, ll. 1-10.

Defense counsel told Judge Dennis he was uncertain how many days Appellant actually served on the ninety day revocation, but that he was certain Appellant had served three hundred and sixty-one days on the one year revocation. Defense counsel said, “And the total would be 1980 days with the 90-day revocation. And even without the 90-day revocation, the sentence [total days Appellant served] would be 1890 days.” R. 6, ll. 11-18.

Defense counsel explained, “Now, a five-year sentence, multiplying 365 times five, would be 1825 days. And in either of those numbers I gave the Court, Mr. Day [Appellant] has exceeded an incarceration term for that five years.” He argued, “[O]ur position is that the ten years was suspended upon the service of five years and that Mr. Day has actually served that five years and, therefore, satisfied that sentence.” R. 6, l. 19 – 7, l. 1.

Defense counsel distinguished State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010), from Appellant’s case. He argued, “[T]he Picklesimer case was ten years suspended to five years and five years probation. And we think there’s a factual distinction in this case in that there was not a probationary term to be served after the five years.” R. 9, ll. 6-10.

Defense counsel acknowledged that the Department of Probation, Parole, and Pardon Services was relying on the following language found in Picklesimer to support its position that Appellant had not satisfied his sentence and was still subject to community

---

<sup>2</sup> Appellant has since had a fourth community supervision violation hearing. This hearing was held in Lexington County on January 31, 2014 before the Honorable Donald B. Hocker. In an order filed February 7, 2014, Judge Hocker likewise ruled Appellant had not satisfied his sentence and is still required to participate in the community supervision program. Judge Hocker also found Appellant in violation of his community supervision and sentenced him to another one year in prison. Appellant has also appealed this ruling. R. 40 – R. 43.

supervision: “We now definitely state that the ‘original sentence,’ as referenced in section 24-21-560(D), includes both the suspended and unsuspended portions of a circuit court’s sentence; it is, in fact, the total sentence handed down by the court.” R. 10, l. 23 – 11, l. 5; See Picklesimer, 388 S.C. at 268, 695 S.E.2d at 848.

However, defense counsel argued, “the statute actually says that the original term of incarceration does not include any portion of the suspended sentence.” R. 12, ll. 3-5. Therefore, defense counsel maintained Appellant was not required under the statute to serve the suspended portion of his sentence and had satisfied his sentence by serving the five year unsuspended portion day for day. Consequently, Appellant could not be continued on community supervision or be re-incarcerated for any alleged violations.

Judge Dennis denied Appellant’s motion. He said, “I could revoke him [Appellant] in one-year increments up to the amount of his actual sentence, the sentence that was imposed, which, in that case, in taking what you said, he’s served five, but in Judge Goode’s mind for the community supervision, he still would have the balance of that and the five that he hadn’t served because he could serve him up to ten because that was the sentence.” R. 7, l. 18 – 8, l. 1. However, Judge Dennis later admitted, “I don’t know what [Judge Goode] knew” and it was “presumptuous of me” to assume what Judge Goode intended. R. 9, ll. 17-22.

Additionally, Judge Dennis noted, “They [the appellate courts] may change this law, but they’ll have to do it there because right now it makes perfect sense to me based on just my knowledge of what I’ve done over the years.” R. 13, ll. 12-13.

The court ultimately continued Appellant on community supervision and added the condition that he attend substance abuse counseling. R. 19, l. 16 – 20, l. 1; R. 26.

## Discussion

Judge Dennis erred by continuing Appellant on community supervision and by ruling that Appellant had not satisfied the original sentence imposed by Judge Goode on October 29, 2007 since Appellant had already served the five year unsuspended portion of his sentence day for day and was **not sentenced to probation**. Judge Dennis' ruling was erroneous because once Appellant served the five year unsuspended portion of his sentence, the suspended portion of his sentence was discharged, leaving no additional revocable time to serve on community supervision violations. Furthermore, under the plain language of § 24-21-560(D), Appellant is not required to serve the suspended portion of his sentence.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Id. (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)) (internal quotation marks omitted). Additionally, “[p]enal statutes are strictly construed against the State and in favor of the defendant.” State v. Morgan, 352 S.C. 359, 365, 574 S.E.2d 203 (Ct. App. 2002) (citing State v. Fowler, 322 S.C. 157, 470 S.E.2d 393 (Ct. App. 1996)).

