

22398

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY

D. Craig Brown, Circuit Court Judge

RECEIVED

NOV 05 2015

SC Court of Appeals

Appeal Number 2014-002664

The State,

Respondent,

V.

Gayle G. Morgan,

Appellant.

RECORD ON APPEAL

Rose Mary Parham
Parham Law Firm, LLC
541 West Evans Street
Florence, South Carolina 29501
(843) 407-7757 (office)
South Carolina Bar No. 17034
Attorney for Appellant Gayle G. Morgan

Thomas W. Nicholson
Post Office Box 50666
Columbia, South Carolina 29250
(803) 734-9220
Attorney for Respondent

INDEX

HEARING TRANSCRIPT FROM DECEMBER 5, 2014 PROBATION REVOCATION HEARING

Transcript Page 1	3
Transcript Page 2	4
Transcript Page 3	5
Transcript Page 4	6
Transcript Page 5	7
Transcript Page 6	8
Transcript Page 7	9
Transcript Page 8	10
Transcript Page 9	11
Transcript Page 10	12
Transcript Page 11.....	13
Transcript Page 12	14
Transcript Page 13.....	15
Transcript Page 14	16
Transcript Page 15	17
Transcript Page 16.....	18
Transcript Page 17	19
Transcript Page 18	20
Transcript Page 19.....	21
Transcript Page 20	22
Transcript Page 21	23
Transcript Page 22.....	24
Transcript Page 23.....	25

Transcript Page 24.....	26
Transcript Page 25.....	27
Transcript Page 26.....	28
Transcript Page 27.....	29
Court's Exhibits	
1. (Form 1106 Violation Report Dated 10/27/14)	30-31
Probation Citation	
Probation Citation No. C-21-14-0255	32-33
Certificate of Appellant.....	34

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE) CASE NO. 2012-GS-21-01025

STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
-vs-) TRANSCRIPT OF RECORD
)
)
GAYLE G. MORGAN,)
)
Defendant.)
)

December 5, 2014
Florence, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, Judge

A P P E A R A N C E S:

ROSE MARY PARHAM, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Probation Violation.....	4
Findings.....	12
Sentence.....	23
Court Reporter Certification.....	27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Form 1106 Violation Report		12

1 DECEMBER 5, 2014

2 (WHEREAS this matter was scheduled for a probation
3 violation hearing, the defendant appeared along with her
4 counsel of record. The proceedings begin at 9:53 a.m.)

5 THE COURT: Yes, sir.

6 THE PROBATION AGENT: Your Honor, if it please the Court,
7 standing before you is Gayle Gardner Morgan. She pled guilty
8 in front of Your Honor on January 16th of this year. She was
9 charged with financial transaction card fraud and financial
10 transaction card theft. The sentence of the Court was five
11 years, suspended to time served of two days, 90 days weekend
12 time, and three years' probation.

13 Your Honor, very early on in the case -- I'm going to,
14 kind of have to lay a timeline out for you. Very early on in
15 the case, Sergeant Lea Harris from the jail came to this court
16 and notified Your Honor that Gayle was not doing her weekend
17 time, had not shown up for it, and you issued a Rule to Show
18 Cause. The first one was kicked back because of a snow day,
19 but on May the 6th, she was here.

20 And through a probation -- well, it's more of a Rule to
21 Show Cause hearing. You altered the original probation
22 sentence and ordered that probation be extended to the five-
23 year max. You were holding the 90-days weekend time in
24 abeyance and ordered her to give us -- or excuse me -- give
25 you through us 90-day updates about her medical condition

1 because whenever she was here in May, she presented a letter
2 to the Court that is in your packet. If you can give me just
3 a second --

4 The original letter was dated May the 5th and it was from
5 a cancer doctor here in Florence. I don't know if you want it
6 read into the record, but that day the -- the issue was that
7 because of her having chemo to treat her cancer, she was not
8 able to do the weekend time because of her being weak and also
9 being susceptible to catching MERSA or staph or something like
10 that at the jail. You took that letter and put it into the
11 permanent record in this file, which is still down in the
12 basement of this building in the Clerk's Office.

13 At that point, she said that -- obviously, like I
14 mentioned, she was continued on probation. You held it in
15 abeyance and wasn't going to let it just go, but you ordered
16 the 90-day reviews. So on September the 5th, there is a letter
17 in your packet that is from the same doctor's office, and that
18 doctor -- the doctor's note there basically says sort of the
19 same thing except is much shortened than the original one, but
20 basically said that she couldn't -- she still couldn't do the
21 weekend time.

