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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Edward B. Cottingham, Circuit Court Judge

ORIGINAL

RECEIVED

JUN 15 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

O'NEAL BERNARD BYRDIC, JR.,

APPELLANT

APPELLATE CASE NO. 2014-001675

RECORD ON APPEAL

JOHN H. STROM
Appellate Defender

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

Attorney for Appellant

MATTHEW BUCHANAN
General Counsel
South Carolina Department of
Probation, Parole & Pardon Services
PO Box 50666
Columbia, SC 29250

(803) 734-9220

Attorneys for Respondent

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1 (The following proceedings were held on July
2 18, 2014.)

3 **THE COURT:** All right. What's before me?

4 O'NEAL B. BYRDIC, JR.,

5 having been duly sworn, testified as follows:

6 **THE COURT:** Who's the attorney here?

7 **MR. OPPERMAN:** My name is Joseph Oppermann.

8 I'm with the Lexington County Public Defender's
9 Office.

10 **THE COURT:** Yes. I just wanted it for the
11 record.

12 What's before me here?

13 **PROBATION AGENT:** May it please the Court, Your
14 Honor. Mr. Byrdic is on probation for unlawful to
15 disseminate obscene material to a person under the
16 age of 18 years of age and criminal solicitation of
17 a minor. He received a sentence of five years,
18 suspended on three years and three years probation.
19 So it was a split on both.

20 **THE COURT:** Who was the judge?

21 **PROBATION AGENT:** Judge Hyman.

22 **THE COURT:** Okay. Go ahead.

23 **PROBATION AGENT:** The facts on this case, Your
24 Honor, are that he's failed to work at a lawful
25 occupation. He hasn't supplied the agent with any

1 proof of employment. He's failed to pay fees. He
2 was terminated from treatment, and I've supplied you
3 with a letter, due to noncompliance. He's refused
4 to engage in the therapy process. He doesn't take
5 responsibility for his crime and denies any arousal
6 with children.

7 When confronted with penile plethysmograph
8 results, which clearly indicate sexual arousal to
9 young children, he responds that the test is wrong.
10 He failed to take a compliance polygraph. They're
11 given ten days to make up that polygraph, and he
12 didn't reschedule it.

13 His counselor, Dr. William Burke, has reason to
14 believe that he's drinking alcohol. And
15 Dr. Burke --

16 **THE COURT:** And he deliberately terminated his
17 treatment?

18 **PROBATION AGENT:** Dr. Burke?

19 **THE COURT:** No. Earlier in your report you
20 said he failed to complete or terminate his
21 something.

22 **PROBATION AGENT:** Yeah. Dr. Burke terminated
23 his treatment.

24 **THE COURT:** Why?

25 **PROBATION AGENT:** Because he was not compliant.

1 Mr. Byrdic was not compliant. He was in denial. He
2 was not --

3 **THE COURT:** Counsel.

4 **MR. OPPERMANN:** Your Honor, we deny he did any
5 of these violations. And I'd be happy to --

6 **THE COURT:** Why isn't he working?

7 **MR. OPPERMANN:** He sought employment. He has
8 worked some during the period of time --

9 **THE COURT:** Paid none of his fees.

10 **MR. OPPERMANN:** Your Honor, he hasn't had the
11 ability to pay. And we would argue that given his
12 indigent status and his inability to pay --

13 **THE COURT:** What about his total denial of his
14 problem? He won't accept treatment or nothing else.

15 **MR. OPPERMANN:** We do not concur with the
16 agent's characterization.

17 **THE COURT:** You may not, but I may. His --

18 **MR. OPPERMANN:** That's fair, Your Honor, and we
19 can address that if you like. Mr. Byrdic, my
20 client, began going to his treatment sessions as
21 ordered with Dr. Burke in February. He's attended
22 virtually every session. I believe he missed --

23 **THE COURT:** No, tell me one more time -- his
24 record doesn't support what you're saying. I know
25 he's telling you this now, but read it again, his

1 violations.

2 **PROBATION AGENT:** He's been terminated from
3 treatment due to noncompliance. He's refused to
4 engage in the therapy process. He takes no
5 responsibility for his crime and denies arousal to
6 children.

7 **THE COURT:** I've got enough. I'm not going to
8 terminate him in full. I'm going to send him a
9 message. I'm going to terminate one year this
10 minute, and he will continue on probation.

11 **MR. OPPERMANN:** Your Honor, if I may, for the
12 record.

13 **THE COURT:** He's a danger to the community and
14 to children with that attitude.

15 **MR. OPPERMANN:** Your Honor, if I may and for
16 the record.

17 **THE COURT:** Please.

18 **MR. OPPERMANN:** We have stated that Mr. Bearden
19 {sic}, a great deal of the responsibility for these
20 alleged violations has to do with ability to pay.
21 And Bearden versus Georgia says that that can't be
22 the basis for a willful violation.