Section 24-21-560(D) reads in relevant part:

The maximum aggregate amount of time a prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed limited by the amount of time remaining on the original “no parole offense.” The prisoner must not be incarcerated for a period longer than the original

sentence. **The original term of incarceration does not include any portion of a suspended sentence.**

(emphasis added).

As defense counsel argued below, the emphasized language above clearly states that a defendant may not be incarcerated on successive community supervision revocations for a period longer than the original sentence and the original sentence “**does not include any portion of a suspended sentence.**” Therefore, Appellant’s original sentence under the statute was the unsuspended five years, which Appellant had already served day for day during his original period of incarceration and his two previous revocations. Because Appellant had satisfied the sentence imposed by Judge Goode, he could not be continued on community supervision nor could he be re-incarcerated for any alleged violations of community supervision.

As seen, defense counsel distinguished this case from State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845. In Picklesimer, our Supreme Court held “that the ‘original sentence’ as referenced in § 24-21-560(D), includes both the suspended and unsuspended portions of the circuit court’s sentence . . .” 388 S.C. at 268, 695 S.E.2d at 848. However, Picklesimer dealt with a situation where the defendant was sentenced to ten years imprisonment suspended upon the service of five years imprisonment **and five years probation.** Appellant, on the other hand, was not sentenced to serve a probationary term after he served the five year unsuspended sentence. Because of this distinction, the specific holding in Picklesimer does not apply in this case and defense counsel’s argument that Appellant had satisfied the sentence imposed by Judge Goode by serving the entire five year unsuspended portion of his sentence was correct. Again, once Appellant served the five year

unsuspended portion of his sentence, the suspended portion of his sentence was discharged, leaving no additional revocable time to serve on community supervision violations.

Despite what Judge Dennis maintained below, Judge Goode could not have intended Appellant to serve more than the unsuspended five years in prison since he imposed a sentence of ten years suspended to five years imprisonment **with no probation to follow**. If Judge Goode had intended Appellant to serve more than the five years, he would have imposed a probationary term to follow the five year unsuspended sentence. The remainder of Appellant's five year unsuspended sentence was the sentence he had to serve if he violated his community supervision and Appellant served this remaining time during his two previous revocations.

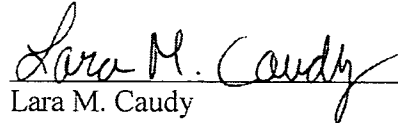
Our Supreme Court has previously said, "Because the CSP [community supervision program] program is a more stringent program than traditional probation, we believe the Legislature did not intend for this form of supervision to have the effect of increasing an inmate's original sentence for a "no parole offense." State v. McGrier, 378 S.C. 320, 331, 63 S.E.2d 15, 21 (2008) (citing State v. Dawkins, 352 S.C. 162, 167, 573 S.E.2d 783, 785 (2002)). If Appellant had originally served the unsuspended portion of his sentence day for day before being released from prison, the suspended portion of his sentence would have been discharged and he would never have had to serve any additional time beyond the unsuspended five years. Therefore, requiring Appellant to serve the suspended portion of his sentence for successive community supervision violations effectively increases his original sentence. This is not what the Legislature intended. See Id.

Therefore, the court erred by continuing Appellant on community supervision and ruling that Appellant had not satisfied the sentence imposed by Judge Goode on October 29, 2007.

CONCLUSION

By reason of the foregoing argument, the ruling of the circuit court should be reversed.