22 Your law clerk I guess keeps a calendar of what you
23 expect from us when you want these reviews and called me and
24 said, hey, it's time for a -- for an update. So I brought it
25 up and we looked at it and initially it was actually your law

1 clerk that brought it to my attention that she didn't think
2 that it looked a hundred percent legitimate. So I kind of --
3 I don't know. I didn't think a lot about it. I went
4 downstairs and showed it to one of the team leaders in our
5 office, Supervisor David Byrd, and he actually thought the
6 same thing.

7 So he picked up the phone and he called over to Dr.
8 Sitti's office and they actually were willing to give us some
9 information over the phone and we eventually had to fax these
10 two letters over there. And the office manager, first of all,
11 said that not only in reference to the first letter, but also
12 to the second letter that they were -- that they were not
13 legitimate. They were fake. They were forgeries.

14 The -- the office manager said that, number one, the
15 letterhead that they would use -- it was not the same letter
16 head. The address that was on there was -- was not the
17 correct address. It was -- I think she actually said that in
18 the phone book they had gotten it messed up or something. And
19 she also wanted to look through her file; so I gave her every
20 name that we had listed for Gayle and they said that she was
21 not a patient, had never been a patient of Dr. Sitti's, and
22 said that the one doctor that's mentioned that I can't even
23 pronounce the name -- it starts with a P -- was no longer even
24 there and that name wasn't even on the letterhead anymore.

25 So -- but she did want to check with a doctor to make

1 sure that it wasn't a case that the doctor knew somebody
2 personally and, you know, all that kind of stuff. And she
3 talked with a doctor and the doctor said absolutely not. I
4 don't know this lady. She's not a patient of mine and, to my
5 knowledge, has never been a patient of mine.

6 And they checked their records again, looked at the
7 signature. The doctor's signature on letter number one and
8 letter number two is different. Both signatures were
9 forgeries. The doctor said that is absolutely not my
10 signature, without a doubt.

11 So I advised your law clerk of what we found out. I got
12 a fax from the doctor's office that I've got in your packet
13 that says that that was a fake. We called them back to let
14 them know that they could pursue fraud or forgery charges if
15 they would choose. I think they're still trying to decide if
16 they're going to do that or not.

17 But I came upstairs and let Your Honor know what the
18 situation was, and the thought came back to you that there was
19 an issue also during the Rule to Show Cause hearing where she
20 noted that she had -- she had had a heart attack this year and
21 had been at MUSC in Charleston. You asked me to get some
22 verification of that for us from her.

23 So I called her. I said, hey, we need a letter of
24 verification about this heart issue that you had at MUSC. So
25 within about a week, she brings me a letter from a doctor out

1 of Charleston that practices at MUSC. It's a Dr. Michael
2 Craig. The letter was dated October the 8th. I think you have
3 a copy of that as well.

4 So we called to find out if that was legitimate and again
5 we found out that it was not. We faxed a copy to the office
6 manager down there and the office manager said that that was
7 not their letterhead and that was not the doctor's signature,
8 but they wanted to check with him and he verified, of course,
9 that it was a forgery as well, that he did not write it, and
10 she was not a patient of theirs and had never been a patient
11 of theirs.

12 I have a -- a note in there from the office manager that
13 details where it actually says that this is a fake. They were
14 upset about it and I think they're possibly looking at maybe
15 contacting the Florence Police Department or whomever is
16 responsible here and maybe charging her with forgery in that
17 matter. Both of those -- I don't know where they stand right
18 now.

19 At any rate, we issued a probation citation charging her
20 with not doing the weekend time and gave her a court date,
21 which was supposed to be during -- if I can look back -- the
22 original hearing was scheduled for a prior term of court. It
23 was November 3rd.

24 Right about the time that you took the bench or right
25 before you took the bench, I got notified that she was on the

1 -- Gayle was on the phone. She had went to McLeod, said she
2 was having some heart problems. I think given the
3 circumstances of what had already occurred with the three
4 letters being a fake that the Court saw fit to issue a bench
5 warrant. She was taken into custody. I have since found out
6 that the -- the doctors did not find anything wrong and said
7 that they could best determine that it was stress. But
8 anyway, she was taken into custody right after that and has
9 been in jail ever since.

10 Her prior record, as you see there, is extensive in the
11 fact that she has had a number of financial crimes that
12 involve forgeries and financial transaction card theft, fraud
13 charges. She's been on probation three prior times. Two of
14 those times -- well, actually one of those times you were the
15 sentencing judge. Prior to that it was in '07 and 2010. They
16 were all for the same type offense.

17 Two of them ended as they expired. A citation had to be
18 issued to hold them open because of money. The other one just
19 expired as, like, a PTUP. I think the way she's been able to
20 pay that money was that her husband was actually taking care
21 of that because he seemed to be the one that was coming in
22 most of the time to pay her money back then.

23 She'd been on -- she's had a long history with us.
24 There's three or four agents in this -- in the courtroom and
25 in our office that have had cases with her going back for

1 years.