23 **THE COURT:** No, sir. You mis --

24 **MR. OPPERMANN:** And so we would ask for a full
25 hearing and then continue --

1 **THE COURT:** Wait a minute, Counsel. You
2 misconstrued what I said. I'm not violating him on
3 the basis he didn't pay. I'm violating him on the
4 clear basis that he's not participating in this
5 serious program and refuses to do so. That's the
6 sole basis for my violation. I'm going to violate
7 one year. Put him in jail.

8 **MR. OPPERMANN:** And, Your Honor, we haven't had
9 the opportunity to address whether or not --

10 **THE COURT:** I don't need it. I've heard enough
11 to know that he's a danger to children, doesn't
12 believe he's got a problem. He needs to be in jail.
13 Now, I ought to revoke him in full. I'm not going
14 to do that. I am going to revoke one year for his
15 attitude. It's not because of failure to pay.

16 **MR. OPPERMANN:** And I appreciate that, Your
17 Honor. For the record, we believe that Mr. Byrdic
18 has been denied due process since the allegation of
19 noncompliance.

20 **THE COURT:** I understand your proceeding, but I
21 think he has.

22 (Defendant leaves the courtroom.)

23 **THE COURT:** Counsel, it ought to be clear to
24 you that he's just waving his hands at the entire
25 process.

1 **MR. OPPERMANN:** Your Honor, having spoken to my
2 client, that has not been my impression.

3 **THE COURT:** Well, unfortunately for you and
4 him, is mine, but I thank you.

5 **MR. OPPERMANN:** Thank you, Your Honor.

6 **PROBATION AGENT:** Thank you, Your Honor.

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8 END OF PROCEEDINGS

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DOCKET NO. 2012-GS-26-02889

WITNESSES

William H. Crumpton

The State of South Carolina

County of Horry

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

David Byrdic
Defendant

COURT OF GENERAL SESSIONS

JULY TERM 2012

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

I-258016

THE STATE

vs.

O'Neal B. Byrdic
D.O.B. [REDACTED]

David Byrdic
Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

**ATTEMPTED DISSEMINATION
OBSCENE MATERIAL TO PERSON
UNDER AGE EIGHTEEN
SC Code: 16-15-345
CDR Code: 0375**

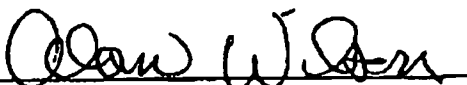
Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)**INDICTMENT****COUNTY OF HORRY)****ATTEMPTED DISSEMINATING
OBSCENE MATERIAL TO PERSON
UNDER AGE EIGHTEEN**

At a Court of General Sessions, convened on July____, 2012, the Grand Jurors of Horry County present upon their oath:

That O'Neal B. Byrdic, between June 2, 2009 and August 31, 2009, did willfully and knowingly commit the crime of Attempted Disseminating Obscene Material to Person Under Age Eighteen. To wit: O'Neal B. Byrdic, a person eighteen years of age or older, did knowingly disseminate or attempt to disseminate to a person, located within the County of Horry, South Carolina, whom he reasonably believed to be under the age of eighteen, material which he knew or should have known to be obscene within the meaning of Section 16-15-305. This is in direct violation of Section 16-15-345, of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL

**ALAN WILSON (JSA)
ATTORNEY GENERAL**

DOCKET NO. 2012-GS-26-02810

WITNESSES

William H. Crumpton

The State of South Carolina

County of Horry

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Neal B. Byrdic
Defendant

COURT OF GENERAL SESSIONS

JULY 2012 TERM

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

I-258017

THE STATE

vs.

O'Neal B. Byrdic
D.O.B. [REDACTED]

Neal B. Byrdic
Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Indictment for
Criminal Solicitation of a Minor

S.C. CODE §16-15-0342
CDR Code: 2999

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF HORRY

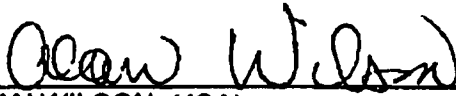
CRIMINAL SOLICITATION OF A MINOR

At a Court of General Sessions, convened on July __, 2012, the Grand Jurors of Horry County present upon their oath:

That O'Neal B. Byrdic, between June 2, 2009 and August 31, 2009, did willfully and knowingly commit the crime of Criminal Solicitation of a Minor. To wit: O'Neal B. Byrdic, a person eighteen years of age or older, while in Horry County, did knowingly communicate or attempt to communicate with a person under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of inducing enticing, or coercing the person to engage in sexual activity within the meaning of 16-15-375(5). This is in direct violation of Section 16-15-342 of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (JSA)
ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of LEXINGTON

Personally appeared before me, Lisa S. Baker, who first being duly sworn, deposes and says that O'NEAL BERNARD BYRDIC JR did within this county and State on the 30 day of June, 2014, violate certain conditions of release in the following particulars:

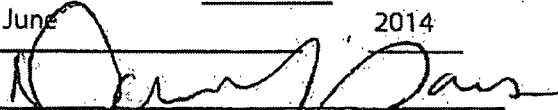
DESCRIPTION OF VIOLATION

Probation violation concurrent to Section 24-21-430 in that the defendant has violated the conditions of his probation sentence as imposed by Judge Hyman at the 7/17/2012 term of General Sessions Court holden in Horry County, Conway SC.