Respectfully submitted,

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

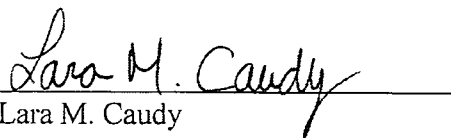
ATTORNEY FOR APPELLANT

This 29th day of July, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 29, 2014



Lara M. Caudy  
Appellate Defender

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

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Lexington County

R. Markley Dennis, Jr., Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

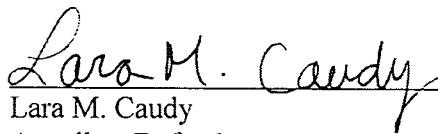
V.

BRAD ALAN DAY,

APPELLANT

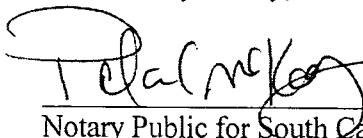
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Tommy Evans, Jr., Esquire, at the South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250, this 29th day of July, 2014.

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 29th day of July, 2014.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions  
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

---

THE STATE, ..... RESPONDENT

v.

BRAD ALAN DAY, ..... APPELLANT

---

**FINAL BRIEF OF RESPONDENT**

---

**Tommy Evans, Jr.**  
**Assistant General Counsel**

**South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 50666  
Columbia, South Carolina 29250  
(803) 734-9220**

**Attorney for the Respondent**

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**CASES**

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State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010).....3,4

**STATUTES**

S.C. Code Ann. §24-13-150(Supp. 2013).....2

S.C. Code Ann. §24-21-100(Supp. 2013).....2

S.C. Code Ann. §24-21-560(Supp. 2013).....2,4

## STATEMENT OF THE CASE

1. Has the Court erred in determining that the Appellant has not satisfied his sentence upon his second violation of community supervision, and can continue to have his supervision revoked pursuant to Picklesimer?

**STATEMENT OF THE CASE**

The Respondent has no objection to the statement of the case presented by the Appellant.

## ARGUMENT

**The Court did not err in revoking community supervision since the Appellant had not yet completed his sentence.**

The Appellant was convicted of criminal sexual conduct with a minor in the second degree (CSC 2<sup>nd</sup> w/minor). He was sentenced to a ten (10) year period of incarceration suspended upon the service of five (5) years. (R.p.44-p.46). At the time of his conviction, CSC 2<sup>nd</sup> w/minor carried a maximum sentence of twenty (20) years which classifies it as a C-Felony.<sup>1</sup> Pursuant to South Carolina law all C-Felonies are “no parole” offenses. The South Carolina Code of Laws specifically state:

Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, a prisoner convicted of a no parole offense as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the prisoner has served at least eighty-five percent of the actual term of imprisonment imposed.

S.C. Code Ann. §24-13-150 (Supp. 2013).

Pursuant to South Carolina law the Appellant was required to serve eight-five (85%) percent of his sentence, or forty-two (42) months. Upon release from incarceration the Appellant was required to serve a two year period of community supervision.<sup>2</sup> The Appellant twice violated community supervision requiring him to appear before a Circuit Court Judge. Due to this being his third

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<sup>1</sup> For purposes of definition under South Carolina law a no parole offense means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more. S.C. Code Ann. §24-21-100 (Supp. 2001).

<sup>2</sup> Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, any sentence for a no parole offense as defined in Section 24-13-100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole and Pardon Services. S.C. Code Ann. §24-21-560 (Supp. 2011).

violation, the Appellant argued that he has completed his sentence; therefore, there exist no additional time that could be subject to a revocation.

The Respondent argues the Appellant is responsible for either successfully completing community supervision, or serving the remaining portion of his original ten (10) year sentence. He continues to be eligible for community supervision, and possibly incarceration upon a violation.

The Appellant was convicted of the offense of CSC 2<sup>nd</sup> w/minor. He argues that if the sentencing judge wanted him to do ten years he would have received a ten year sentence, or be sentenced to probation. There exist no mandatory minimum for the offense of CSC 2<sup>nd</sup> w/minor; therefore, if the Court wanted him to serve only five years he would have sentenced him as such. The Appellant received a sentence of ten years suspended to five years incarceration. It could be possible that the Court failed to sentence the Appellant to probation because, a person's probationary sentence is discharged once he has successfully completed community supervision. See, State v. Dawkins, 352 S.C. 162, 573 S.E.2d 783 (2002). The Appellant would either successfully complete community supervision, or his ten year sentence. In either instance he would never be responsible for serving a period of probation. It is unnecessary to sentence a person convicted of a "no parole" offense to a period of probation, because it will never be served.