2 The victim in this matter is a Ms. Melissa Powell. I've
3 talked to her on the phone personally. She could not be here
4 because of work. She works at a dentist's office here in
5 Florence. But she -- I've talked to her several times, of
6 course, about the weekend time and the Rule to Show Cause
7 hearing, but when she found out the full extent of this, she
8 was extremely upset at, number one, that Gayle was trying to
9 skirt the law.

10 She was also upset that originally when she was offered
11 probation for this case that she was not advised that there
12 were -- there was a long criminal history of forgery and
13 fraud. She didn't -- she said that she told the Solicitor's
14 Office at the time that she was fine with whatever they wanted
15 to do, but she said she had never been advised that there were
16 so many prior cases and that she had such a history of doing
17 this.

18 She said that she would have never agreed to that at the
19 time, but she is very, very upset about this whole situation.
20 She feels like, you know, obviously she was wronged in the
21 matter and she does not feel like at this point justice has
22 been served, and she wants something more done than what has
23 been done in the past, you know, since 2007 at least.

24 THE COURT: All right.

25 THE PROBATION AGENT: Everything that I've noted for you

1 I've got copies in your packet and also a criminal history.
2 If you have any questions, please let me know.
3 THE COURT: All right. Ms. Parham, you represent Gayle
4 Morgan?
5 MS. PARHAM: I do.
6 THE COURT: Have you received and reviewed the 1106
7 Violation Report?
8 MS. PARHAM: I have.
9 THE COURT: Do you need any more time to talk to her
10 about it?
11 MS. PARHAM: No, sir.
12 THE COURT: Does she admit willfully violating her
13 probation?
14 MS. PARHAM: She does.
15 THE COURT: Ma'am, if you'll raise -- Ms. Morgan, if
16 you'll raise your right hand? Do you swear to tell the truth,
17 the whole truth, and nothing but the truth, so help you God?
18 THE DEFENDANT: I do.
19 THE COURT: You are Gayle Gardner Morgan?
20 THE DEFENDANT: Yes, sir.
21 THE COURT: Have you talked with your lawyer, Ms. Parham,
22 about this Violation Report?
23 THE DEFENDANT: Yes, I have.
24 THE COURT: Do you need any more time to talk to her?
25 THE DEFENDANT: No, sir.

1 THE COURT: Do you admit willfully violating your
2 probation?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Any objection, Ms. Parham, to the
5 1106 being made part of the record?

6 MS. PARHAM: No, Your Honor.

7 THE COURT: Mr. Caulder?

8 THE PROBATION AGENT: No, sir.

9 (Whereupon, the Form 1106 Violation Report is marked and
10 entered as Court's Exhibit Number 1.)

11 THE COURT: All right. Based upon what I've heard here
12 today and based upon my -- based upon what's stated or set
13 forth in the 1106 Violation Report, I do find the defendant
14 has willfully violated the terms and conditions of her
15 probation. Therefore, I will be happy to hear from you at
16 this time, Ms. Parham, regarding any mitigation.

17 MS. PARHAM: Thank you, Your Honor. May it please the
18 Court.

19 THE COURT: Yes, ma'am.

20 MS. PARHAM: Gayle is 52 years old. She was born in
21 Florence. She was the sole caretaker of her mother, Frances
22 Gardner, who is 83 years old. There's no excuse for what she
23 did. There's no excuse for her writing those letters about,
24 you know, being treated for cancer when she wasn't.

25 I will tell Your Honor just in an explanation, she had a

1 full hysterectomy by Dr. Dent in December before she pled in
2 January. December of 2013, she had a complete hysterectomy.
3 Dr. Dent told her at that time if one of her cysts came back
4 malignant, she would be treated by Dr. Sitti. Those cysts did
5 not come back malignant. Gayle has --

6 THE COURT: Well, let me ask you -- and I didn't -- well,
7 go ahead. I'll ask you in a minute. I'm sorry.

8 MS. PARHAM: So -- so, you know, then she pled in
9 January. Gayle has never been to jail before. She's never
10 been to SCDC. You know, I know she's been on probation
11 previously, but she successfully completed probation those
12 times. And so I think she was a proper candidate for
13 probation when she pled.

14 Gayle -- Gayle's mother, Frances, fell and broke her hip
15 and her femur, and Gayle -- and she can't drive and she's had
16 surgery and -- by Dr. O'Dell, and one leg is longer than the
17 other. And Gayle lives with her and is her sole caretaker and
18 Ms. Gardner is here standing next to her.

19 But when Your Honor -- when she was sentenced to that
20 weekend time, she completely freaked out. I mean she's never
21 been to jail before. She's scared to death and there's no
22 excuse for what she did, but she panicked and was scared to
23 death of going to jail. She was also scared to death of
24 something happening to her mom while she was in jail.

