

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Chester County

OCT 21 2016

Honorable Brian M. Gibbons, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DALE MACK FEASTER,

APPELLANT

APPELLATE CASE NO. 2016-000470

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF CHESTER
2016-GS-12-00072

State of South Carolina

vs.

Dale Mack Feaster

Chester, South Carolina

February 24, 2016

Before the Honorable Brian M. Gibbons

APPEARANCES

For the State: Karen Fryar

For the Defendant: Devon Nielson

Reported by: Michael C. Watkins
Official Court Reporter

1	Plea Hearing:	3
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NO EXHIBITS

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1 MS. FRYAR: Standing before you is Mr. Dale Mack
2 Feaster, he is charged with the offense of failing to
3 register as a sex offender third and subsequent offense.
4 He is present in court today with his attorney, Mr. Devon
5 Nielson, and he has indicated his desire to plead guilty.
6 Your Honor, I had indicated to Mr. Nielson that I would
7 recommend to the Court an active sentence of no more than
8 two years, however I don't know if that is applicable under
9 the law and I would just ask you to -- he believes that
10 that can be done, if you would just hear from him and then
11 make a determination of what you think the correct sentence
12 has to be.

13 THE COURT: Well, before I proceed any further I need
14 to give y'all my opinion on what the statute says because
15 that's very relevant. Is this the most recent version?
16 Let's see if it has been amended, I'll pull it up right
17 now.

18 (Break in proceedings.)

19 THE COURT: Section 23-3-470, which this falls under,
20 subsection E3, a person convicted for a third or subsequent
21 offense is guilty of a felony and must be imprisoned for a
22 mandatory period of five years, three of which shall not be
23 suspended nor probation granted. All right. My
24 interpretation of that given its plain and ordinary
25 meaning, which is what I have to do according to the

1 cardinal rule of statutory interpretation, is ascertain and
2 effectuate the intent of the legislature and to give its
3 plain and ordinary meaning means the least I can do is
4 three.

5 MR. NIELSON: Okay. We'll need to step back because I
6 haven't advised my client properly.

7 THE COURT: That's the Court's opinion.

8 (Break in proceedings.)

9 THE COURT: You introduced it before. And Mr.
10 Nielson, do you agree, is Mr. Feaster pleading guilty to
11 this charge?

12 MR. NIELSON: He is, Your Honor.

13 THE COURT: Do you agree with his decision to do so?

14 MR. NIELSON: I do, Your Honor.

15 THE COURT: All right. Mr. Feaster, you are 58 years
16 of age, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand what you're doing in
19 court?

20 THE DEFENDANT: Yeah.

21 THE COURT: You understand this charge against you?

22 THE DEFENDANT: Yeah.

23 THE COURT: You understand it carries up to five years
24 in prison.

25 THE DEFENDANT: Yeah.

1 THE COURT: The minimum I can give you is three.

2 THE DEFENDANT: Yeah.

3 THE COURT: All right. So the best you can do today
4 is going to be three, the worst you can do is going to be
5 five, you understand that?

6 THE DEFENDANT: (Nods head yes.)

7 MR. NIELSON: You've got to speak up.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you still wish to go forward with the
10 plea?

11 THE DEFENDANT: Yeah.

12 THE COURT: Has anybody forced you to do that?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anybody promised you anything?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you satisfied with your lawyer?

17 THE DEFENDANT: Yeah.

18 THE COURT: Has he answered all of your questions?

19 THE DEFENDANT: Yeah.

20 THE COURT: Do you understand you're giving up your
21 right to a jury trial when you plead guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You understand all of those rights?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you been over them with your lawyer?

1 THE DEFENDANT: Yeah.

2 THE COURT: Are you under the influence of anything
3 that would make you not understand what's going on?

4 THE DEFENDANT: No, sir.

5 THE COURT: Listen carefully to what the State says
6 happened.

7 MS. FRYAR: Your Honor, Mr. Feaster was released from
8 the South Carolina Department of Corrections, I believe, on
9 October the 5th, on October the 6th he reported to the
10 Chester County Office for sex offender registration, which
11 was required of him. Mr. Feaster did request some help
12 with the form and Officer McKenzie was going to help him
13 fill out the form, but before he could do that Mr. Feaster
14 left. So at that time the sheriff's department folks
15 called the contact information listed on Mr. Feaster's SCDC
16 release as well as the beginning of the sex offender
17 registry form that he was filling out and she spoke to his
18 mother, Ms. Mattie Feaster and -- he had indicated that he
19 was going to be living in Chester County at a particular
20 address where she lived. Well, when they called his mom
21 she said that she would tell him if she seen him. Well,
22 later on, Your Honor, they contacted her again -- she came
23 up there actually and they said he needs to return before
24 5:00 today, this is on October 6th, or the first thing in
25 the morning, October 7th, to complete the registration, and

1 at that time his mother indicated she would tell Mr.
 2 Feaster. He did not come. Captain Robinson called and
 3 talked to Ms. Feaster again at 12:00 on that day since Mr.
 4 Feaster had not reported back, and again she said she would
 5 tell him if she saw him that but that he was living in
 6 Columbia. Mr. Feaster had, of course, said he was living
 7 at 744 Kelsey Street in Chester. So they could not locate
 8 him, they tried for awhile and finally on October the 19th
 9 when he hadn't shown up a warrant was issued for his arrest
 10 for failing to register as a sex offender. He was located,
 11 Your Honor, November 5, 2015 in Fairfield County and was
 12 turned over to the sheriff's department.