The Appellant argues that according to State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010), since he was never placed on probation, the five year portion is the only part he is responsible for serving. In Picklesimer, the Appellant was on probation; however, the Picklesimer decision never mentions a mandatory probationary sentence must exist for the aggregate sentence to apply. According to Picklesimer, an original sentence is defined as, the total aggregate suspended and unsuspended portions of a circuit courts sentence. Picklesimer, at 268.

The Appellant received a ten year sentence that was suspended upon the service of five years. (R.p.46). According to Picklesmier his total sentence was ten years, so he is responsible for serving that portion until he either successfully completes community supervision, or the total ten year sentence.

**2. The Statute allows the Appellant to remain on community supervision until it is successfully completed or he completes his full original sentence.**

The Appellant argues that the language in the statute only allows for revocations up until the completion of the unsuspended five year portion of his sentence. The South Carolina Code of Laws specifically state:

The maximum aggregate amount of time a prisoner maybe required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed limited by the amount of the time remaining on the original “no parole offense.” The prisoner must not be incarcerated for a period longer than the original sentence. The original term of incarceration does not include any portion of a suspended sentence.

S.C. Code Ann. §24-21-560(D)(Supp. 2013).

The Appellant argues that this statute does not allow for the suspended portion to be included within the revocation period, we disagree.

If the Court looks at the entire statute, it states that successive revocations may not exceed an amount of time remaining on the original, “no parole offense.” The Appellant’s sentence for his no parole offense is ten years. So he cannot receive continuous violations pass the ten year period, because he cannot be incarcerated beyond the amount of his original sentence. In Picklesmier, the Court ruled that the total sentence handed down by the Court includes both the suspended and unsuspended portions of the original sentence. Id., at 268.

The Appellant argues that the original term of incarceration does not include the unsuspended portion of his sentence. The original term of incarceration and the original sentence

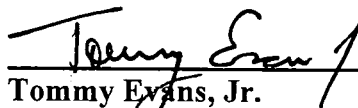
are not the same. The statute clearly states that that the term of incarceration cannot go beyond the time remaining on the original sentence. The original term of incarceration, does not include the suspended portion of the sentence. The original period of incarceration or in this case the five year portion, would be excluded from any violation because it has already been served. The statute and Picklesimer state that the length of incarceration is limited by the amount of the time remaining on the original "no parole offense." The total sentence includes the suspended and unsuspended portion, or in this case ten years. So the Appellant had a little over five years remaining on his sentence that was revocable upon his release from incarceration.

The Appellant was originally sentence to a ten year period of incarceration suspended to the service of five years, this makes his total sentence 3, 650 days. According to the Appellant's brief, at the time he appeared before the Court he had served a total of 1, 980 days. Therefore, he had 1, 670 days or about 4½ years remaining on his sentence when he appeared before Judge Dennis. Since he had not completed his original sentence, Judge Dennis was correct in denying the Appellant's motion, and revoking a year upon finding the Appellant in violation. The Respondent will request this Court to affirm the decision of the lower court.

**CONCLUSION**

The lower Court committed no error in determining that the Appellant violated community supervision, and thereby, revoking one year. Therefore, the Respondent respectfully request this Honorable Court affirm the decision of the lower court.

Respectfully submitted,



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July 22, 2014

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions  
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

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THE STATE, .....RESPONDENT

v.

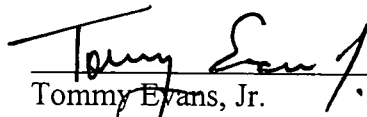
BRAD ALAN DAY, .....APPELLANT

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***CERTIFICATE OF COUNSEL***

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.

  
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Tommy Evans, Jr.  
Assistant General Counsel

July 22, 2014