25 What she should have done was told the Court about the

1 full hysterectomy in December and all that, but, you know,
2 she's her mom's driver, she's her mom's caretaker, and her
3 fiancé who is standing behind me, Simon Powell -- he worked
4 for the county for 17 years in the Treasurer's Office, but he
5 has some heart issues. He has real heart issues which, you
6 know, Gayle does not have, but he's supposed to have heart
7 surgery. He's been trying to take care of her mother while
8 she's been in jail, but he's supposed to have a pacemaker put
9 in as soon as possible.

10 So I mean although there's no excuse for what she did,
11 Your Honor, I do think that you ought to consider the reason
12 that she did it was (a) because she was panicked about going
13 to jail, and (b) she was panicked about what would happen to
14 her mom when she went to jail. I know she wants to talk to
15 Your Honor. If you'll -- if you'll hear from her mother and
16 her fiancé, I'd appreciate it. But, you know, we're not here
17 to make excuses, but it is mitigating, Your Honor, her
18 circumstances. And -- and she's -- she's really sorry and I
19 know she'd like to address the Court.

20 THE COURT: All right. Thank you, Ms. Parham. Ms.
21 Morgan, I'd be happy to hear from you.

22 THE DEFENDANT: Your Honor, I truly apologize to you and
23 the Court. I never, ever thought anything that would be
24 horrible like this. It has been a complete nightmare.

25 I do not want to show any disrespect. I am so sorry. I

1 apologize. I was trying to take care of my mom. Simon had a
2 massive heart attack and he's been wearing an external
3 defibrillator and he has to have a defibrillator and a
4 pacemaker put in, and it was -- everything is just
5 overwhelming.

6 And the most important thing to me is the healthcare of
7 my mother. She's been with me for years, and in the past few
8 years her health has certainly declined and it terrifies me.
9 She is all the family that I have and I'm the only family that
10 she also has as well.

11 It's hard not to be with her. I respect her. She's my
12 best friend and being where I have been for the past 30 days
13 has really been one of the hardest things I've ever done. Not
14 to know at night if she's okay or has she fallen again and
15 broken something else and is laying in the house by herself.

16 Again, I just -- I am so sorry and I apologize. If you
17 would, just please let me continue to take care of her.
18 That's the most important thing in my life. If there's
19 anything I need to complete or community service, house
20 arrest, anything that I could just continue to take care of
21 her. I don't go out at night. I stay at home with her all
22 the time.

23 THE COURT: All right. Anybody else, Ms. Parham?

24 MS. FRANCES GARDNER: May I say something?

25 THE COURT: Yes, ma'am. I'll be happy to hear from you.

1 Tell me your name for the record.

2 MS. FRANCES GARDNER: Frances Gardner.

3 THE COURT: Yes, ma'am, Ms. Gardner?

4 MS. FRANCES GARDNER: This is my caretaker. I sure could
5 have used her Monday when I accidentally fell and did this to my
6 arm, but there was no one to pick me up. So I crawled to the
7 nearest chair because once I get down, I can't get up. I
8 think the past three and half -- probably four years have been
9 really mentally and physically hard on Gayle because it's from
10 one doctor to another and I can't drive any longer. She runs
11 the house. Groceries. She does all the shopping. I just --
12 I don't know whether I can make it without her. I'm sure I
13 couldn't after Monday's tumble.

14 (To the defendant) And I didn't want you to know it. You
15 didn't need anything else to worry about.

16 THE COURT: All right. Thank you, Ms. Gardner. Sir,
17 anything you wish to tell me?

18 MR. SIMON POWELL: Yes, sir.

19 THE COURT: Tell me your name for the record, sir.

20 MR. SIMON POWELL: Simon Powell.

21 THE COURT: Yes, sir, Mr. Powell?

22 MR. SIMON POWELL: Gayle is the sole caretaker of her
23 mother. Since she's been incarcerated, I've had to do it and
24 it's hard for me to take care of myself. I wear a life vest
25 to stay alive. I've already put heart surgery off to take

1 care of Frances and I can't have it done as long as I have to
2 -- I'm responsible for -- you know, for her. So if there's
3 any way you can see where Gayle can take care of her mother,
4 then maybe I can have my heart operated on and could save my
5 life.

6 THE COURT: All right. Thank you, sir.

7 MS. PARHAM: Your Honor, I'd just like to recognize a few
8 other people who are in the courtroom on behalf of Gayle.
9 Simon's brother, Gerald Powell, is here and John Jordan is
10 here and also Reverend Albert Ivey is here.

11 THE COURT: All right. I'm going to stand down for just
12 a minute. I want to look at something.

13 MS. PARHAM: Thank you.

14 THE COURT: And I'll be right back.

15 (Whereupon, there is a break in the proceedings from
16 10:13 a.m. until 10:22 a.m.)

