

22584

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANNIE VICTORIA WILSON,

APPELLANT

APPELLATE CASE NO. 2015-002028

RECORD ON APPEAL

ROBERT M. PACHAK
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

MATTHEW BUCHANAN
General Counsel
South Carolina Department of
Probation, Parole & Pardon Services
Post Office Box 50666
Columbia, South Carolina 29250
(803) 734-9220

ATTORNEY FOR RESPONDENT

ANDERS
ORIGINAL
ANDERS RESPONSE BRIEF
RESPONDENT'S BRIEF
RECEIVED

JUL 14 2016

SC Court of Appeals

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State of South Carolina
County of Aiken

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2009-GS-02-00981
	)	
Annie Wilson	)	
	)	
<u>Defendant.</u>	)	

September 8, 2015
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Ashley Finch, Probation Agent

Bradley McMillian, Assist. Public Defender
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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1 (The following proceedings were held September
2 8, 2015.)

3 ANNIE WILSON

4 being first duly sworn, testified as follows:

5 THE COURT: All right. Ms. Wilson, you were
6 before me back in November of 2011 for burglary
7 third degree, first offense. You got a five-year
8 sentence suspended to five years probation, 250
9 hours of public service.

10 You've had a number of prior violations
11 starting in May of 2012. You tested positive for
12 illegal drugs, you failed to pay your fines and
13 fees. At that time we issued a consent order where
14 we exempted your supervision fees and restructured,
15 and you were required to attend substance abuse
16 counseling.

17 You had another violation in September of 2012
18 for failing to report, failing to pay your financial
19 obligations, failing to complete your public
20 service, you tested positive for illegal drugs. You
21 were incarcerated and were remained to be
22 incarcerated until bed space was available.

23 You were back before me in March of 2013 for
24 failing to report after you got out of the inpatient
25 treatment, failing to complete substance abuse

1 counseling, failing to pay your restitution. I
2 revoked 90 days. Once again, January of 2014, that
3 was for failing to pay fines and fees.

4 You're before me today -- it looks like there's
5 two warrants -- or a warrant and a citation. It's
6 alleged that you've failed to report. You were
7 instructed to report back to the probation office on
8 June 17 of this year. After she was released --
9 what was she doing in ACDC?

10 MR. FINCH: That was a driving under
11 suspension.

12 THE COURT: Tried to put you into inpatient,
13 but you never reported back since June of 2015.
14 They say you disregarded this office in every way.
15 You failed to refrain from further local charges in
16 that you were convicted and arrested on DUS, had a
17 30-day sentence after a bench warrant was issued,
18 failed to pay your fines, your DACOR fees, failed to
19 enroll in drug treatment.

20 Citation says that you've failed to pay your
21 supervision fees, fines, restitution; you haven't
22 completed your public service. She's in arrears 250
23 hours. All she had was 250 hours, so she's never
24 done any?

25 MR. FINCH: None.

1 THE COURT: Agent is recommending revocation
2 saying that you have shown a willful disregard to
3 the conditions of your probationary sentence; failed
4 to report, continues to use illegal drugs, been
5 arrested with multiple violations in the past,
6 continues to show a disregard to the Court's order
7 and the conditions of supervision, signed by
8 Mr. Ashley Finch.

9 Mr. McMillian?

10 MR. MCMILLIAN: Thank you, Your Honor.

11 Ms. Wilson is 49 years old. She grew up here in
12 Aiken County in North Augusta. Judge, she tells me
13 that she didn't get into rehab -- that Your Honor
14 actually ordered her held, nothing was found, she
15 was released, and then made several attempts to
16 enter rehab through voc rehab, but due to paperwork
17 errors on their part, she was turned away and asked
18 to come back, and when she came back, that she was
19 turned away again.

20 THE COURT: And why didn't she report? Why
21 didn't she do her public service? Why didn't she do
22 anything she was supposed to do?

23 MR. MCMILLIAN: Your Honor, with regard to the
24 reporting and the failure to do the public service,
25 she tells me, Judge, that her mother was put on

1 dialysis during that time and that she was having to
2 stay home and help take care of her mother. Judge,
3 she's notified me that her mother and her husband
4 are present in the courtroom and would like to speak
5 up for her when the Court deems appropriate.

6 In talking with her, Judge, what she would have
7 me ask you for is a chance to pay her restitution
8 current and enter the rehab.