13 THE COURT: Did you hear what she said?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is that what happened?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. This is a true third?

18 MS. FRYAR: This is either a third or a fourth. I
 19 believe this is going to be a fourth, Your Honor.

20 MR. NIELSON: I believe it's a fourth as well, Your
 21 Honor.

22 THE COURT: I accept your plea. Let me hear from you.

23 MR. NIELSON: Yes, Your Honor. I represent Mr.
 24 Feaster. Mr. Feaster -- I would like for the record -- for
 25 record keeping purposes to put on the record that I do

1 believe that this could be suspended to a time served. The
2 way I read the statute is different than Your Honor, I
3 understand that, Your Honor has already made a ruling that
4 the way that you read the statute you must give him three
5 years, but for appellate and down the road purposes I would
6 like to put on the record that I believe it can be
7 suspended to time served. This man tried to register, he
8 tried to do everything he could, he thought he had
9 registered when he left the office that day. There was no
10 maliciousness on him on not registering, and my plan this
11 morning was to come before Your Honor asking for time
12 served based on the fact that the way our statutes are
13 written usually they say something to something when the
14 legislature intends to give a minimum amount of time, and
15 so that would be what I would ask you to do. I understand
16 Your Honor is going to do that, I've advised my client as
17 to that, he is still wishing to plead guilty but I would
18 like all of that on the record and Your Honor --

19 THE COURT: We don't have conditional guilty pleas in
20 South Carolina. I mean, if he's pleading guilty he
21 understands that I could give him up to five.

22 MR. NIELSON: He understands that, Your Honor.

23 THE COURT: And you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So if I gave him five -- you can appeal

1 your sentence, you have ten days to appeal it, do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. But I have the discretion to give
5 you -- in my opinion I have the discretion to give you
6 three to five under this, okay? I don't know what I'm
7 going to give you yet but I don't have the discretion to
8 give you two, I don't have the discretion to give you less
9 than three in my opinion, of course, I could be wrong. But
10 then again it doesn't matter because you're pleading
11 guilty, do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I just want to make sure we're all on the
14 record. Anything else you want to tell me?

15 MR. NIELSON: I would just ask based on the fact that
16 he did try to do that and the fact that he's been no
17 problem with the jail, I've spoken with jailers and
18 different people, he has been of good -- he has behaved
19 himself well out there, I would ask Your Honor to lean
20 towards the three and not go closer to five.

21 THE COURT: I will do that. Sentence of the Court is
22 three years, certainly you're given credit for the time you
23 have served so far, okay? Good luck to you.

24 (End of the hearing.)

25

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

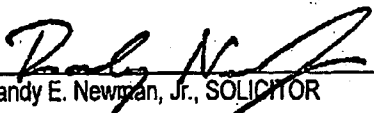
INDICTMENT

At a Court of General Sessions, convened on March 22, 2016, the Grand Jurors of Chester County present upon their oath:

FAILURE TO REGISTER AS SEX OFFENDER

That Dale Mack Feaster did in Chester County on or about October 6, 2015, being a sex offender as defined by § 23-3-430 of the Code of Laws of South Carolina, fail to register with the sheriff of Chester County as a sex offender and provide the information prescribed by the State Law Enforcement Division, in violation of §§ 23-3-450, 23-3-460, 23-3-470(A), 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.


Randy E. Newman, Jr., SOLICITOR

12
 STATE OF SOUTH CAROLINA)
 COUNTY OF _____ State: _____)
 STATE _____ VS. _____)
 Dale Mack Feaster)
 AKA: _____)
 Race: BLACK Sex: M Age: 58)
 DOB: _____ SS#: _____)
 Address: _____)
 City, State, Zip: Chester, SC 29706)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS12072
 A/W#: 2015A1210100212
 Date of Offense: 10/6/2015
 S.C. Code §: 23-03-0470(A)
 CDR Code #: ~~2435~~ 2435 **RECEIVED**

SENTENCE SHEET MAR 07 2016

SC Court of Appeals

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Sex / Sex Offender Registry Violation, fail to register - 3rd & sub. offense

CONVICTED OF

in violation of § 23-03-0470(A) of the S.C. Code of Laws, bearing CDR Code # ~~2435~~ 2610
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. **DF** (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Karen Fryar 10385 SC Bar# _____ Defendant
J.R. [Signature] 10444 SC Bar# _____ Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 3 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 _____

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 the 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: \$ _____ plus 20% fee: \$ _____
 days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS _____
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 123.90

Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk: Jane K. Carpenter
 Court Reporter: Mike [Signature]
 SCCA/217 (03/2011)

Presiding Judge: [Signature]
 Judge Code: _____
 Sentence Date: 2/24/16 2168

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."

Respectfully Submitted,



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 21st day of October, 2016.

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THE STATE,

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APPELLATE CASE NO. 2016-000470

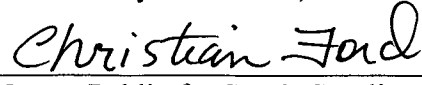
CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Dale Mack Feaster, #273780 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 21st day of October, 2016.



George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2016.



Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026