17 THE COURT: All right. We're back on the record with Ms.
18 Morgan. All right.

19 What I wanted to do when I stepped off the bench was go
20 back and look at mine and my law clerk's notes from when she
21 pled guilty back in January. I know this, but didn't state it
22 on the record and you didn't either, Ms. Parham, but at the
23 time that Ms. Morgan pled guilty, she was represented by Hank
24 Anderson, and certainly I know you didn't know that. You
25 probably knew it now -- knew it, but you didn't state it on

1 the record previously.

2 MS. PARHAM: I did.

3 THE COURT: And I want to make it abundantly clear for
4 the record that Ms. Parham came into this case within the last
5 month and that she was retained. Prior to Ms. Parham coming
6 into this case, Ms. Morgan was represented by Karen Parrott of
7 the Public Defender's Office.

8 In fact, Ms. Morgan had come back before me on a Rule to
9 Show Cause some time back. She said that Mr. Anderson was
10 still representing her and he wasn't here and I think I ended
11 up continuing the matter due to that issue. I had the Clerk's
12 Office I believe call or contact Mr. Anderson's office. I
13 can't remember if it was Nicole or Doris contact Mr.
14 Anderson's office and he informed the Court then I represented
15 her on the plea, I do not represent Ms. Morgan anymore. And
16 that is when I appointed the Public Defender's Office because
17 I said we're not going to let this hold up the proceeding or
18 the moving forward of this probation matter.

19 Ms. Morgan was ordered to be back in court at the end of
20 I think October -- excuse me -- November 3rd, that week. That
21 week and for whatever reason again she had called the
22 probation office and advised them that she was at McLeod. Ms.
23 Parrott advised the Court that she had spoken with Ms. Morgan
24 the day before and that Ms. Morgan knew she was supposed to be
25 here, and when she failed to appear for that day of court,

1 that is when I issued a bench warrant.

2 I instructed Ms. Parrott at that time to advise the Court
3 when Ms. Morgan was taken into custody and I advised Ms.
4 Parrott at that time -- Ms. Parrott asked me if I would issue
5 a subpoena -- sign a subpoena for them to get records from
6 McLeod I said no, I'm not doing that. When Ms. Morgan gets
7 taken -- when she's taken into custody, go see if Ms. Morgan
8 will sign a release authorizing you to get those records or
9 records from any of these medical providers.

10 And I don't know if any medical records were provided to
11 you, B. Parham, at all. Mr. Caulder has indicated that he --
12 that McLeod confirmed with him I believe that it was stress-
13 related issues.

14 THE PROBATION AGENT: The best they could figure. They
15 said nothing was wrong with her.

16 THE COURT: All right. Anyway, then it was -- I was
17 later advised that she was taken into custody. Did not turn
18 herself in, but was taken into custody by law enforcement.

19 This -- and, Ms. Parham, as you stand here today with
20 your client, it brings back those memories of myself handling
21 criminal cases and recognizing that as a defense lawyer we
22 don't make the facts, but we just got to deal with them.

23 MS. PARHAM: Yes, sir.

24 THE COURT: And you have done and spoken well and
25 admirable on behalf of your client here today.

1 But the bottom line is as I looked back in my notes and
2 my law clerk's notes -- that's why I stepped off the bench and
3 it's why I keep notes when individuals plead guilty in front
4 of me because of issues that may come up later down the road,
5 which this very well did. I went back and looked at my notes
6 and at the time of her plea -- at the time of her plea, again
7 Ms. Parham wasn't here and she didn't represent her; so Ms.
8 Parham would not know other than what her client told her.

9 She did advise the Court that she had had a hysterectomy.
10 Mr. Anderson brought that to my attention and that was another
11 reason I put her on probation and I only gave her weekend
12 time.

13 But in addition to her through her lawyer at that time
14 advising the Court that she had had this medical procedure,
15 she advised the Court also that she was to begin chemotherapy,
16 which was not true -- which was not true, and that was clearly
17 documented in my law clerk's notes.

18 And one of the conditions -- before I ever hire a law
19 clerk, I tell them from the outset it is your responsibility
20 to take copious notes when we are in the courtroom. I can't
21 take notes like I want to because I want to listen to lawyers
22 as they -- and defendants and whoever they have here in
23 support of them, I want to be able to clearly listen to them
24 and make sure that they understand and that I'm listening to
25 what they have to say. And it wouldn't be fair to them if my

1 head was down the entire time you were talking and writing.

2 So I want you to understand that I do listen to what's being
3 said.

4 Now, having said all of that, one of the things that I do
5 and try to do as I impose probation cases or sentence
6 individuals to probation is to on the front end when I suspend
7 a sentence, it is my general practice to put on the front end
8 what I think I would have given them had they -- had I sent
9 them to jail at that time, and that's what I did in this case.

