

FILED-CLERK'S OFFICE
ANDERSON SC

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

COMMON PLEAS AND
GENERAL SESSIONS

Indictment #: 2012-GS-04-01034

THE STATE

v.

SHAWN ALAN MITCHELL,
Defendant.

ORDER A TRUE COPY

MAR - 3 - 2016

RECEIVED

MAR 14 2016

Richard A. Kintley
ANDERSON CLERK OF COURT

This matter comes before me upon a Memorandum in Opposition to Defendant's Motion to Quash by the South Carolina Department of Probation, Parole, and Pardon Services and the Defendant's Memorandum in Opposition to Order Imposing Lifetime Electronic Monitoring. Upon considering the parties' arguments on July 13, 2015 and my review of this case, I have determined that the Defendant, Shawn Alan Mitchell, appeared before me at a probation violation and GPS hearing on November 17, 2014. At that hearing, the Defendant was given fifteen days to obtain counsel so that his hearing could be rescheduled at a later date. The court finds that the Defendant failed to obtain counsel as instructed by the court and continued to violate his probationary terms. As a result, the Defendant's probation was revoked for a year by the Honorable R. Lawton McIntosh on February 27, 2015.

The court also finds that the Defendant's Motion to Quash is untimely as it has been filed and received well beyond the time requirements of Rule 29(a) of the SCRCrimP and Rule 59(b) of the SCRCivP. Additionally, the Defendant's motion violates the doctrine of harmless error, the equitable principles of waiver, and the doctrine of laches. In regards to the Defendant's arguments presented in his recent memorandum, I find that the lifetime electronic monitoring is mandatory as required by South Carolina law and it is not cruel and unusual punishment. As such, SC Code Section 23-3-540 is constitutional. State v. Nation, 408 S.C. 432, 799 S.E.2d. 420 (S.C., 2014). Since the Sex Offender

Registry and electronic monitoring statutes are mandatory and primarily involve the tracking of sex offenders after they've completed their sentences, the electronic monitoring requirements do not depend upon the time of sentencing, but are automatically activated upon the Sex Offender Registry requirements. See SC Code §§23-3-440-540.

In this matter, the Department does have standing to pursue this action as the Defendant was under supervision at the time of his November 17, 2014 and February 27, 2015 hearings. The Defendant is still required to complete his court-ordered supervision upon his release from his current incarceration as a result of a probation revocation. In addition, the Department is listed as one of the law enforcement agencies in the Sex Offender Registry statute that is obligated to notify the offender that he must notify the sheriff of the local county in which he intends to reside within one day of his release. See SC Code §23-3-440.

Ultimately, the Defendant is required to register as a sex offender for Committing or Attempting a Lewd Act Upon a Child. Pursuant to §23-3-540(C), a person who is required to register and who violates a term of probation must be ordered by the court to be monitored with an electronic monitoring device. Pursuant to §23-3-540(E), a person required to register and who violates a term of this article [Article 7 of Chapter 3 of Title 23 of the S.C. Code or the Sex Offender Registry law] must be ordered to be monitored with an electronic device. I find that the Defendant has met the provisions of the statutorily mandated requirements as addressed herein. As required in §§23-3-540(C) and (E), this Court hereby orders the Defendant to be monitored by the South Carolina Department of Probation, Parole, and Pardon Services with an active electronic monitoring device. The Defendant's Motion to Quash shall also be dismissed.

It is so ordered.

3/2/16
Date

COMMON PLEAS AND
GENERAL SESSIONS

MAR 27 3 27 PM '16

FILED-CLERK'S OFFICE
ANDERSON SC

J. Cordeil Maddox
The Honorable J. Cordeil Maddox
A TRUE COPY
MAR - 3 2016
Richard X. Miller
ANDERSON CLERK OF COURT

sm

5/12
12-1035

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL
SESSIONS
TENTH JUDICIAL CIRCUIT

COUNTY OF ANDERSON)

THE STATE)

Plaintiff,)

ORDER

v.)

SHAWN ALAN MITCHELL)

Defendant.)



This matter comes before me upon Motion of the South Carolina Department of Probation Parole and Pardon Services. Upon review of the case, I have determined that Defendant Shawn Alan Mitchell was convicted on May 17, 2012, for Failure to Register, in violation of Article 7 of Chapter 3 of Title 23 of the South Carolina Code.

The Court finds that the Defendant is required to register as a sex offender for Committing or Attempting Lewd Act Upon a Child.

As required in §23-3-540(E), this Court hereby orders the Defendant be monitored by the South Carolina Department of Probation Parole and Pardon Services, with an active electronic monitoring device.

It is so ordered.

[Signature]
Presiding Judge
Tenth Judicial Circuit

11/18/14
Date

FILED-CLERK'S OFFICE
ANDERSON SC
2014 NOV 19 2:26
COMMON PLEAS AND
GENERAL SESSIONS

TRUE COPY
NOV 19 2014
[Signature]
CLERK OF COURT

STATE OF SOUTH CAROLINA

County of ANDERSON

STATE VS.

SHAWN ALAN MITCHELL

AKA: _____

Race: White Sex: Male

DOB: _____

SSN: _____

SID#: 01023218

IN THE COURT OF GENERAL SESSIONS

Indictment Number:

2012 - GS - 04 - 1034

Probation C/W#: C-04-14-0515

W-04-14-0373

Name of Original Offense: Grand Larceny, value more than \$9

Original A/W#: J894741

Date of Original Offense: 06/14/2011

Conviction S.C. Code §: 16-13-30(B)

Conviction CDR Code #: 3 / 4 / 2 / 0

Original Sentence: 5 yr upon the service of 366 days and 2 yr

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 05/17/2012 in the Court of General Sessions of ANDERSON County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on _____, as set forth in the attached warrant(s) or citation(s) dated 12/15/2014. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 1, 2, 10 and special condition

Therefore, IT IS ORDERED that:

the suspended sentence be revoked and the above named defendant be required to serve _____ months/years, the remainder of the original sentence, and/or pay \$ _____.

the suspended sentence be revoked and the above named defendant be required to serve 1 months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.

the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.

probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

Financial Obligations: Order satisfies: Department fees (arrearage) Civil judgment Department fees
 Fines and other fees (arrearage / balance) Fines and other fees
 Restitution (and 20%) (arrearage / balance) Restitution (and 20%)

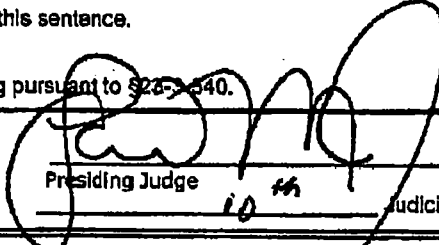
Additional Conditions ordered by the Court: Proble 1 yr, toll probation while in SCDC; Extend probation for one yr Restructure fine.

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

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

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

This 27 day of February, 2015
Anderson, SC


Presiding Judge 10th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed. This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature [Signature]

Witnessed by [Signature]

Signed this 27 day of Feb., 2015 at Anderson, SC