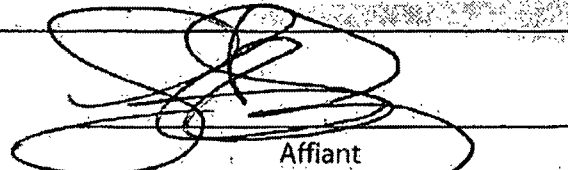
The Affiant states that there is probable cause to believe the defendant named committed the violations set forth and that such probable cause is based on the following facts:

Subject has violated his probation in the following manner. He has failed to work diligently at a lawful occupation. He has failed to show his agent any proof of his employment. He has failed to pay Supervision Fees being \$420.00 in arrears. He has failed to pay 2 court ordered fines both with an unpaid balance of \$133.90. He has failed to pay \$20.00 Drug Testing Fee. He has failed to follow the advise and instructions of the agent having been terminated from treatment on June 26, 2014 due to noncompliance. Such actions constitute a violation of Sections 5, 7, 9, 10 of the original probation order dated 7/17/12 and Sections 2 of the Standard Sex Offender Conditions signed and dated on 1/31/2014.

Sworn to and subscribed
before me this 30 day of
June 2014


Signature of Notary Public

My Commission Expires: 8-19-20


Affiant

12

South Carolina Department of Probation, Parole and Pardon Services

Violation Report

Offender's Name: O'NEAL BERNARD BYRDIC JR

State of South Carolina, County of: LEXINGTON

SID#: 00482729

Warrant#: C-32-14-0115

Date of Birth: [REDACTED]

SCDC#:

Indictment Numbers:

12-GS-26-02889, 12-GS-26-02890

GPS DISCRETIONARY

Offense and Offense Code:

375 - Unlawful to disseminate obscene material to person under 18 yrs of age; 2999 - Criminal solicitation of a minor

Supervision Program: Probation

Begin Date: 1/31/2014 End Date: 1/30/2017

Supervision Level: Sex Off. - High

Sentencing Judge: 2152 - Hyman, Larry

Sentencing County: HORRY

Sentencing Date: 7/17/2012

Location (Bold Response): Community

Sentence:

DISSEMINATION OF OBSCENE MATERIAL TO PERSON <18 - 5 YRS SS 3 YRS S 3 YRS PROBATION
WARRANT# 1258016, CRIMINAL SOLICITATION OF A MINOR - 5 YRS SS 3 YRS S 3 YRS PROBATION
WARRANT# 1258017

Special Conditions:

Fine - Fine / Fine/Costs and Assessments payable as directed by the Court. 133.90 @ 25.00 A MONTH; Other1 - SEX OFFENDER REGISTRY REQUIRED; Fine - Fine / Fine/Costs and Assessments payable as directed by the Court. 133.90 @ 25.00 A MONTH; Other1 - SEX OFFENDER REGISTRY REQUIRED

Current Address and Summary of Residence:

Subject does live at the above residence.

Reporting:

Subject does report as scheduled.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
Unemploy	1/31/2014 -		\$0.00

Subject is U/E.

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		\$20.00	\$20.00
Intensive Supervision	\$3,140.00	\$20.00/W	\$0.00		\$440.00	\$3,140.00
Fines						
Court Ordered Fines	\$133.90	\$5.00/M	\$0.00		\$25.00	\$133.90
Court Ordered Fines	\$133.90	\$5.00/M	\$0.00		\$25.00	\$133.90

Subject is U/E.

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

Offender's Name: O'NEAL BERNARD BYRDIC JR

Prior Violation Dates	Prior Violations	Prior Violation Disposition

Details of the Present Violation:

C-32-14-0115

Subject has violated his probation in the following manner. He has failed to work diligently at a lawful occupation. He has failed to show his agent any proof of his employment. He has failed to pay supervision fees being \$420.00 in arrears. He has failed to pay 2 court ordered fines both with an unpaid balance of \$133.90. He has failed to pay \$20.00 Drug Testing Fee. He has failed to follow the advise and instructions of the agent having been terminated from sex offender treatment on June 26, 2014 due to noncompliance. Such actions constitute a violation of Sections 5, 7, 9, and 10 of the original probation order dated 7/17/2012 and Sections 2 of the Standard Sex offender Conditions signed and dated on 1/31/2014.