10 I hung five years over Ms. Morgan's head at that time,
11 and I did so -- which I'm certainly entitled to take into
12 consideration. I did so taking into full consideration her
13 prior record -- her prior record. She had been engaged --
14 involved in this type of conduct and this type of fraudulent
15 conduct since 2002 -- since 2002, and she had been on
16 probation I believe Mr. Caulder said three times. She had
17 been on probation three times and very -- I'm not saying I
18 don't do it because I did it in this case, but very, very
19 rarely do I put people on probation when they've been on
20 probation three times and they continue to do the same type of
21 conduct.

22 But in light of the circumstances that were presented to
23 me back in January when she pled guilty concerning her health
24 condition at that time, that was why I -- that was another
25 reason I put her on probation at that time and that was the

1 reason that I had 90 days weekends. I wanted her to get a
2 taste of jail at that time because she hadn't. As you aptly
3 stated or pointed out to the Court, Ms. Parham, she hadn't
4 been to jail before. I wanted her to get a taste of it at
5 that time so it would hopefully steer her off of this road of
6 continuous fraudulent conduct that's been going on since 2002
7 -- since 2002.

8 And it just -- you know, I've always heard, Ms. Morgan,
9 that when you tell one lie, you've got to tell another lie to
10 cover up the first lie to cover up the next lie and to cover
11 up the next lie and the next one, and it just creates a
12 snowball effect. You haven't been in here, you know, since
13 you last appeared in front of me and I continued your case,
14 but it's quite often that I tell individuals this in the
15 courtroom.

16 And I have the utmost sympathy for your mother as she
17 stands there and for Mr. Powell as he stands there, but I say
18 this and I say it often in the courtroom. When we make bad
19 decisions, the people that suffer the most are the people that
20 care about us the most. The last thing I want to do as a
21 judge -- and I'd venture to say most judges will say the same
22 thing. The last thing we want to do is send individuals to
23 jail, but they -- the individuals that stand before this Court
24 and courts throughout this state and this country stand before
25 judges because of bad decisions they made that have dire

1 consequences to those decisions. They just do.

2 What you have done over the last nine -- ten months is a
3 continuous conduct of fraud upon the Court and everybody else,
4 even your lawyers -- even your lawyers.

5 SENTENCE

6 What I am going to do on the probation matter -- I am
7 going to revoke five years. Give her credit for whatever days
8 she has done.

9 With regards to the defendant's conduct over the last
10 nine -- ten months of perpetrating a fraud upon the Court,
11 upon Probation, state law authorizes within the Court's
12 discretion to punish by fine or imprisonment all contempts of
13 authority before the Court.

14 Further stated in State -- or McLeod v. Hite, 272 S.C.
15 303, the courts have the inherent power to punish for offenses
16 that are calculated to obstruct, degrade, and undermine the
17 administration of justice. A person may be found guilty of
18 direct contempt if the conduct interferes with judicial
19 proceedings, exhibits disrespect for the Court, or hampers the
20 parties or witnesses.

21 Direct contempt involves contemptuous conduct in the
22 presence of the Court under State v. Kennerly, 337 S.C. 617.
23 South Carolina courts pursuant to Gooding v. Gooding -- South
24 Carolina courts have construed the term "in the presence of
25 the Court" liberally to include not only the physical presence

1 of the judge of the courtroom, but also all elements of the
2 system.

3 This Court finds that Ms. Morgan's multiple lies and
4 misrepresentations to the Court under oath -- and when I say
5 Court, not only me, but to Probation in providing not one, not
6 two, but at least three separate fraudulent letters to
7 Probation are acts in the presence of the Court in an effort
8 to obstruct, degrade, or undermine the administration of
9 justice.

10 Having found the defendant in contempt of court as
11 previously stated, this Court imposes an additional 120 days
12 to run consecutive to the five years.

13 In going back to the probation matter -- bear with me
14 just a minute here.

15 (Whereupon, there is a pause in the proceedings.)

16 THE COURT: The Court finds, if it didn't previously
17 state, with regards to the probation matter willful violation
18 in defendant's failure to complete the 90-day weekend time as
19 previously imposed by this Court when she pled guilty back in
20 January of this year. That such failure to complete said 90
21 days was without just cause or reason. That in and of itself
22 was a violation of probation warranting a finding of such
23 willful conduct.

24 Anything further from the State?

25 THE PROBATION AGENT: No, sir, Your Honor.

1 THE COURT: Ms. Parham, anything further?

2 MS. PARHAM: We would just object for the record to the
3 -- to the contempt being one of the bases for the revocation
4 and also --

5 THE COURT: Well, that's why I put on the record --

6 MS. PARHAM: I understand. I just wanted to preserve it
7 just in case it was --

8 THE COURT: Well, okay. Certainly, so noted for the
9 record. So noted for the record. But in addition to her
10 failing to pay -- excuse me -- to do her weekend time as
11 previously ordered by the Court, she has failed without just
12 reason or just cause to make any payments or to make her -- or
13 fulfill her financial conditions as stated and required as a
14 condition of her probation.

