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**The South Carolina Court of Appeals** NOV 23 2015

SC Court of Appeals

The State, Respondent,

v.

Phillip Simoneaux a/k/a Phillip Gerald Simoneaux,

Appellate.

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Appeal from Charleston County  
Appellate Case No.: 2015-001171

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**INITIAL BRIEF OF APPELLANT**

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## Table of Contents

	<b>Page</b>
Table of Authorities.....	ii
Issues on Appeal.....	iii
Statement of Case.....	1
Argument.....	2, 3
Conclusion .....	4

## Table of Authorities

Cases:	Page
1. <u>Clark v. Cantrell</u> 339 S.C. 369 at 389; 529 S.E.2d 528 at 539 (2000)	2
2. ExParte James A. Brown, Jr., Attorney Appellant In Re: <u>State of South Carolina v. Howard</u> <u>Opinion # 26991 (S.C.T. S.C.)</u>	2
3. <u>Patel v. Patel</u> 359 S.C. 515 at 529; 599 S.E. 2d 114 at 121 (2004)	2
4. <u>The State v. Hicks, Opinion 4360 (SC CT App)</u>	2
 <b>STATUTES:</b>	
<b>Title 24-13-40 Code of Laws of S.C. 1976 as amended</b>	3, 4

**Statement of Issues on Appeal**

**I**

**THE HONORABLE SENTENCING COURT ABUSED ITS DISCRETION IN REFUSING TO GRANT ANY RELIEF FOR THE APPELLANTS TIME ON SUPERVISED RELEASE ON BOND PURSUANT TO TITLE 24-13-40 CODE OF LAWS OF SOUTH CAROLINA 1976 AS AMENDED.**

### Statement of Case

The Appellant was charged with Criminal Sexual Conduct on or about 1985. This was a case where the Complainant was a young girl and waited until 2012 to make a complaint about contact with the Appellant in the year 1985. The Appellant was required to post a surety bond and was placed on house arrest with electronic monitoring and served some 27 months until coming to Court. This lasted until the Appellant appeared in General Sessions Court on May 15, 2014 and pled guilty to assault/assault and battery 2<sup>nd</sup> degree. He was sentenced to 3 years supervised upon two (2) years probation. His probation was transferred to his County of residence, Charleston, where he served on probation. He was ultimately brought before the Honorable Roger Young on March 12, 2015 for essentially two (2) separate citations. On one citation he was revoked for 90 days and brought back before the Court on May 22, 2015 for the second citation. There was a "bifurcation" so that the Appellants medical needs could be attended to. On May 22, 2015 the Appellant was brought back before the Honorable Roger Young on the second citation wherein he was revoked for 33 months. At that point the Defense sought for the Court to grant Appellant credit under Title 24-13-40 Code of Laws which was denied. The appeal was taken.

## Argument

### Issue

#### **THE HONORABLE SENTENCING COURT ABUSED ITS DISCRETION IN REFUSING TO GRANT ANY RELIEF FOR THE APPELLANTS TIME ON SUPERVISED RELEASE ON BOND PURSUANT TO TITLE 24-13-40 CODE OF LAWS OF SOUTH CAROLINA 1976 AS AMENDED.**

The Honorable Roger Young revoked the Appellants Sentence on the day in question. At that point Counsel sought relief pursuant to Title 24-13-40 of the Code of Laws 1976 as amended. Record on Appeal Page 5 Lines 2 through 15. The Court addressed it by saying"..... I don't find that he's entitled to it....." Record on Appeal Page 6 Lines 4 and 5. The Court further said at Line 18....."I believe it's discretionary and I find it's not warranted.....Record on Appeal Page 6 Line 18 and 19.

Title 24-13-40 of the Code of Laws of South Carolina provides that time under House arrest may be completed and was checked on the Original Sentencing Sheet. Title 24-13-40 Code of Laws S.C. 1976 as amended; *Exhibit 1* Record on Appeal.

It does make it discretionary with the Judge, In South Carolina an abuse of discretion comes about when a ruling lacks evidentiary support or is controlled by an error of Law. Patel v. Patel, 359 S.C. 515, 529; 599 S.E. 2d 114, 121 (2004); Clark v. Cantrell 339 S.C. 369, 389; 529 S.E. 2d 528 at 539 (2000); ExParte James A. Brown, Jr. Attorney appellant In re State of South Carolina v. Howard, Opinion #26991 (s. CTSC); The State v. Hicks, Opinion 4360 (SCCT App).

So the rule is fairly basic, straightforward and to the point. An abuse of discretion occurs when there is no evidence or when the Law does not support the ruling. Here an examination of the record reveals that the Court says:

".....I don't find that he's entitled to it....." Record on Appeal Page 6 Lines 4, 5.

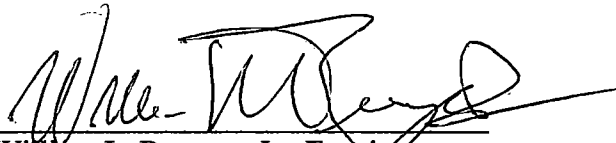
No conclusion of Law are reached nor is there a recitation of evidence upon which the conclusion is based. The record contains no evidence supporting the Courts decision. Accordingly it is respectfully submitted that the Sentence as imposed (33 Months) is a clear abuse of discretion.

The appropriate relief herein would be, in this case to remand for an evidentiary hearing and/or for a hearing during which the Court can explain on the record why it says"...I find it's not warranted...." Record on Appeal Page 6 Line 19.

Furthermore the original sentencing sheet is checked where it says "The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to calculated and applied by the State Department of Corrections." Record on Appeal *Exhibit 1*.

### Conclusion

Accordingly the Honorable Lower Court's sentence and decision should be reversed and the matter remanded for rehearing with proper consideration given to the Appellants consideration for relief pursuant to Title 24-13-40 of the Code of Laws of S.C. 1976 as amended together with such other and further relief as may be afforded.



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