9 THE COURT: How are you going to pay it
10 current?

11 THE DEFENDANT: My mother has the money on her
12 today, Your Honor.

13 THE COURT: How much does she owe to make it
14 current?

15 MR. FINCH: The balance is \$226, and that's how
16 many payments it is behind at this point.

17 THE COURT: Anything else? Is she going to
18 bring her public service current today? It's 250
19 hours.

20 MR. MCMILLIAN: I don't think there are enough
21 hours in the day to bring that one current, Judge.

22 THE COURT: There has been though since 2011.

23 MR. MCMILLIAN: Yes, sir.

24 THE COURT: She's not going to do probation.

25 THE DEFENDANT: Yes, I will.

1 THE COURT: She continues and continues and
2 continues to violate. I mean, I tried to help her,
3 I've given her a 90-day revocation one time. We've
4 tried to put her in drug rehab a couple times, we've
5 tried everything we know. I don't know what else to
6 do. This is four or five times. I gave her
7 probation to start off with. She's just not going
8 to do it. I'll be glad to hear from her mama if she
9 wants to say anything.

10 MR. MCMILLIAN: I don't know that she's able,
11 Judge. I think --

12 THE DEFENDANT: She's not able to walk. My
13 husband --

14 THE COURT: That's fine. We'll let your
15 husband come up here.

16 MR. MCMILLIAN: Mr. Toole, would you like to
17 speak?

18 MR. TOOLE: Yes, sir.

19 THE COURT: Come on up here, sir. Your name?

20 MR. TOOLE: Randy Toole, sir.

21 THE COURT: I'll be glad to hear from you.

22 MR. TOOLE: We really need her home for her
23 mother. She's -- she's disabled, you know --

24 THE COURT: I understand all of that.

25 MR. TOOLE: My sister-in-law, she had to leave

1 her home in Columbia County to come and help. So,
2 you know, we really need her home.

3 THE COURT: I understand you need her home.
4 But I gave her a sentence back in 2011, and she has
5 completely ignored everything she's supposed to do.
6 She's had four prior violations and she continues
7 not to report. She hasn't done any of her community
8 supervision. I've given her every chance I can give
9 her. I'm going to revoke her probation in full.
10 Good luck to you, ma'am.

11 MR. MCMILLIAN: Thank you, Your Honor.

12 MR. FINCH: Thank you, Your Honor.

13 THE DEFENDANT: I have a letter. I can't read
14 it to you?

15 THE COURT: Thank you.

16 -- END OF TRANSCRIPT OF RECORD --

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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, Bethanie K. Creppon, Circuit Court Reporter for the Second 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 Aiken County, South Carolina, on the 8th day of September, 2015.

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

May 23, 2016

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA **RECEIVED**

IN THE COURT GENERAL SESSIONS

County of Aiken SEP 25 2015
STATE VB.

Indictment Number: 2009-GS-02-00981
Probation C/W #: W-02-15-0161
C-02-14-0172

SC Court of Appeals

Annie Victoria Wilson

AKA: _____

Race: W Sex: F

DOB: _____

SSN: _____

SID#: 00510207

Name of Original Offense: Burglary 3rd degree 1st off

Original A/W #: 1102507

Date of Original Offense: 01/12/09

Conviction S.C. Code #: 16-11-0313

Conviction CDR Code #: 0141217

Original Sentence: 5 yrs, 555 yrs, P. in

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 11/11/11 in the Court of General Sessions of Aiken County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 11/07/14, as set forth in the attached warrants or citation(s) dated 7/20/15. 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, 3, 6, 7, 9, 10, special condition

Therefore, IT IS ORDERED that:

☒ the suspended sentence be revoked and the above named defendant be required to serve 5 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 _____ 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: Revoke in Full + Terminate

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

☒ The defendant has previously served 90 Days 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 8 day of September 2015
Aiken SC

THE COURT
Presiding Judge 21st 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 condition 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

Witnessed by

Signed this 3rd day of September 2015
Day Month Year

Aiken SC
City

WITNESSES

Aiken County Sheriff

Greg Savell

Law Enforcement Case #: 09-002923

SK

ARREST WARRANT NUMBER

M025072

FILED June 11 2009L. J. Hodard
J.C.C.P. & G.S.Anne Sanders as
PROSECUTOR**ACTION OF GRAND JURY**True Bill[Signature]Foreperson of Grand Jury
Date: June 11, 2009**VERDICT**Foreperson of Petit Jury
Date:**DOCKET NO. 2009GS0200981****The State of South Carolina****County of Aiken****COURT OF GENERAL SESSIONS****JUNE TERM 2009****THE STATE****vs.****ANNIE VICTORIA WILSON****CDR #: 0080****Indictment for****BURGLARY IN THE SECOND DEGREE****§ 16-11-0312****J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA)