15 And the reason I said what I said from the outset about
16 what I suspend on the front end --

17 MS. PARHAM: Yes, sir.

18 THE COURT: -- is for that very reason. I'm not double
19 punishing her for what's taken place here. I started out on
20 the front end of the five years because that's what I would
21 have given her had I sent her to jail at that time.

22 In taking into consideration -- and the Court has every
23 right to take into consideration her prior record at the time
24 of sentencing and that's what I did and that was why.
25 Ordinarily, under a financial-type of situation, I wouldn't

1 have hung five years over her head, but because she had been
2 on probation three times before, she continued to engage in
3 this type of conduct since 2002, which was eleven years at the
4 time or approximately thereto, that is why I hung the five
5 years over her head.

6 MS. PARHAM: Yes, sir.

7 THE COURT: All right. But your objections are so noted
8 for the record.

9 MS. PARHAM: Thank you, Your Honor.

10 THE COURT: Thank you.

11 THE PROBATION AGENT: Thank you.

12 (Whereupon, the proceedings end at 10:41 a.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 26 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Florence County, South Carolina, on the
13 5th day of December, 2014.

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

16
17 Krystal J. Smith
18 Court Reporter
19

20 Florence, South Carolina
21 February 6, 2015
22
23
24
25

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

Offender's Name: **GAYLE GARDNER MORGAN, GAYLE G. MORGAN, GAYLE**

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

SID#: **01404802**

Warrant#: **C-21-14-0255**

Date of Birth: **5/8/1962**

SCDC#: **NONE**

Indictment Numbers:

12-GS-21-01025

Offense and Offense Code:

2349 - Financial Transaction Card fraud value more than \$500 in six month period, by cardholder; 348 - Financial Transaction Card Theft

Supervision Program: **Probation**

Begin Date: **1/16/2014** End Date: **1/15/2019**

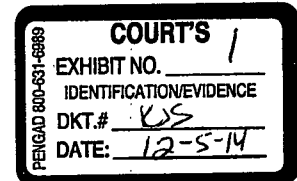
Supervision Level: **Standard Supervision**

Sentencing Judge: **2160 - Brown, D.**

Sentencing County: **FLORENCE**

Sentencing Date: **1/16/2014**

Location (Bold Response): **Community**



Sentence:

W# M274779; 5 YRS. SS:TS-2 DYS AND 90 DYS W/ENDS AND 3 YRS. PROBATION

W/ENDS MAY START 1/17/2014 @ 8AM

CASE RUNS CONCURRENT W/W# 2012GS2101025A

05/06/14 consent Order Per Judge D. Brown: Extnd Prob to 5yrs max. Hold 90dys sentence in abeyance. Give prob 90dy updates from Doctor about medical condition.

05/19/14 Consent Order Per Judge D. Brown: Extnd Prob to 5yrs max. Hold 90day weekend time sentence in abeyance. Give Prob 90day updates from Dr. about medical condition., W#2012GS2101025A; 5 YRS. SS: TS-90DYS AND 3 YRS. PROBATION

RUNS CONCURRENT W/W# M274779

05/06/14 consent Order Per Judge D. Brown: Extnd Prob to 5yrs max. Hold 90dys sentence in abeyance. Give prob 90dy updates from Doctor about medical condition.

05/19/14 Consent Order Per Judge D. Brown: Extnd Prob to 5yrs max. Hold 90day weekend time sentence in abeyance. Give Prob 90day updates from Dr. about medical condition.

Special Conditions:

Fine - Fine / Fine/Costs and Assessments payable as directed by the Court.

TOTAL: 148.15- SURCHARGE: 108.15 + PDA: 40.00; Other1 - 90 DYS, WEEKENDS MAY START 1/17/2014 @ 8AM; Fine/ Costs and Assessments payable as directed by the Court.

Assessments payable as directed by the Court.

SURCHARGE: \$108.15

Current Address and Summary of Residence:

401 GRAHAM STREET, FLORENCE, SC 29501, FLORENCE, USA, ; SAME, SAME, SC, USA,

Reporting:

No reporting problems.