Subject's counselor, William Burke, Ph.D, LPC President & Clinical Director of SEA Assistant Clinical Professor at the Department of Forensic Psychiatry at Medical University of South Carolina, terminated subject because he refused to engage in the therapy process. Dr. Burke stated above subject does not take responsibility for his crime and denies arousal to children. The penile plethysmograph clearly indicates sexual arousal to young girls which he denies. He also failed to take a polygraph. He had 10 days after the missed polygraph to reschedule it. His Dr. also believes he is drinking due to a text message which probation found on his phone (on 3/2/2014 a computer search was done on his phone by his agent. There were texts about going to a bar) and he believes above subject to be a moderate to moderate-high level of risk to reoffend.

Agent's Recommendation:

Revocation. Fines to civil Judgement.

Agent's Justification:

Subject is not working or paying his monies. He has refused to engage in the therapy process and is in denial of his crime. He takes no responsibility for his crime. He has been terminated from treatment and his treatment provider considers him to be a moderate to moderate to high level of risk to reoffend. Subject has shown by his own actions that he is not willing to accept treatment or probation. He is a threat to minors and should be revoked and sent to prison to do the remainder of his time.

Lisa S. Baker

Senior Agent

Date: 7/1/2014

Supervisor's Signature

[Signature]

Date:

7/8/14

(B)

PROBATION CITATION

No. C-32-14-0115

SOUTH CAROLINA V. O'NEAL BERNARD BYRDIC JR		COUNTY: LEXINGTON	
		SCDC #	SID # 00482729
TO: O'NEAL BERNARD BYRDIC JR			
YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below.			
Place		Room	
		Date and Time	
YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.			
Violations Charged Probation violation concurrent to Section 24-21-430 in that the defendant has violated the conditions of his probation sentence as imposed by Judge Hyman at the 7/17/2012 term of General Sessions Court holden in Horry County, Conway SC.			
YOU ARE HEREBY NOTIFIED that you have the rights listed below.			
List of Rights: You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear on your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.			
IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.			
LEXINGTON, South Carolina		Probation and Parole Agent	
Date 6/30/2014		Lisa S. Baker	
		Agent # 0569	
A copy of the citation was served by the undersigned and given to the individual named therein at the time, date, and place indicated below.			
Place SCDPPPS 605 West Main Street, Ste#104 Lexington, SC 29072		Date and Time 7/3/14, 10:32 am	
		Serving Officer's Signature <i>[Signature]</i>	
Sworn to and subscribed before me this <u>3</u>		day of <u>July</u> , 2014	
<i>[Signature]</i> Signature of Notary Public		My Commission Expires <u>1-23-18</u>	



SouthEastern Assessments, Inc.

709 Old Trolley Road, Summerville, SC 29485

Office: (843) 821-2124

Fax: (843) 875-3149

June 26, 2014

Lisa Baker
Lexington County Department of
Probation, Parole, & Pardon Services
Lexington, SC

Re: Neil Byrdic

Dear Agent Baker,

I have terminated Mr. Byrdic from treatment due to noncompliance. Mr. Byrdic has refused to engage in the therapy process. He takes not responsibility for his crime and denies arousal to children. When confronted with his penile plethysmograph results—which clearly indicate sexual arousal to young girls—he responds with “Your test is wrong.” Additionally he has failed to take a compliance polygraph. As you are aware, my rule is 10 days past the due date for a polygraph results in termination from our program. I have reason to believe he is drinking alcohol given his text messages that probation found to his girlfriend. I consider Mr. Byrdic to be a moderate to moderate-high level of risk to reoffend. If you have any questions, please feel free to contact me.

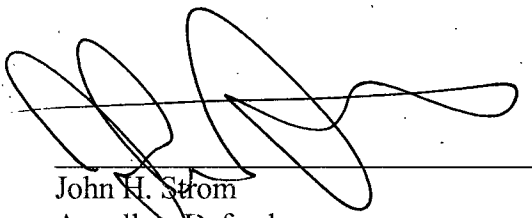
Sincerely,

William Burke, Ph.D. LPC
President & Clinical Director of SEA
Assistant Clinical Professor
Department of Forensic Psychiatry
Medical University of South Carolina

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."

June 15th, 2015



John H. Strom
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

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JUN 15 2015

SC Court of Appeals

5

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

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SC Court of Appeals
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THE STATE,

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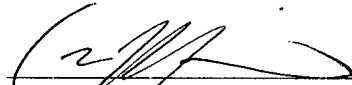
O'NEAL BERNARD BYRDIC, JR.,

APPELLANT

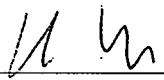
APPELLATE CASE NO. 2014-001675

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Matthew Buchanan, Esquire, at at South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250 this 15th day of June, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 15th day of June, 2015.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.