INDICTMENT FOR
BURGLARY IN THE SECOND DEGREE

COUNTY OF AIKEN)

§ 16-11-0312

At a Court of General Sessions, convened on June 15, 2009, the Grand Jurors of Aiken County present upon their oath:

That **ANNIE VICTORIA WILSON**, along with another, did in Aiken County, South Carolina on or about January 12, 2009 knowingly and willfully enter a dwelling belonging to Michael Taylor located at _ _ _ _ _ ue, Bath, South Carolina, without consent and with the intent to commit a crime therein, in violation of § 16-11-312 (A) 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.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS0200981

VS.
Annie Victoria Wilson

A/V#: M025072

AKA: Ann V Manning, Annie V Key

Date of Offense: 1/12/2009

Race: Sex Age: 45

S.C. Code §: 16-11-0312

DOB: SS#:

CDR Code #: 0080

Address:

City, State, Zip: BATH, SC 29816

DL# SID# SC00510207

SENTENCE SHEET

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Burglary - Third degree - 1st offense

In violation of § 16-11-0313

of the S.C. Code of Laws, bearing CDR Code # 0427

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☒ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 74983

Defendant

Attorney for Defendant

SC Bar# 65401

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 5 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 _____ days/months/years and or payment of \$ _____

; plus costs and assessments as applicable; the balance is suspended with probation for 5 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.

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered PTUP

Total: \$ 355. plus 20% fee: \$ 250 days/hours Public Service Employment

Payment Terms:

☒ Set by SCDPPPS

Recipient:

*Fine:

\$14-1-208 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-288 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
\$14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 80.6 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>18.90</u>

TOTAL \$ 648.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve WE 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:

No contact w/ Victim or Cases, Maria includes her son

☒ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

0236

Nov 19, 2011

Form 18.1-Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-180
March 15, 1978

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Probation

ARREST WARRANT

Indictment Number 09-GS-02-00981

Warrant Number W-02-15-0161

State Identification No. (SID) 00510207

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

It appearing from the attached affidavit that there are reasonable grounds to believe that ANNIE VICTORIA WILSON, did on the 20 day of July, 2015 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Probation Violation as ordered by Judge Doyet Early at November 14, 2011 term of General Sessions Court, Aiken, SC.

Now, therefore, you are empowered and directed to arrest the said defendant and bring ANNIE VICTORIA WILSON 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 AIKEN, S. C. this 20 day of July, 2015.

County of **AIKEN**

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

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Ashley Finch, who, first being duly sworn, deposes and says that ANNIE VICTORIA WILSON did within this County and State on the 20 day of July, 2015, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Probation Violation as ordered by Judge Doyet Early at November 14, 2011 term of General Sessions Court, Aiken, SC.

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:

Annie Victoria Wilson has failed to report as instructed. She was instructed to report back to the probation office on June 17, 2015 after she was just released from the ADCDC on 6/12/15. Efforts were in place to get her into inpatient treatment but to no avail as she has never reported back to the probation office. She has disregarded this office in every way. Subject has failed to refrain from any further local charges/convictions in that she was arrested and convicted of DUS, receiving a sentence of 30 days in Magistrate Court, after a Bench Warrant had been issued for her arrest; Subject has failed to pay her Court Fine as ordered in that she is \$506.00 in arrears, having paid -0-. Subject has failed to pay DACOR in that she is 2,905 in arrears, having paid a total of \$1,187.00, she has only paid \$155.00 in the year 2015, Subject has failed to enroll in drug treatment after the Supervising Supervisor, Charles Finch has tried to no avail to get her into treatment and by failing to follow the advice and instructions of her agent, which constitutes a violation of Sections 1, 6,

Sworn to and Subscribed before me
this 20 day of July, 2015.


Affiant

 (L.S.)
Signature of Notary Public
9/22/2024
My Commission Expires

Address: P.O. BOX 2194
AIKEN, SC 29802-2194
AIKEN
USA

(803) 641-7690

Addendum

9, 10, 11 and the Special Conditions of her probation agreement.

Sworn to and Subscribed before me
this 20 day of July, 2015.

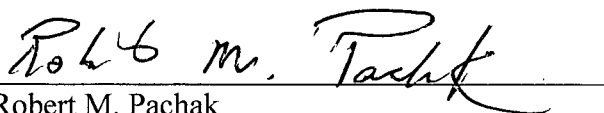
Cashley Jemel
Affiant

Marissa
Signature of Notary Public
9/22/2024
My Commission Expires

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 South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robt M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 14th day of July, 2016.