Employment Records While Under Supervision:

Employer	Dates (from -to)	Reason(s) for Leaving	Earnings
UNEMPLOYED	7/1/2008 -		\$1.00

Financial Conditions:

	Total Amount ordered	Pay Period	Total Paid	Date Last Paid	Arrearage	Balance Due
Fees						
Drug Test Fee	\$20.00	\$20.00/Q	\$10.00	10/22/2014	\$10.00	\$10.00
Regular Supervision	\$3,000.00	\$50.00/M	\$500.00	10/22/2014	\$0.00	\$2,500.00

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

Offender's Name: **GAYLE GARDNER MORGAN, GAYLE G. MORGAN, GAYLE**

Fines						
Surcharge	\$256.30	\$8.00/M	\$0.00		\$72.00	\$256.30

Prior Violation Dates	Prior Violations	Prior Violation Disposition
5/6/2014	Rule to show cause issued by Judge Brown for offender to answer for failure to do weekend time as directed.	Extnd Prob to 5yrs max. Hold 90dys sentence in abeyance. Give prob 90dy updates from Doctor about medical condition.

Details of the Present Violation:

10. Failure to complete weekend time as ordered by Judge Brown during initial sentencing. Judge Brown ordered agent to bring offender back to him for a review on the record as soon as possible. - 10. Failure to complete weekend time as ordered by Judge Brown during initial sentencing. Judge Brown ordered agent to bring offender back to him for a review on the record as soon as possible.

Agent's Recommendation:

Court review.

Agent's Justification:

During a rule to show cause hearing on 05/06/2014, offender presented a document to the court that outlined a medical issue that she stated prevented her from doing her court ordered weekend time. Judge Brown made that document part of the permanent record and ordered 90 day reviews of her medical condition. Offender also advised the Judge that date that she had recently been treated for a heart attack at MUSC in Charleston. On 9/5/2014 Morgan presented this agent with her first 90 day review. The letter stated her cancer was not any better. The authenticity was immediately questioned and the doctor's office was contacted. Agent faxed the letter to them and they determined it to be a forgery. They further stated that Gayle Morgan was not a patient of this doctor. They ran all names possible, DOB and SS#. The doctor was personally contacted and she stated she does not know Morgan and that the signature on the letter was not hers. Agent alerted Judge Brown's office of this apparent forgery. I was ordered to issue a citation and return offender to court. Agent was also advised to get a letter from offender in reference to her heart attack. Offender brought in that letter a week later. Agent called the doctor's office in question and determined that letter was also a forgery.

Robert Caulder

Senior Agent

Date: 10/27/2014

Supervisor's Signature



Date:

10/27/14

PROBATION CITATION

No. C-21-14-0255

SOUTH CAROLINA		COUNTY: FLORENCE	
V. GAYLE GARDNER MORGAN, GAYLE G. MORGAN, GAYLE G MORGAN		SCDC # NONE	SID # 01404802
TO: GAYLE GARDNER MORGAN, GAYLE G. MORGAN, GAYLE G MORGAN			
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 10. Failure to complete weekend time as ordered by Judge Brown during initial sentencing. Judge Brown ordered agent to bring offender back to him for a review on the record as soon as possible.			
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.			
FLORENCE, South Carolina		Probation and Parole Agent Robert Lee Caulder	Agent # 0620
Date 10/2/2014			
A copy of the citation was served by the undersigned and given to the individual named therein at the time, date, and place indicated below.			
Place SC JPPS - Florence		Date and Time 10/13/2014 @ 1430	Serving Officer's Signature [Signature]
Sworn to and subscribed before me this [Signature] Signature of Notary Public		13 day of Oct, 2014 My Commission Expires November 7, 2014	

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of FLORENCE

Personally appeared before me, Robert Lee Caulder, who first being duly sworn, deposes and says that GAYLE GARDNER MORGAN, GAYLE G. MORGAN, GAYLE G MORGAN did within this county and State on the 2 day of October, 2014, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

10. Failure to complete weekend time as ordered by Judge Brown during initial sentencing. Judge Brown ordered agent to bring offender back to him for a review on the record as soon as possible.

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:

10. Failure to complete weekend time as ordered by Judge Brown during initial sentencing. Judge Brown ordered agent to bring offender back to him for a review on the record as soon as possible.

Sworn to and subscribed
before me this 2 day of
October, 2014

Daniel M. Gordon
Signature of Notary Public

My Commission Expires: November 7, 2021

[Signature]
Affiant

RECEIVED

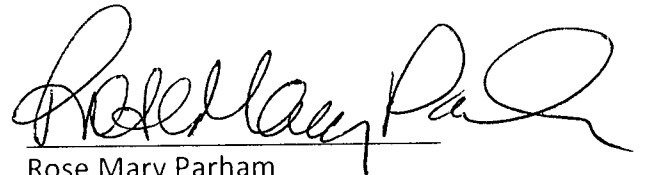
NOV 05 2015

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 2, 2015



Rose Mary Parham
SC Bar Id. 17032
Parham Law Firm, LLC
P.O. Box 1514
Florence, SC 29503
Phone: (843) 407-7757
Facsimile: (843) 407-7758
rosemaryparham@sc.rr.com